

ליקוטי ופסקי הלכות

"חוקי חיים"

ותלמוד
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לעשות רצונך
בלבב שלם



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Halachos of Loans

Parshas Mishpatim 5785

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The Mitzvah to Lend Money

Mitzvos Deoraisa

1. **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 ח"מ סי' צ"ז ס"א) since someone who gets tzedakah becomes dependent on people, whereas a borrower is not called dependent and maintains his dignity.
2. **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" (ויקרא א"ח, ו"ט). 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.
3. **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"ו, ט"ז), (רמב"ם ספ"ה מ" ל"ת ר"ל"א) "השמר לך וכו' ולא תתן לו" (אהבת חסד בפתיחה).
4. **לא תעמוד על דם רעך.** 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 ספ"ה מ" ל"ת ד"ש) "לא תעמוד על דם רעך", (ויקרא י"ט, ט"ז).

To Whom Must One Lend Money?

Someone Who Is Not Poor

5. 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 סי' 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). 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).
6. **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).
7. **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".
8. **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 בפתיח חושן הלוואה פ"א הע"א).

To Someone Who Does Not Repay

9. 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 סי' צ"ז).

Lending with a Shtar, Witnesses

Making Sure Only to Lend with a Shtar or Witnesses

10. **Witnesses.** One may not lend without witnesses if he does not accept collateral for the loan (ש"י ח"מ סי' ע"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).
11. **Shtar.** Better than lending with witnesses is lending with a shtar (ש"י ח"מ סי' ע"א) that says the sum of the loan and that the lender has in his hand for whenever he needs it (ש"י הרב).
12. **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 ח"מ סי' מ"ג ס"ו) since in any case, the lender cannot collect from someone who bought something from the borrower [אין גובים מן]. Still, to be safe, it is best to write the time of the loan and when it is due to avoid potential misunderstandings.
13. **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 סי' ע"א).
14. **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 סי' ע"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.
15. **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 ח"מ סי' רס"ח).
16. **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).
17. **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). 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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