

Do I Need to Repay a Loan that I Do Not Remember Taking?

Rabbi Yosef Greenwald

Case: A friend of mine is “pretty sure” that he lent me \$20 dollars this past Purim. I have no recollection of it, but I was quite tipsy and there are lots of things I don’t remember. He is threatening that I will have to come back as a gilgul if I don’t pay up.

Question: Do I have to pay him? Should I pay him just in case? If I am unsure whether I owe someone money, do I have to pay?

Answer: No, you do not have to pay him at all. The cardinal rule of monetary law is המוציא מחבירו עליו הראיה, one who would like to excise money from his friend carries the burden of proof. The Gemara [Bava Kama 46a] adds that even if the one making the claim is sure of his claim, and the other party is unsure, he still cannot extract payment without definitive proof in the form of Kosher witnesses.

It’s true that if the lender would be *certain* that you owe him the money, then *bidai shamayim* you may have to pay. In this case that even the lender is unsure, therefore there is no *chiyuv* to pay at all. Withholding payment is generally an *issur d’oraysa*, consequently one would think that every case of doubt should be considered at least a *safek d’oraysa*. However, the Acharonim give various reasons why that does not apply in cases that according to the rules of *safek mamon* (monetary doubt), one does not have to be stringent and pay.

It’s worth noting that this will change if the borrower’s doubt is different. For instance if he knows he borrowed the money and is just unsure whether he paid it or not. It is only to create an “obligation to pay” that we say the other party must prove that you owe the money. Whereas in the event there is already a clear monetary obligation, and we are unsure of payment, according to the Shulchan Aruch the *chezkas chiyuv*, (the originally presumed obligation) to pay remains in effect until you know for certain that you did pay.