



## Asmachta

The *Mishnah* (10:5) discusses a case where one partially paid off a loan. Instead of writing a receipt for the payment, they entrusted the loan document with a third party. The borrower told this individual that if he does not pay the remainder of the loan by a specific date, then the loan document can be returned to the lender. In other words, if the remainder is not paid, then the lender will be able to use the document to claim the entire amount. The *Mishnah* then records the debate regarding what must be done if the time expires. According to *R' Yossi*, the document must be returned as stipulated. *R' Yehuda* however argues that the document must remain in the hands of the third party.

The *Bartenura* explains that the debate is whether an "asmachta" acquires, i.e. whether such a condition is binding. The *Bartenura* explains that an *asmachta* is where one makes a commitment dependant on a condition being fulfilled and is certain at the time he will fulfil that condition. Unfortunately however, once the time expires, that condition was not however met.

Putting aside the question of *asmachta* for the moment, how can *R' Yossi* maintain that the contract is returned to the lender? Doing so would mean that the lender can claim more money than was lent, which would appear to violate the prohibition of *ribbit* – charging interest. The *Ritva* (168a) explains that this case is not one of *ribbit* since if the remainder was paid as agreed, then the only the value of the loan would have been paid. Consequently, the extra amount being paid in the event that the condition is not fulfilled, is not defined as "*agar natar*" – a fee paid for borrowing money – and therefore not defined as *ribbit*.

The *Ritva* adds that it is must be considered is if it was stipulated that if the time expires, the original money paid would be defined as a gift. If however it was considered as a

payment, then the binding nature (*shiabudo*) of the document would have already been forgone. Once that occurs the contract could no longer be used to claim the loan even if returned.

Returning to our debate regarding an *asmachta*, the definition above appeared to include any conditions one might place in a contract. What is the difference between an *asmachta* and a valid condition that is binding in a financial document?

The *Ran* explains that it if the condition is dependent on his own action that is within his control, then the condition works. An example of this is the sharecropper that stipulates that if he leaves the land fallow, he would need to pay the land owner a percentage of the expected yield. Similarly, if it is dependent on the other party to fulfil, then he obligates himself. An *asmachta* is when it is dependent on his own action, but it is not fully in his control to fulfil. That would be like our case, where the borrower now does not have the remaining money (see also *Bava Metzia* 73b).

The *Ritva* however compiles the principles of how to define an *asmachta* based on the lessons of his teachers the *Ra'ah* and *Rashba*. Unlike the *Ran*, he explains that in our case, the borrower's stipulation was an exaggeration and understood as being more like a fine for not paying on time. Furthermore, it was other factors (the need to resolve how to manage the partial payment) that drove him to make that condition. Had the borrower been able to resolve the situation without that condition he would not have made it. To be clear, it was not a position the borrower willing took from the outset. Finally, the *Ritva* adds, much like the *Ran* above that an *asmachta* is where the fulfillment is dependant on his action that are not fully in his control.<sup>1</sup>

*Yisrael Bankier*

<sup>1</sup> Perhaps the *Ritva* adds the distinction of the *Ran* due to a difficulty of the *Ran*. The *Ran* cites the opinion of the *Rashba* that an *asmachta* is where the person making the condition does not want it to eventuate and it is more like a fine. The *Ran* however asks that we find that the case of the *mesachek be'kubiya* (gambler) is not defined as an *asmachta* despite neither party wanting to lose the bet. The *Ran* suggests that the *Rashba* also needs the

rational that if the outcome is dependent on something external (in this case, the roll of the dice) then it is similarly not an *asmachta*. We find that the *Ritva*, who communicated the principles he received from his teachers, indeed does combine both explanations.

## Revision Questions

בבא בתרא ט' ג' – י' ו'

- What is the law regarding a case where there are both adult and minor heirs, and the adult brothers develop and increase the value of the inheritance? (ט' י')
- When is the law in the previous case different? (ג' י')
- Regarding the previous two questions, what other case is similar? (ג' י')
- What is the law regarding brothers that are supported by the inheritance where one brother: (ט' ד')
  - Receives a significant promotion?
  - Become ill and used significant finance to heal?
- What are *shushvinot* and why is it important to the case in the previous question? (ט' ד')
- If a wedding is broken off, when are the *sivlonot* returned and when are they not? (ט' ה')
- What is a *matanat shchiv mera*? (ט' ו')
- If the *shchiv mera* recovers, when can he renege on the *matana*? (ט' ו')
- What are the three opinions regarding the formulation of a *matanat shchiv mera*? (ט' ו')
- What case is discussed where there would be a dispute and how is it resolved if a house collapsed on:
  - A man and his father? (ט' ח')
  - A man and his wife? (ט' ט')
  - A man and his mother? (ט' י')
- What is the difference between a *get pashut* and a *get mekushar* regarding:
  - The location of the signatures? (י' א')
  - The number of witnesses? (י' ב')
- What is the law if two different sums of money were written in a loan document? (Include two different cases.) (י' ב')
- Can a *get* be written in the absence of the wife? (י' ג')
- What other two cases share a similar law to the previous question? (י' ג')
- Regarding a share-cropping agreement, who finances the writing of the contract? (י' ד')
- What does *Rabban Shimon ben Gamliel* argue regarding settlement documents produced by *beit din*? (י' ד')
- What is the case in the *Mishnah* that involves a debate regarding an *asmachta*? (י' ה')
- If a loan document was badly damaged, what must a person do in order for *beit din* to draw up a replacement document and how is such a document termed? (י' ו')
- What are the two opinions about what should be done if a person partially pays off a loan? (י' ו')

## Melbourne, Australia

### Sunday -Thursday

10 minutes before *Mincha*  
Mizrachi Shul  
Melbourne, Australia

### Friday & Shabbat

10 minutes before *Mincha*  
Mizrachi Shul  
Melbourne, Australia

## Efrat, Israel

*Shiur in English*

### Sunday -Thursday

Rabbi Mordechai Scharf  
9:00am  
Kollel Magen Avraham  
Reemon Neighbourhood

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## Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
24 March י"ז אדר	25 March י"ח אדר	26 March י"ט אדר	27 March כ' אדר	28 March כ"א אדר	29 March כ"ב אדר	30 March כ"ג אדר
Bava Batra 10:7-8	Sanhedrin 1:1-2	Sanhedrin 1:3-4	Sanhedrin 1:5-6	Sanhedrin 2:1-2	Sanhedrin 2:3-4	Sanhedrin 2:5-3:1

