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שע"י "חדר הוראה" שכונת מנחת יצחק פעיה"ק ירושלם תובב"א - בראשות הרב חיים אהרן בלייער שליט"א

Halochos compiled by HaRav Chaim Bleier – Translated from the Hebrew edition by R' Zerachya Shicker

Dinim of Loans

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ליקוטי ופסקי הלכות "חוקי חיים"



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"תוקף חיים"
לעשות רצונך
בלבב שלם

שע"י "חדר הזרואה" שכונת מנחת יצחק פעיה"ק ירושלם תובב"א - בראשות הרב חיים אהרן בלייער שליט"א

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Halachos of Loans

Parshas Mishpatim 5785

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The Mitzvah to Lend Money

Mitzvos Deoraisa

- אם כסף תלוה את עמי.** It is a mitzvas asei deoraisa to lend money to poor Yidden, as the posuk says, "אם כסף תלוה את עמי" (משפטים כ"ב, כ"ד). This mitzva is greater than the mitzva of tzedakah (ש"י חיימ ס' צ"ז ס"א) since someone who gets tzedakah becomes dependent on people, whereas a borrower is not called dependent and maintains his dignity.
- והחזקת בו.** If, by lending money, a person supports the borrower and helps him avoid financial ruin, he also fulfills the mitzvas asei of "וכי" (ויקרא כ"ה, ל"ה) "נימוך אחיך ומטה ידו עמך והחזקת בו" (ויקרא כ"ה, ל"ה). This is very relevant at the present time, as there are many people whose businesses suffered greatly due to the situation during and after the virus from China; they have expenses but no income. There are also many people that lost their source of livelihood, lo aleinu. Therefore, it is a big mitzva to assist others by lending them money to help them recover – even if they are not technically poor – and to support people so that they do not completely collapse financially, chas veshalom.
- ולא תתן לו.** Someone who has money but refrains from lending out of fear it will not be returned transgresses the lav of (דברים ט"ז, ט"ז) (דברים ט"ז, ט"ז) (רמב"ם ספה"מ ל"ת רל"א) "השמר לך וכו' ולא תתן לו" (אהבת חסד בפתיחה) even if this fear is not because of shemittah.
- לא תעמוד על דם רעיך.** If a person may suffer a loss if he cannot obtain a loan, one may not refrain from lending him the money due to the lav of (רמב"ם ספה"מ ל"ת ד"ט) "לא תעמוד על דם רעיך", (ויקרא י"ט, ט"ז).

To Whom Must One Lend Money?

Someone Who Is Not Poor

- The mitzva to lend obviously applies if the borrower is poor. But there is also a mitzva to lend to someone who is not poor but needs money at the moment (ש"י חיימ ס' צ"ז ס"א) as a short term loan [less than 30 days] – for example, someone who is in a place or at a time that he does not have money on him. Nevertheless, lending to a poor person takes precedence over lending to someone who is not poor (ש"י הרב) (הל' הלואה ס"א). Even if the poor person is from another city and not a relative, he takes precedence over someone who is from the same city and a relative, but not poor (אהבת חסד ח"א פ"ו ס"א).
- In a place where people don't know him.** If someone who is not poor is in a place that people do not know him and he needs money, or in a case of a health issue or something similar, there is a mitzva to lend him money just like there is to a poor person; it is not limited to a short term loan (אהבת חסד פתיחה, נתיב החסד סק"ט).
- For an investment.** If a person who is well-off or who makes an adequate livelihood wants to borrow money to use for an investment, and he cannot get it from a bank or does not want to pay interest to the bank etc., one does not fulfill the mitzva of lending money by lending to him. However, it is chessed and a fulfillment of "ואהבת לרעך כמוך".
- Loan with a heter iska.** Lending money with a heter iska does not fulfill the mitzva of lending. Nevertheless, it is a chessed, and if it is of benefit to the borrower and the interest is within reason, the loan fulfills the mitzva of "והחזקת בו" and it is better than not lending at all (מור"ד בפתיחת חושן הלוואה פ"א הע' א').

To Someone Who Does Not Repay

- If someone knows that a certain person is not careful with other people's money and possibly will not repay his debt or is a big spender and will not have any money to pay back, it is better not to lend to him without collateral than to lend and then need to demand the money back and transgress the lav of "לא יגוש" (ש"י חיימ ס' צ"ז).

Lending with a Shtar, Witnesses

Making Sure Only to Lend with a Shtar or Witnesses

- Witnesses.** One may not lend without witnesses if he does not accept collateral for the loan (ש"י חיימ ס' ע' ס"א). If he lends without witnesses, he transgresses "לפני עור לא תתן מכשול" because the borrower might deny the loan (סמ"ע שם), and the lender also causes himself to get a curse. Even if the lender is a talmid chacham, perhaps he will be preoccupied with his learning and forget about the loan (ט"ז שם).
- Shtar.** Better than lending with witnesses is lending with a shtar (ש"י חיימ ס' ע' ס"א) that says the sum of the loan and that the lender has in his hand for whenever he needs it (ש"י חיימ ס' ע' ס"א).
- Promissory note.** Most poskim hold a note written by the borrower that says he owes x amount of money to so-and-so is as effective as a shtar (ש"י סק"ב בדעת הסמ"ע) even if it does not say when the loan was made (ש"י חיימ ס' מ"ג ס"ו) since in any case, the lender cannot collect from someone who bought something from the borrower [אין גובים מן] (ש"י סק"ח) (ש"י סק"ח). Still, to be safe, it is best to write the time of the loan and when it is due to avoid potential misunderstandings.
- Borrower's notes.** The lender should not rely just on the borrower's personal notes that he borrowed money from so-and-so since he might lose the note. A promissory note or shtar should always be written for the lender (דעת קדושים ס' ע' ע').
- Guarantee check/security deposit check.** If the borrower gives collateral, there is no need for witnesses or a shtar since he cannot deny the debt (ש"י חיימ ס' ע' ס"א). Still, it is best to have a shtar that has the amount of the loan written so that they do not end up arguing about it (סמ"ע שם). Nowadays, if the borrower gives the lender a check as a security deposit, there is no need for a shtar since the lender has a check made out to him for the amount of the loan, and he can collect the amount in beis din even if the borrower voids the check (הגר"י קרליץ). This is the best method.
- Small amount, short time.** Even if the borrower and lender know each other, and it is a small loan for a short time, it should not be made without a shtar or promissory note – just because they know each other, is there no chance they will forget? (ש"י חיימ ס' ע"א ס"ה).
- Brothers, neighbors.** If someone wants to make a loan to his brother, relative, neighbor or the like, and it is a small amount that they know he will forgive if they forget about it and they will not make claims on each other, the loan may be made without a shtar. This is because from the outset, the lender forgives the loan if the borrower forgets to repay it, so the lender will not cause a transgression or a curse (הגר"י קרליץ).
- Promissory note after the loan.** Some poskim hold if a loan was made without witnesses, a kinyan, or a shtar, the lender does not have the right to subsequently demand a shtar or promissory note (סמ"ע ע"ג) (סמ"ע ע"ג). However, many poskim hold even after a loan was made, the lender can demand that the borrower either write a promissory note or return the money immediately (ב"ח, לבוש, ש"י שם סק"ד).



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Chiyuv for a Debtor to Repay His Creditor

Being Lax about Repaying a Debt

18. Unfortunately, many people are lax about repaying their debts. Sometimes they actually do not have money to repay, but often they are remiss in getting the money or have misconceptions that there is no need to perform the mitzvah of repaying a debt. They think it is like some other rare mitzvos that not everyone has a chiyuv to perform, such as reishis hageiz or pidyon peter chamor... or Birkas Hachamah...
19. They often tell themselves they do not have money to pay back, yet at the same time, they spend money on all sorts of luxuries beyond what they need to live or on hiddurim for other mitzvos, e.g., "chaburah matzos" or a beautiful esrog.
20. **Repaying evil for good.** Sometimes, the borrower forgets about his debt to the lender, who did him a favor when the borrower came to request a loan with all sorts of promises that he would pay back on time. Instead, the borrower repays the lender's favor with wickedness and views the lender unfavorably for demanding the money that he deserves. This causes people not to want to give loans in the first place; thus, it is necessary to bring up this topic and demonstrate the chiyuv.
21. **Logic.** A borrower must repay his debt to his creditor by the time they determined. This is a logical result of the chiyuvim bein adam lechaveiro (תוס' קידושין י"ג: ד"ה מלוה) if he has money to repay (see below, 36). If he has no intention to repay, he is a thief and must return the money due to the mitzvah of "והשיב את הגולוה" (אמרי בינה ח"מ דיני גבית חוב סי' ב) "והשיב את הגולוה".

Mitzvah to Pay Off a Debt

22. **Mitzvah.** Besides for the logic that a borrower has to repay his debt, there is also a mitzvah: in Chazal's words, "פריעת בעל חוב מצוה." Debtors can be compelled to fulfill this mitzvah in the same way people can be compelled to fulfill other mitzvos (שו"ע ח"מ ע"ז סט"ו).
23. **Source.** Some Rishonim hold the source for this is the posuk (ויקרא י"ט), "והינן צדק," on which Chazal say, "Your 'yes' [ה'ן] – a play on the word [ה'ן] and your 'no' should be with integrity." Thus, a borrower must repay his debt to fulfill the pledge that he originally made to do so (רש"י י"ט: ד"ה פריעת פ"ו). Others say the source is the posuk, "אשר אתה נושה בו יוציא אלך את העבט" (שטימלק שם בשם תוס') which implies that a lender can force the borrower to provide collateral.
24. **Withholding someone else's money.** Someone who withholds money, e.g., he borrows money but is an aggressive, tough person who does not pay back when his creditor asks for the money, transgresses the lav of (ויקרא י"ט, י"ג) "לא תעשוק רעך" (ואבדה ה"ד, שו"ע ח"מ סי' שני"ט ס"ח).
25. **"Come back later."** If a borrower has money to repay but puts off his creditor by saying, "Come back later," even if he sincerely plans on paying eventually and does not transgress "לא תעשוק," he transgresses miderabanan the posuk (משלי ג, כ"ח) "ושוב ויש אתך" (שו"ע סי' צ"ז ס"ד).
26. **"A rasha borrows and does not pay back."** A borrower who has money to repay but does not want to is called a rasha, as the posuk (תהילים ל"ז, כ"א) says, "לוה רשע ולא ישלם." Also, someone who borrows money and spends it unnecessarily and depletes it until he has nothing left for his creditor to collect is called a rasha (שו"ע סי' צ"ז ס"ד).

Having a Plan How to Repay Debt

27. A borrower needs to have a plan how he will repay a debt. If he does not know how he will repay, it is better for him to minimize his expenses and live meagerly rather than borrowing money.
28. **Knows in advance he won't have money to repay.** A person who borrows money knowing from the start that he will not have a way to repay the loan also falls under the posuk, "לוה רשע ולא ישלם" (רבינו יונה אבות ב, ט). If someone knows he will be able to pay, but not by the agreed upon due date, perhaps he is not called a rasha, but he transgresses "מו"ר בפתחי חושן הלוואה פ"ב הע' כ"ו" (ה"ן צדק).
29. **Gemach cycling.** One must know at the time of a loan how he will have the ability to return the money, or at least a reasonable-sounding plan. If he does not have a clear strategy and plans to borrow from gemachs to repay, he also falls under the posuk, "לוה רשע ולא ישלם" (הסתייפלער, תולדות יעקב עמי קצ"ט).
30. **Bitachon.** The poskim discuss whether a person may borrow money and have bitachon that he will be able to repay it. Some hold if this same person would lend money with bitachon that he will get it back, he may also borrow money and rely on his bitachon (ספר הזהר במנון) (הבריכס, מעיינה של תורה פ' בהר עמ' קמ"ט (ספר הסיידים ש"ח) in Hashem). Others hold even such a person should not borrow relying on his bitachon in Hashem (ספר הזהר במנון).
31. For Shabbos and Yom Tov expenses, one may borrow money relying on his bitachon (ב"ח א"ח סי' רמ"ב, שער"צ שם סק"ב). However, some say this is only if he estimates that he will have money to pay back – it all depends on the circumstances (שער"צ שם).

Old Debt

32. Even if a lender did not claim money from his borrower for several years, we do not assume that shows he forgave the loan; the borrower must still repay the loan when he has the money (שו"ע סי' צ"ח ס"א). Even if the borrower is poor and the lender is rich and does not need the money, the borrower must repay the loan (שו"ע סי' צ"ז ס"ה).
33. **Yiush over a debt.** Even if the lender was heard saying words that indicate he gave up on the loan, e.g., "It's a pity about the monetary loss," it is not yiush. Since a creditor can never be sure that a debtor will pay back, he made the comment out of uncertainty, but he did not actually have yiush (שו"ע שם). However, if it is clear that he gave up hope, e.g., he told someone that he is confident he will never get this money back, it is considered yiush and the borrower is no longer obligated to repay (ע"פ הרמ"א ח"מ סי' קס"ג ס"ג).
34. **Statute of limitations.** Nowadays, many countries have statute of limitations laws that give a certain amount of time for a creditor to claim money he is owed, after which he can no longer make a claim. However, dina demalchusa dina does not apply here, and a creditor can always claim his money in accordance with the halachah (מו"ר (בפתחי חושן הלוואה פ"ב הע' ע"ב).
35. **Bankruptcy.** Even if a person declares bankruptcy and is absolved of many types of debts by the secular law, this does not change the halachah, and he must still repay people he owes when he gets money, assets, or the like, even if many years have passed. Dina demalchusa dina does not apply here (שם הע' ס"ג).

Borrower Has No Money to Pay

36. The application of many halachos depends on whether or not the borrower has money to repay ["ein lo" vs. "yeish lo"]. A borrower is considered to have money to repay if he has more than the arrangement made for a debtor ["mesadrin lebaal chov"].
37. **The arrangement for a debtor** leaves a debtor with enough money to buy: food for himself – not his wife and family – for 30 days like an average person in the city; appropriate clothes for himself for 12 months like an average person in the city; a bed; pillows, blankets, and linens that he uses; tefillin; and, if he is a craftsman, two of each type of tool for his craft (שו"ע ורמ"א סי' צ"ז סכ"ג). Whatever he has beyond that is considered available to pay off a debt. Nowadays, borrowers usually have much more than that minimum – possessions, furniture, housewares, jewelry, the house they live in, etc. (ש"ך שם סק"ד). Thus, people today nearly always have the status of "yeish lo."
38. **Do we force the borrower to work?** A borrower who falls under the category of "ein lo" is not forced to hire himself out or to do any work in order to repay (סי' צ"ז סט"ו). If he normally works or hires himself out but now does not want to since he knows his creditor will take his earnings, the dayanim can give him a penalty as they see fit, beyond what is strictly mandated, so that he will work and repay his debt (רדב"ז ה"א סי' ס'). Even if we do not force a borrower to work, he is personally obligated to work to fulfill the mitzvah of paying off a debt (שער משפט סי' צ"ז אות ג', פתחי תשובה שם ס"ה). Someone defined as a "yeish lo" certainly must work to pay off a debt.
39. **Soliciting tzedakah to pay off debts.** If a person who does not normally collect tzedakah for his livelihood is thrust into debt, he does not need to go around soliciting tzedakah to pay off his debts if he is defined as an "ein lo" (ש"ת שבט הלוי). However, if he is technically a "yeish lo," i.e., he has more than the basic arrangement for a debtor, just he does not want to pay, he must solicit tzedakah to pay back his debts (נתיבות המשפט סי' פ"ו ח' (סק"א). If he is accustomed to soliciting tzedakah and that is his regular livelihood, he certainly must take tzedakah to pay off his debts.

Issur to Demand Payment if the Borrower Has No Money

40. If a lender knows the borrower has nothing to pay back [no money, possessions, or real estate] and is defined as an "ein lo," it is an issur deoraisa for him to demand payment and pressure the borrower, even after the due date arrives, as the posuk (כ"ד) says, "לוה רשע ולא ישלם" (שו"ע סי' צ"ז ס"ד). This means, do not use a loan to wield power over a debtor by asserting yourself as the creditor and causing him to feel shame that he cannot afford to repay.
41. **Coming near him.** In the above scenario, the creditor may not even come near the debtor without saying anything since that would cause the debtor to be afraid and ashamed that the creditor will demand his money (שו"ע שם, שו"ע הרב). If they often cross paths, e.g., they daven next to each other in shul, the creditor can come near the debtor and does not need to relocate (ע"פ ערוך השלחן).
42. **Unsure if he can repay.** If a lender is not sure whether or not the borrower has money to pay back, he may claim his money. The issur is only when he knows with certainty that the lender does not have money to pay him back.
43. **Suspects he forgot.** If a lender suspects the borrower has not repaid because he forgot about the loan or its due date, he may remind the borrower about the debt or due date, even if he knows the borrower does not presently have the money, as long as it is a gentle reminder and not a demand (מו"ר בפתחי חושן פ"ב הע' י"ט).