

## ושמואל אומר אין לו עליו אונאה<sup>1</sup> –

**And Shmuel maintains, he is not liable for deceit**

### OVERVIEW

The גמרא asks that שמואל is (seemingly) contradicting himself. He maintains that if a loan was given with the stipulation that שביעית should not be משמט; it is nevertheless משמט. He also rules that if there is a stipulation by a sale that there is no אונאה (in the sale) the stipulation is valid and there is no אונאה. Our תוספות offers and rejects a possible solution to this contradiction.

-----

תוספות asks:

**ואם תאמר מי דמי הכא השביעית ודאי עקר אבל התם מי ימר דעקר<sup>2</sup> –**

**And if you will say; how can we compare** the case of אונאה to the case of שביעית, **here** by שביעית the מלוה **certainly uprooted the law of שביעית** (by saying that שביעית is not משמט), **however there** by אונאה **who says that he will uproot** the law of אונאה –

**כדאמרינן בהזהב (בבא מציעא דף נא,ב) [שמא לא יהא בו אונאה] –**

**As the גמרא states in הזהב**; פרק הזהב [‘perhaps there will be no אונאה in this’] sale and therefore the תנאי is effective –

תוספות answers:

**ויש לומר דהכא נמי מי ימר דעקר שמא יפרע לו קודם:**

**And one can say; that here too** by שביעית **who can say with certainty that he uprooted** שביעית, **perhaps** the lender **will pay him before** שביעית. Therefore the two cases are similar (in regards to דעקר (מי ימר דעקר), therefore there is a contradiction.

### SUMMARY

Both by שביעית and אונאה it is possible that the stipulation will not violate the law.

### THINKING IT OVER

Why does תוספות assume initially that by שביעית he is ודאי עקר; and in his answer he concludes that by שביעית it is מי ימר דעקר?!

<sup>1</sup> אונאה (deceit) is where either the buyer charged too much or the seller paid too little. In certain instances (where the אונאה was exactly a sixth [above or below the market value]) the amount of אונאה must be returned; in other instances (where the אונאה was more than a sixth) the entire sale is nullified.

<sup>2</sup> We can differentiate and say, when the stipulation will certainly uproot the law (as in the case of שביעית), then the stipulation is not valid (he is a מתנה על מה שכתוב בתורה); however when it is possible that the stipulation may not violate the law (as in the case of אונאה), the stipulation is valid even if it actually violates the law