The Legal Status of a Loan in the Oxford Cairo Genizah Manuscript and its implication to a Sukkah and Marriage

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Maimonides’ Huntington 80 Manuscript
Book of Mada and Ahava
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Ben Ezra Synagogue, Cairo
Cairo Genizah Draft Mishneh Torah
1. Limitation of a lender to retract Maimonides

- When a person borrows an article or an animal from a colleague without making any stipulation, the lender may require him to return it at any time.
- If he borrowed it for a set time, once he performs meshichah (drawing) with it, he acquires it, and the owner may not compel the borrower to return it from his possession until the conclusion of the period for which it was borrowed.
- Indeed, even if the borrower dies, his heirs are entitled to continue using the borrowed article until the conclusion of the period for which it was lent out.
2. Talmud – Three opinions

**Rabbi Huna:** Lender cannot retract only when the borrower chops wood with the hatchet.

**Rabbi Ami:** Lender cannot retract from the time of the “drawing near” of the hatchet – possession.

**Rabbi Elazar:** In the manner that the Sages instituted “drawing near” (*Meshichah*) as a method of acquisition in cases of purchasers, so they instituted “drawing near” (*Meshichah*) as a method of acquisition in cases of custodians (borrower).
Maimonides follows Rabbi Elazar

Transaction of the article limits the lender’s right to retract
Maimonides’ Logic

This concept can be appreciated by logical deduction. A purchaser acquires the body of the article he purchases forever in return for the money he gave. The recipient of a present acquires the body of the article he receives forever, although he did not give anything. Similarly, a renter acquires the body of an article for the sake of deriving benefit from it for a limited time in return for the money he gave. And a borrower acquires the body of an article for the sake of deriving benefit from it for a limited time without giving anything. Thus, just as the giver of a present resembles a seller in that he cannot retract his gift forever, so too, a person who lends an article resembles one who hires it out, in that he cannot retract in the midst of the term of the agreement.
What is Maimonides’ Source for the logic?

1. Spanish Rabbi Vidal Tolosa of the 14th century: Talmud

2. Spanish Rabbi Shem Tov ibn Gaon (1283-ca. 1330): Own interpretation
Marginal Note in the draft edition of the Cairo Genizah Mishneh Torah
Should it have been added?

• Talmud and Jewish Law – Maimonides - does not recognize full ownership of a loan by a borrower.
• Possession of the right to benefit from a property is not the same as possession of the property itself.
• Kinyan Hagul L’peirot eino k’kinyan haguf domi
Case study

Father wants to override inheritance and give possessions to favourite son.
Law of borrowing a Sukkah

- The sages say: Although they said that one cannot fulfil his obligation on the first day of the Festival with the lulav belonging to his fellow, he may nevertheless fulfill his obligation with the Sukkah of his fellow, since it is written:

- "All that are homeborn in Israel shall dwell in Sukkot" this teaches that all of Israel are fit to sit on one Sukkah.

- And how do the rabbis interpret the words "for yourself"? It is needed to exclude a stolen [Sukkah]; but as to a borrowed one, It is written, "All that are homeborn." Leviticus 23:42
Borrowing a ring for a wedding

• If specified it is a valid wedding.
• Four criteria
Legal theory

• Principle ownership
• Practical ownership
• Practical ownership is also ownership
• Wittgenstein
• A man without a house is not a man