

Whoever says I did not borrow, it is as if he said etc., I did not repay. – כל האומר לא לייתי כאומר כולי

Overview

The **בריייתא** states that if a **לוה** originally admits (in the presence of witnesses) that he owes money and then subsequently denies that he ever borrowed; the ruling is that he is liable to pay the debt. The **גמרא** cites the dictum of **כל האומר** as the reason for this ruling. Seemingly this dictum is not at all necessary to obligate the **לוה**. He is liable because he cannot contradict his previous admission of owing the monies. **תוספות** will be addressing this issue.

תוספות asks:

The ר"י asks: – הקשה הרב ר' **יצחק**

why is it necessary here to utilize the explanation of -

whoever says etc, I did not borrow is as if he said I did not repay.

This idea is superfluous in the case under discussion. For in our case –

since he already admitted that he owes money, then **certainly** –

he will not be believed to restate and claim that he did not borrow. Once an admission is made one cannot retract the admission.

תוספות will now explain where this dictum is necessary:

It is understood that in מסכת – **דבשלמא בשבועות** (דף מא,ב ושם דיבור המתחיל כל) **שבועות**

this reasoning is necessary; that **כל האומר וכו'**. There the **גמרא** is discussing a case –

where the מלוה says to the לוה 'you owe me a מנה (a hundred זוז) [literally I have a מנה in your hand]

and this לוה responds: 'It never happened; you never lent me money -

and witnesses came and testified that –

we saw that he borrowed money and subsequently repaid it –

now we view this case as follows; that which the witnesses testify that the לוה borrowed –

they are believed. We have therefore substantiated that the לוה owed money to the מלוה.

however that which they testify [that] he repaid the loan – **והא דקאמרי [ש¹] פרע**

¹ See **הגהות הב"ח** for this and future emendations in parenthesis (to omit) and brackets [to insert].

they are not believed. We assume that he still owes the money. The reason the witnesses are not believed that he repaid the loan, is –

for the himself contradicts them – דהא איהו קמכחיש ליה –

for the said I did not borrow any money from this מלוה – דאמר לא לויתי –

and one who says I did not borrow – והאומר לא לויתי –

it is as if he said I did not repay the loan. The מלוה by claiming לא לויתי it is as if he is admitting that he did not repay. Therefore even though that the עדים testify that he did pay, his inferred admission that he did not pay is stronger than the testimony of the witnesses. A person is believed for his detriment, even against the testimony of witnesses.

In מסכת שבועות it is understood why it is necessary to use the rationale of 'כל האומר וכו'; otherwise he would be exempt from payment since the עדים are testifying that he repaid the loan (and he did not explicitly say that he paid) –

however here in our case where he originally admitted to owing the money – אבל הכא –

it is entirely not necessary to depend on the rationale of 'כל האומר וכו'; for even without that reasoning he would still be obligated to pay, since originally he admitted that he owed the money, he cannot later retract and claim there was never such a loan. לא צריך כלל –

answers: תוספות

and the ר"י says – ואומר רבינו יצחק –

it is necessary to cite the rationale of 'כל האומר וכו', in order to let us know – דאיצטריך לאשמועינן –

that the מצי למימר – דלא מצי למימר –

[that which I subsequently stated] that I did not borrow from you anything, I did – [הא דאמרי] לא לויתי –

not mean that [I] did not borrow at all from you – לא שלא (לוה) [לויתי] כלל – but rather I meant that **it is as if I never borrowed** from you – אלא כאילו לא לויתי –

because I repaid the loan. When I claimed לא לויתי I meant to say that as of now it is as if I never borrowed money from you since I already repaid it. Therefore were it not for the rule that 'כל האומר וכו', he might be believed, since according to his interpretation of his subsequent claim of לא לויתי he is not contradicting his original admission of owing money. That is why the גמרא – לפי שפרעתי –

comes to let us know by citing the ruling of 'כל האומר וכו', that when a person claims לא לויתי he cannot later reinterpret his statement to mean that I repaid you and it is as if I never borrowed. This is not so, but rather the statement of לא לויתי is – קא משמע לן –

כאילו אומר לא פרעתי בהדיא – as if he explicitly stated I did not (borrow and certainly did not) **repay** the loan. Therefore he cannot reinterpret his claim of לא לוייתי; but rather we take it to mean לא פרעתי².

Summary

The dictum כל האומר וכו' is effective in extracting a (tacit) admission from the לוי that he did not pay (even against conflicting testimony), and also preventing the לוי from reinterpreting לא לוייתי to mean לא פרעתי.

Thinking it over

1. מאס' תוספות maintains that without כל האומר וכו', the לוי could reinterpret לא לוייתי to mean לא פרעתי. However our גמרא states that the subsequent claim of the לוי was להד"ם. It would seem a bit far to reinterpret להד"ם to mean לוייתי (כל האומר even without).

2. Can we differentiate between what כל האומר accomplishes in שבועות to what it accomplishes here in our גמרא?

² If we were able to reinterpret לא לוייתי to mean לא פרעתי, then how come in שבועות he is not believed; especially since there are עדים who testify that he paid, let us reinterpret his לא לוייתי as לא פרעתי which would make him in full accord with the עדים. Once I see that we do not reinterpret לא לוייתי even when it is in accordance with עדים then we will certainly not reinterpret it to mean לא פרעתי when it is not corroborated by עדים.