



## Deposit Disputes

The *Mishnah* (3:4) discusses a case where two people entrusted different sums of money with a third party – one hundred and two hundred *zuz*. When it came time for collection, each claimed that the larger amount was theirs. The first opinion is that each receive one hundred, with the remaining amount left until the matter can be resolved – “until *Eliyahu* [*ha’Navi*] comes”.<sup>1</sup> *R’ Yossi* however disagrees and explains that it is clear that one of the people are lying. If one hundred is returned to each party then the liar does not lose out, because his original sum is returned to him. Consequently, he maintains that for there to be a deterrent, all of it should be left with the trustee.

The *Gemara* explains that the case of the *Mishnah* is where they both entrusted their money with this person at the same time. Since they demonstrated their trust for one another when depositing together, the trustee was not required to store the money separately and is not held responsible for not being able identify who the money belongs to.

The *Tosfot Yom Tov* notes that one might think that the position of the trustee is one of *modeh be’miktzat*. In other words, if one claims that he entrusted money with another and the person partially admits to a smaller sum, then the trustee is obligated to swear that that is case in order to exempt full payment. The trustee in our case appears to be in the same position. However, since in this case he cannot swear because he cannot identify the true owners, he should be obligated to pay the full amount to both parties.

The *Tosfot Yom Tov* cites the *Nimukei Yosef* who explains that this case is different. The obligation of a *shevua* in the case of *modeh be’miktzat* is only where the trustee wanted to keep the disputed amount. The *shevua* was put in place to try and prevent that. As the *Ramban* puts it, the *shevua* was instituted to compel him to admit to the full amount. In our

case however, the trustee admits that the full amount was put in his care, he simply does not know who to give it to. The *Rashba* explains that the proof is that were he certain who the money should be given to, then even if one of the parties objected, the trustee would be believed without a *shevua*, since everyone agreed to the total amount entrusted.<sup>2</sup>

The *Rashba* finds this answer difficult since ultimately, the trustee would be retaining the difference. Consequently, perhaps that result is motivating him to say he does not know. Note that the *Rashba*’s argument assumes that when the *Mishnah* states that the disputed amount remains until *Eliyahu HaNavi* comes, it means in the hands of the trustee.

The *Mordechai* (274) however cites the *Ohr Zaruah* who explains that disputed funds were left in the care of *Beit Din*. Otherwise, a trustee would always say he does not know in order to retain the deposit. This position would thereby allay the *Rashba*’s concern.

The *Ramban* offers another answer that the dispute is not between the individuals and the trustee. If the law was that he would simply place the difference on the floor and leave, he would be willing to do so. Instead, the dispute is really between the two people that the brought money. Consequently, the trustee cannot be considered as being *modeh be’miktzat*.

The *Rashba* however offers a different explanation. The obligation to pay in a case where one is obligated to make a *shevua* but is unable to do so, is because we treat his lack of knowledge as negligence. As explained above, in this case the individuals entrusted their money together, so the trustee was not required to identify who the money belonged to. Consequently, his lack of knowledge is not defined as negligence and therefore he is not required to pay.

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<sup>1</sup> The *Yalkut Biurim* cites the *Kovetz Shiurim* (*Bava Batra* 640) that explains that it is possible to understand the *Mishnah* does not mean that *Eliyahu HaNavi* will come and clarify the true ownership. That would require a formal witness testimony for which *nevuah* is insufficient. Rather, it is that the liar would be two embarrassed to cheat in the presence of *Eliyahu HaNavi* and would therefore admit to the truth.

**Revision Questions**

בבא מציעא ב' ד' – ג' ה'

- Can a person keep an object that he found a shop? (ב' ד')
- Can one keep money that he found in his shopping bag? (ב' ד')
- Why was a “simla” singled out when the *Torah* discussed the law of returning lost objects? (ב' ה')
- For how long is one obligated to try to identify the owner of the lost object he found? (Include both opinions.) (ב' ה')
- When is the object not returned even if the person claiming it provides the identifying marks? (ב' ה')
- What should one do while trying to identify the owner of the lost object if the object itself requires upkeep? (Include both cases.) (ב' ה')
- What should one do while trying to identify the owner of a lost object if he found:
  - A book?
  - Clothing?
  - Glassware? (ב' ח')
- Which objects is one not required to take in order to find its owner? (ב' ח')
- When can one assume that an animal (that he found) is indeed lost? (ב' ט')
- Is there a limit to how many times a person must return an animal that keeps running away from its owner? (ב' ט')
- Can a person claim compensation from the owner of the lost object for the time spent trying to return the object? (ב' ט')
- If a *Kohen* sees a lost object in a cemetery, is he obligated to enter the cemetery to retrieve the object and return it to its owner? (ב' י')
- Is someone obligated to help his friend unburden his animal if the friend is sitting back and not getting involved? (ב' י')
- What are the exceptions to that rule? (Include all three opinions) (ב' י')
- What is the law if someone finds his own lost object and his father's, but can only retrieve one? (ב' י"א)
- What is the law if someone finds his father's lost object and his rebbe's, but can only retrieve one? (ב' י"א)
- If someone is entrusted with a collateral and it was stolen, is he responsible to pay the owner back? (ב' י"א)
- If the *ganav* was found, to whom is the *kefel* paid? (Include both scenarios.) (ב' י"א)
- If *Reuven* rented an animal, then lends it to *Shimon* and the animal naturally died, who pays who? (ב' י"א)
- What is the law regarding a *gazlan* that said to two people “I stole \$100 from one of you, but I'm not sure who”? (ב' י"ג)
- What is the law if two people entrusted money with a third party, one \$100 and the other \$200, and each claim they were the one that entrusted \$200? (Include both opinions.) (ב' י"ד)
- Regarding the previous question, what if it was not money, but two utensils, one worth \$100 and the other worth \$200? (ב' י"ד)
- Explain the debate regarding what one should do if they were entrusted with fruit and the fruit began to spoil. (ב' י"ד)

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
29 September כ"ט אלול	30 September כ"ז אלול	1 October כ"ח אלול	2 October כ"ט אלול	3 October א' תשרי	4 October ב' תשרי	5 October ג' תשרי
Bava Metzia 3:7-8	Bava Metzia 3:9-10	Bava Metzia 3:11-12	Bava Metzia 4:1-2	Bava Metzia 4:3-4	Bava Metzia 4:5-6	Bava Metzia 4:7-8

