

רב נחמן ורבי יוחנן אמרי פטור –

Rav Nachman and Rav Yochanon say; he is exempt

Overview

In the case of ר"נ ור"י (ברי ושמא) (where it is שמא does not have to pay, since he is a מוחזק. Our תוס' qualifies this ruling

בבבא קמא (דף קיח,א ושם) ובפרק קמא דכתובות (דף יב,ב ושם) -

- מסכת כתובות of פרק ב"ק and in the first מסכת ב"ק

פירש בקונטרס פטור היינו קודם שניתקנה שבועת היסט¹ -

explained that the שמא is פטור (according to ר"נ ור"א), that is before the שבועת היסט was instituted -

אבל אחר שניתקנה שבועת היסט חייב לישבע שאינו יודע -

However after שבועת היסט was instituted the שמא is obligated to swear that he does not know if he was loaned the money -

דאם לא כן כל נתבע יאמר איני יודע ויהיה פטור² מכלום:

For if it were not so (but rather a שמא is not required to swear a שבועת היסט, then) every respondent will claim, 'I don't know', and he will be פטור from any obligation.

Summary

There is a שבועת היסט for a claim of איני יודע.

Thinking it over

In the very end of the previous תוס' we were told that a person does not want to claim איני יודע³, so why here are we concerned?⁴

¹ שבועת היסט means a שבועה of inducement. According to תורה law one who is a כופר הכל, he denies owing anything to the claimant, is not obligated to pay or even to swear that he owes no money (only a מודה במקצת is obligated to swear). However in the times of the גמרא the חכמים (some say נחמן) instituted that even a כופר הכל is required to swear. The חכמים instituted this שבועה in order to 'induce' the respondent to admit that he owes. The חכמים were concerned that people are becoming so brazen that they deny debt which they owe. By requiring them to swear the שבועת היסט, they hoped that people will be more forthcoming.

² The purpose of שבועת היסט will be thwarted, for the liars (who do not want to swear falsely) will claim איני יודע (if they are not required to swear) instead of denying the claim (where they will be required to swear a שבועת היסט).

³ Therefore there is no מיגו for a מ"מ to claim איני יודע that ידענא ונ' לא ידענא, because no one will say איני יודע, so why are we concerned here that he will claim איני יודע?!

⁴ See מהרש"א and הישועות.