

Loans & Collections: Part I

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THE MITZVAH TO LEND:

There is a positive commandment in the Torah for a Jew to lend money to another Jew in need. According to the Rambam, this is one of the 613 *mitzvos d'ohrassa*.

There are two verses in the Torah that refer to this mitzvah. One is in Parshas Mishpatim, where it is stated: "*Im kesef tilveh es ami es ha'ani imach.*" If you lend money to My people, to the poor person who is with you.

Chazal explain that in this instance, the word "im", which usually translates as "if", should be translated as "when", so that the verse is saying that you have a mitzva to lend money. They learn this from the verse in Parshas Re'eh, where it states: "*Pasoach tiftach es yadecha...*" You shall open your hand to him, and you shall lend him as is sufficient for his needs, which he is lacking. From this verse, we see that lending money to those in need is an obligation.

THE BASIS FOR RIBBIS:

Some Acharonim suggest that the obligation to lend out money is the basis for the prohibition to lend money with interest.

We know that the Torah prohibits lending with *ribbis*, but the Acharonim struggle to explain the rationale behind this prohibition. They note that the Torah allows us to rent our possessions for a fee. If so, why aren't we allowed to "rent" our money for a price? The deal would be consensual, with the borrower agreeing to pay a certain amount of interest in exchange for the loan. Why would the Torah prohibit a consensual monetary transaction?

Furthermore, the Gemara in Bava Metzia implies that *ribbis* is a form of theft. How can a mutually agreed-upon transaction be considered theft?

Some Acharonim answer by citing the *drasha* of "*mah hu b'chinam af ata b'chinam*", which is interpreted to mean that whenever a person has an obligation to do a mitzvah, he should do it for free. They posit that since lending money is

a mandatory obligation, one may not make money off it by charging interest.

This is somewhat hard to understand because we know there are some dispensations to the rule of *mah hu b'chinam af ata b'chinam*. For example, while it is forbidden under this rule to charge money to teach Torah, there are several ways that one is permitted to accept payment. The most well-known of these is to charge for one's time and for the loss of income he could otherwise have earned during this time, rather than for the job itself. Accordingly, if this is the source for the prohibition of *ribbis*, it would seem that one should be able to charge interest if he could have used this money for a profitable business venture and instead chose to lose this gain by lending it out – yet we know that *ribbis* is prohibited even in such a case.

It would seem that the Acharonim are merely giving a rationale for the probation of *ribbis*, but it must be said that we do see that the Torah forbids charging interest no matter the circumstances.

WHO IS ONE OBLIGATED TO LEND MONEY TO?

The Gemara in Bava Metzia discusses the above-mentioned *pasuk* in Mishpatim and discerns a number of halachos regarding who takes precedence when one is lending out money.

The verse says: "*Im kesef tilveh es ami es ha'ani imach.*" From the word "*ami*", your nation, the Gemara learns that lending to a fellow Jew takes precedence over lending to a non-Jew.

From the word "*ha'ani*", the Gemara learns that a poor person takes precedence over a rich person. The Rambam says that the mitzvah to lend money applies to a poor person, but the Tur clarifies and says that there is also a mitzvah to lend to a rich person if he needs the money. Here, we see from the verse that a poor person takes precedence over a rich person. However, the Peleh Yoetz stipulates that this is only true if the poor man needs the money for pressing expenses. If he wants it for luxuries, and a rich man needs a loan to pay a debt that

he currently owes, the rich man would take precedence, as he is considered the “poor one” in this instance.

From the word “*imach*”, with you, the Gemara learns that those closest to you take precedence over others. Accordingly, one’s family members take precedence over other residents of their town, while the residents of one’s town take precedence over non-locals.

TAKING A LOSS TO GIVE A LOAN:

Regarding the halacha that a Jew takes precedence over a non-Jew, the Gemara says that one must lend money to a Jew even if he could have lent it with interest to a non-Jew, and thereby made a profit with the money. We see that one must perform the mitzvah of lending money even if it means that he will miss out on an opportunity to earn money.

The Acharonim debate how much profit one must be willing to forgo to fulfill this mitzvah. Sefer Megilas Esther on the Rambam’s Sefer Hamitzvos says that one must even be willing to forgo a large amount of *ribbis* in order to lend his money to a Jew. The Shaar Mishpat and others disagree and say that one only must forgo a small gain, but if he stands to lose a large profit, he doesn’t have to lend the money to a Jew over a non-Jew who will pay significant interest.

The exact parameters of a “small loss” versus a “large loss” are not entirely clear, but it is clear that one must be willing to sacrifice some amount of profit to fulfill this mitzvah.

CHAYECHA KODMIN:

The Sefer Agudah – a Rishon – says that there is a general rule that one only needs to forgo a profit and lend his money to a poor person if that person’s need is greater than one’s own. If the poor person needs the money right now and you want to lend it to a non-Jew with interest in order to put some money away in the bank, you are obligated to forgo the profit and lend the money to the poor man. But, he says, if the poor man also wants the money to put it away for later, and he doesn’t really need it now, then you do not need to forgo a profit in order to lend it to him. In such a case, the rule of “*chayecha kodmin*”, your life comes first, comes into play.

Moreover, the Agudah says that if one makes his livelihood by lending out money to non-Jews with interest, he does not need to forgo his entire business in order to lend money to poor people. He does add that if the poor man is starving and needs money to buy bread to eat, then one should lend him the money even at the expense of his business.

The Erech Shai takes it a step further and says that the halacha of the Gemara is almost inapplicable today. He confirms that one is not obligated to forgo profits of lending to non-Jews on interest if that is his form of livelihood and adds that, in contemporary times, everyone is struggling to earn a living and, therefore, everyone needs the money they could make by lending with interest. With this in mind, he says that the

obligation to forgo this profit and lend to a Jew rather than to a non-Jew with interest rarely applies today. [Obviously, he wrote for his generation; this would have to be reassessed in every time and place.]

The Peleh Yoetz urges people not to be so quick to assume that they have no obligation to forgo a potential profit and basically says that everyone has to seriously assess each individual situation. He says that everyone must be honest with themselves to determine if they really need the potential profit they could make by lending with interest, rather than lending to a fellow Jew, or if they are just being greedy even though they don’t necessarily need the money right now.

LENDING WITH A HETER ISKA:

We’ve learned from the *pasuk* of *im kesef talveh* that one must lend money to a fellow Jew. Does one also get the mitzvah if he lends with a *heter iska*?

Technically, a *heter iska* transforms a loan into a half loan/half business transaction. This permits the lender to make a profit off of the borrower, without it being considered *ribbis*. Is this enough of a loan to fall under the mitzvah of *im kesef talveh*?

The Chofetz Chaim (Ahavas Chesed) seems to assume that one only receives the mitzvah of *im kesef talveh* if he makes no profit off of the loan, and not in the case of a *heter iska*. He does, however, say that the lender has fulfilled another mitzvah known as “*vihechzakta bo*”, which is a more general commandment to support one’s fellow Jew in any way. He adds that in order to fulfill this mitzvah, one should make sure that the terms of the *heter iska* are favorable to the borrower so that he is being helped and supported by the transaction.

On the other hand, the Peleh Yoetz implies that one does fulfill the mitzvah of *im kesef talveh* even when lending with a *heter iska*. When discussing the halacha that a poor person takes precedence to receive a loan over a rich person, he questions whether this applies even where the rich person would be borrowing with a *heter iska*, thus also providing some profit to the lender? He concludes by saying that in fact the lender is not obligated to forgo the potential profit and lend to the poor person over the rich person, but he is still inclined to say that it is a *greater mitzvah* to give the loan to the poor man.

From his statement that it is a “greater mitzvah” to give the loan to the poor man, it seems that it is also a mitzvah of *im kesef talveh* to lend to someone with a *heter iska*, albeit possibly a smaller mitzvah than lending without one.

STORE CREDIT:

Is extending store credit part of the mitzvah of *im kesef talveh*?

The Chofetz Chaim says that a store owner is not obligated to extend credit as part of this mitzvah. He explains that a store may not be able to operate if it doesn’t have revenue coming in and out constantly, which means that the owner cannot be obligated to provide products without being paid on the spot.

He further says that store credit is not technically a loan, so one is not obligated to provide it to customers.

He does say that although one would not fulfill the mitzvah of *im kesef talveh* by providing store credit, he would get the broader mitzvah of *vihechzakta bo*.

NON-MONEY ITEMS:

The Chofetz Chaim also says that the mitzvah *im kesef talveh* only applies to lending where the item is consumed and an equivalent is returned. Whereas, if one lends out any other item, he does not fulfill this mitzvah, but he does get the mitzvah of doing an act of *chesed* for a fellow Jew.

He adds that for the general mitzvah of *chesed*, one is not obligated to forgo any profit; therefore, if a non-Jew wants to rent his item and a Jew wants to borrow it for free, there is no obligation to take a loss to lend it to the Jew. If one does lend it to the Jew, however, he has fulfilled a mitzvah of *chesed* and *vihechzakta bo*.

GEMACHS AND ADVICE FOR LENDERS:

The Sefer Agudah says that one doesn't have to lend out

money if the borrower has no plan regarding how he will pay back the loan. He only must lend if the borrower has some form of security and plan for repayment.

The Chofetz Chaim says that instead of taking money out of one's personal account every time he is asked for a loan, it makes more sense to create a Gemach by putting some money in a separate account and constantly lending out that money. He proposes that while it is not plausible for every individual to have enough time or money to create his own Gemach; instead, every community should have a community-wide Gemach fund, in which individuals deposit money to be lent out interest-free.

He recommends that the community Gemachs institute clear rules for their governance, such as only lending money to borrowers with a *mashkon* [collateral], and says that the rules should be enforced with no exceptions to ensure that the money is returned on schedule and the Gemach remains sustainable. He adds that those running and operating the Gemach will receive a special mitzvah.

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