

Loans & Collections: Part III

Rav Yitzchak Grossman

LO SIHIYE K'NOSHEH:

In addition to the positive commandment to lend money to one's fellow Jew, there are several mitzvos *lo sa'aseh* that dictate how a lender must act. The *pesukim* tell us that he may not seize the garment of a widow as a *mashkon* [collateral], and he cannot take items that the borrower needs to live. He also is not allowed to enter the borrower's home to take a *mashkon*, nor can he grab a *mashkon* on his own. There is yet another prohibition of "*lo sihiye k'nosheh*", which means that he cannot engage in aggressive behavior against the borrower.

The Gemara in Bava Metzia explains this to mean that one cannot demand payment if he knows that the lender doesn't have the money. Furthermore, he cannot even pass him by in the street, as this will cause him shame and distress from the fact that he knows that he cannot pay his debt.

The Acharonim discuss whether this prohibition only applies if one knows for certain that the lender lacks the means to repay the debt, or if it also applies if one does not know if he can pay back or not. From the wording of both the Gemara and the Rishonim who discuss the Gemara, it seems that it is only prohibited to ask for payment if one knows that the lender cannot pay.

The Minchas Chinuch questions this premise, noting that there is a general rule of *safek d'ohraysa l'chumrah* (one must be stringent in doubts regarding Biblical prohibitions). Since *lo sihiye k'nosheh* is a *d'ohraysa*, he asks why one doesn't have to be stringent and refrain from asking for payment even if he is simply unsure whether the borrower has the money or not.

He answers that it appears that the law of *safek d'ohraysa l'chumrah* does not apply because the entire definition of the prohibition is that one cannot ask for payment when he knows that the borrower has no money. Since this is the actual meaning of the mitzvah, there is no room to be more stringent than that.

The Kesef Hakodoshim adds that one need not assume that the borrower doesn't have money to repay his debt, as one is not allowed to borrow money if he has no means of repayment;

therefore, the lender can assume that the borrower is a responsible person and has the money.

While it is certainly forbidden for the lender to go out of his way to accost the borrower, as this will cause him distress and shame, the Poskim are unsure whether one can pass by the borrower if he is going that way anyway. For example, if he davens in the same shul as the borrower, does the lender have to inconvenience himself and change his normal daily routine in order to avoid passing him by? Some suggest that the lender does not have to change his normal routine, but he should inform the borrower that he will be davening in shul with him and he should not feel bad if he sees him and is reminded that he cannot repay his debt.

WHAT DEMANDS CAN THE LENDER MAKE OF THE BORROWER?

If the borrower does not have money to repay his debt, can the lender demand that he find work in order to earn the money?

The Teshuvos HaRosh discusses a case where the borrower has no money and doesn't want to work because he knows any money he earns will go straight to the lender in any case. He says in the name of the Rabenu Tam that he cannot be forced to work. This ruling is based on the verse in the Torah that says that we are slaves only to Hashem. From these words, Chazal learn that one cannot be treated like a slave and forced to work by a human being. Accordingly, one cannot be forced to work in order to pay off a debt.

While he cannot be forced to work, the Acharonim debate whether he has a personal obligation to work and earn money to pay his debt. The Shaar Mishpat says that he definitely is permitted to work of his own volition in order to pay the lender back, as this is not similar enough to slavery to be prohibited. The only question is whether we can say that he himself is obligated to work, or if enacting such an obligation would be akin to slavery.

The Shaar Mishpat concludes that, according to his understanding, there is a *machlokes* Rishonim whether he is

obligated to work or not. Other Acharonim disagree and say that he definitely is not obligated to work and enacting such an obligation would be a transgression of the prohibition of treating him like a slave. It should be pointed out that even according to this opinion, it is only forbidden to obligate him to work for an employer, as this would look like slavery. If he is able to employ himself by running some type of business, it would not look anything like slavery, and the lender could be obligated – although not forced - to engage in such work.

The Mishpatei Hatorah discusses whether a borrower can be forced to borrow money from another source in order to repay the lender. He says that in principle he cannot, unless that is the local custom.

MESADRIN L'BAAL CHOV:

If the borrower does have money or assets, they can be seized in order to repay a debt; however, there is a rule known as “*mesadrin l'baal chov*”, which means that certain basic items that the borrower needs to live cannot be taken from him.

What is the borrower allowed to keep? The answer is, not much.

He is only allowed to retain enough food to last for 30 days, enough clothing to last for 12 months, his tefillin, and certain, essential professional equipment that he absolutely needs to do his job. For example, if he is a woodcutter, he may keep an ax to chop down trees. On the other hand, he may not keep an ox to help him drag the wood as this is considered “assets” and not a tool.

He is not allowed to keep any *sefarim*, even if he is a Torah scholar. He also can only retain food and clothing for himself, and not for his wife and children, as it is not the lender's responsibility to make sure that the borrower's family has food and clothing.

Furthermore, the borrower would only be allowed to keep an average level of food and clothing. He would be allowed to eat and dress like an average person – not like a pauper but also not like a rich man. Consequently, if he would own a very expensive coat, he could be forced to sell it and use part of the money to buy an average coat, with the remainder going towards his debt.

Whether or not he can keep his house is not discussed in the Gemara or in most Rishonim. The Teshuvos HaRashba seems to imply that he can be forced to rent out his home in order to make money to pay his debt. The Pischei Choshen notes that it seems from the Rashba that although he is not allowed to remain living in his home, he is not forced to sell it. The Maharit disagrees and says that one's home is as essential as one's clothing, and, therefore, a borrower is allowed to remain in his home. Again, he would only be allowed to keep 12 months' worth of his home and only enough living space for himself, and not for the rest of his family. He also would only be allowed to remain in an average home, and not in a luxurious abode.

A Rov in Argentina sent a question to the Minchas Yitzchok regarding a butcher who owned commercial equipment that he used for his job – such as a commercial refrigerator and freezer and meat cutting equipment. He suggested that this equipment would not be considered essential, as the butcher could technically use more basic equipment and cut up the meat by hand. The Minchas Yitzchok agreed and said that this equipment could be seized by the lender. The Pischei Choshen, however, disagrees with this ruling and says that although butchers in the past may have been able to operate without modern equipment, today using such tools is the norm for any butcher and it would not be realistic to expect him to be able to work without it. He says that this would deem this equipment essential and it cannot be seized from the borrower.

If the borrower owns merchandise that he uses for business, the Pischei Choshen quotes the Aruch Hashulchan as ruling that he must sell off the stock in order to settle his debt; however, he is given a reasonable amount of time to sell it for a good price. The Chasam Sofer disagrees and says that the merchandise is considered essential equipment and the borrower would be allowed to continue doing business with it as usual until he pays back what he owes.

To watch the video or listen to the shiur given by the Dayan, visit:

www.baishavaad.org/yorucha-topics

Or sign up to receive them via whatsapp: ☎ 732.232.1412

Want to receive practical Q&A daily videos on the Yorucha topics?

📌 baishavaad.org/daily ☎ 732.232.1412