

## It is possible to return money

## ממון אפשר בחזרה –

### OVERVIEW

The חשוד אממונא (who maintains that according to אביי (חשוד אשבועתא), a person will not refrain from taking money which is possibly not his; however he will not take an oath which is possibly not true. The reason is that money can be returned (if we know who the rightful owner is); however an oath once it is taken, it cannot be reversed. תוספות explains what is meant by ממון אפשר בחזרה.

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ממון אפשר בחזרה explains that the meaning of is:

**אם לא יזכור יחזיר ולא יעכבנו מספק<sup>1</sup> –**

**If he will not remember** that he is owed, **he will return** whatever he took, **and he will not retain it** for himself **because of the doubt** that maybe he is owed the money and cannot remember.

**אבל אין לפרש אם יזכור שאינו חייב לו יחזיר –**

**However we cannot interpret** ממון אפשר בחזרה to mean that **if he remembers that** his opponent **does not owe him, he will then return it -**

**אבל אם לא יזכור יעכבנו<sup>2</sup> אף על פי שידוע שלא יזכור עוד<sup>3</sup> –**

**However if he cannot remember** whether he is owed or not, **he will retain it, even though he realizes that he will never remember** and find out whether he is owed or not; this cannot be the interpretation of ממון אפשר בחזרה -

**דאם כן גם מספק שבועה לא יפרוש<sup>4</sup>:**

**for if indeed** this is the meaning of ממון אפשר בחזרה, that as long as he in doubt whether he is owed or not he will retain it, even if he knows that his doubt will never be resolved, **then** such a person **will not refrain from taking an oath** even if there is **a doubt** whether he is swearing falsely or not.

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<sup>1</sup> This person thinks that possibly he is owed money and the opportunity presented itself that he can seize his opponents property as compensation for this possible debt. The seizer will then review his accounts whether or not he is owed the money and if he realizes that he cannot prove with certainty that he is owed the money he will return it, and therefore he is not hesitant to seize the money for he can always return it. However concerning an oath which is irreversible, he will not swear unless he is certain that he is stating the truth.

<sup>2</sup> This person, who is willing to retain someone else's money because of the possibility that he is owed the money, is a person who is willing to possibly transgress לא תגנוב, since it is [only] a ספק.

<sup>3</sup> See 'Thinking it over' # 1

<sup>4</sup> This person is not concerned with making a possible false oath and possibly transgressing לא תשבעו בשמי. According to אביי one who is חשוד אממונא is חשוד אשבועתא; the עבירות are equal. See 'Thinking it over' # 2.

## **SUMMARY**

A person is not willing to retain money that is possibly not his; therefore he is not חשוד אשבועה.

## **THINKING IT OVER**

1. Why was it necessary for תוספות to add<sup>5</sup>, 'אע"פ שיודע שלא יזכור עוד',?
2. Why cannot we learn according to the explanation which תוספות negates; that ממון אפשר בחזרה means that when he realizes that it is not his, he will return it (and indeed he will keep it as long as he is in doubt);<sup>6</sup> however it cannot be compared to שבועה, because by a שבועה he realizes that perhaps he is swearing falsely, and that can never be rectified; however concerning money even if it turns out that the money is not his, he can always return it?!<sup>7</sup>

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<sup>5</sup> See footnote # 3.

<sup>6</sup> See footnote # 4.

<sup>7</sup> See נח"מ # 58 and אמ"ה.