

לא שביק היתירא ואכיל איסורא –

He will not abandon the permitted and eat the forbidden

OVERVIEW

ruled that if the lender claims that he lost the פרוסבול he is believed since no one will willingly choose to do the wrong thing (transgress שמיטה) when he could just as easily do the right thing (write a פרוסבול).

אומר רבינו תם דמהאי טעמא נאמן אפילו בלא שבועה¹:

The ר"ת said that for this same reason (of לא שביק היתירא ואכיל איסורא), the מלוה is believed that he lost the פרוסבול (even) without taking an oath.

SUMMARY

The מלוה is not (even) required to swear that he wrote a פרוסבול.

THINKING IT OVER

1. We learnt previously² that a post dated פרוסבול is פסול, for a פרוסבול is only effective for what was loaned before the פרוסבול was written but not for the loans that came later. Therefore there is concern (by a post dated פרוסבול) that the מלוה will use this פרוסבול to collect (even) the later loans. However since we say here that לא שביק היתירא ואכיל איסורא, why is there this concern, he will surely write another פרוסבול for the subsequent loans?³

2. If the לווה claims that he is certain that the מלוה did not write a פרוסבול, what is the ruling (regarding שבועה)?⁴

¹ Usually in cases where we award the claimant his money (even though the respondent denies owing it), the claimant is required to swear that the money is due him (נשבע ונוטל). However here the claimant is not required to swear that he made a פרוסבול (so the money is due him)

² See תוספות לו,ב ד"ה דאלימי.

³ See # 58. אמ"ה

⁴ See נח"מ.