

## They delivered it to him with witnesses

## מסרי ליה בסהדי –

### OVERVIEW

The גמרא relates the story of רעיא, mentioning that the sheep were delivered to him in the presence of witnesses. The גמרא mentions this to (seemingly) inform us that the shepherd could not deny it<sup>1</sup>. תוספות explains that giving it to him in the presence of witnesses is not sufficient protection for the owners.

ומיירי דאמרי ליה אל תחזיר אלא בעדים<sup>2</sup> –

**And we are discussing** a situation **where the owners said to the shepherd** (in the presence of witnesses), **‘do not return the sheep, unless** it is in the presence of **witnesses’**<sup>3</sup>.

**דאם לא כן הא קיימא לן** (כתובות יח,א) **המלוה את חבירו בעדים אין צריך לפרעו**<sup>4</sup> **בעדים:**  
**For if this were not the case** (and they did not mention that he must return it in the presence of witnesses), then the owners accomplished nothing by giving it to him in the presence of witnesses **for we have an established rule that one who lends in the presence of witnesses, this does not obligate the borrower to pay in the presence of witnesses.**<sup>5</sup>

### SUMMARY

The owners are protected only if (besides giving it to him in the presence of witnesses) they told him (in the presence of these witnesses) that he must return it in the presence of (any two) witnesses.

### THINKING IT OVER

Did the owners say<sup>6</sup> return it in the presence of (any two) עדים, or did they say return it in the presence of these (specific) two עדים?<sup>7</sup>

<sup>1</sup> Otherwise why mention it at all.

<sup>2</sup> It is only in this case that the owners are protected; the רעיא cannot claim that you never gave it to me (because of the initial witnesses) and he can also not claim that he returned it (if he has no witnesses).

<sup>3</sup> See ‘Thinking it over’.

<sup>4</sup> The borrower will be believed to claim that he paid, just as he is believed to claim ‘I paid’, if there were no עדים that he borrowed.

<sup>5</sup> The owners would not be protected, for the shepherd could claim, I returned them to you.

<sup>6</sup> See footnote # 3.

<sup>7</sup> See אג"ה # 178.