YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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***Bein Adam Le-chavero:* Ethics of Interpersonal Conduct**

**By Rav Binyamin Zimmerman**

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**Shiur #23: The Prohibition Against Lending on Interest**

**Ramifications of the Two Types of Loans**

In last week’s lesson we found that the Torah discusses two distinct types of loans. One, in *Parashat Re’eh*, is a form of *tzedaka* that provides money to those unwilling to accept outright charity. The second type, mentioned in *Parashat Mishpatim*,is a means of assisting a person who is not poor, but nevertheless is in need of additional funds. Because these two categories of loans overlap, a number of *halakhot* are applicable to both. However, due to the spirit of the law, there are allows significant differences in how we relate to them.

Although it is always permissible to request collateral as security for a loan, it is not always proper. The Torah’s limitations on taking collateral from a poor individual, notably requiring that it be returned daily if needed, makes collateral more of a hassle than a security. This and other laws remind the lender that a loan to a poor person is in lieu of outright charity, and if it cannot be paid back, one should accept that the money essentially was given to charity. For this reason, no collateral should be taken. On the other hand, providing a loan to a person of similar means to oneself is not charity, but a separate mitzva, and here the Torah does not limit the use collateral or other means of ensuring collection.

This understanding of lending to those in need is far removed from the common perspective that views capital sitting around as a potential means of making money – and, by extension, views interest-free lending as foolish. The Torah clearly identifies a loan of any kind as an extreme kindness – not foolish, but sacrificial, one person’s forfeiting his gain for the benefit of another.

As we have seen, there are means of ensuring that a loan is repaid. Yet the Torah is very cautious to specify that though the borrower has the right to recoup his money, he must also exercise care for the needs of the borrower. The Torah implies that one should go beyond the letter of the law, exercising compassion and expressing more concern for the plight of the borrower than for money owed. This is why the Torah threatens that God will take to task a person who goes too far in pursuing money that he has lent to the needy (*Shemot* 22:26).

This threat, notes Abarbanel (verse 24), puts the laws of lending in perspective. They are rooted not in justice, which does not require lending, but in the description of God answering the call of harassed debtors: “and I will listen, because I am gracious” (verse 25). Graciousness is the essence of the obligation to lend, and a character trait that God wishes for lenders to cultivate through giving.

**Responsibility of the Borrower**

It is clear by now that lending without interest is a fabulous mitzva. Yet with that said, there is another side to the lending dynamic. Though the Torah focuses on the responsibilities of the lender, the borrower must not take advantage of the lender’s philanthropy.

A person who borrowed money but finds that he is liable to default must find a way to repay his debt, because failure to do so would result in damage both to society and to him personally. If borrowers fail to pay their debts, people will become wary of lending, fearing that their loans will never be returned, and the institution of lending will suffer accordingly. There also are implications for the borrower: what will happen to a person’s character if he is not concerned with returning money he has borrowed, or with returning it in a timely manner?

Of course, a borrower typically is inclined to repay his debts regardless of these concerns. A loan creates a responsibility on the part of the borrower and causes him to feel indebted to the lender. As the verse puts it, “The borrower is servant to the lender” (*Mishlei* 22:7).

Thus a proud poverty-stricken individual who is unwilling to accept charity will be committed to returning money he borrows. If all goes well, and he successfully uses the loan to get back on his feet, then all parties will ultimately feel that the loan was a positive experience. The borrower received assistance without feeling degraded. The lender, for his part, receives the money in return and is satisfied that he has assisted another individual and can now use the money for further acts of kindness.

Significantly, the Torah is not concerned only with providing money for those in need, but also strives to improve the lender’s character, so that he does not boast about his giving or belittle the recipient, but feels privileged to be God’s agent in providing for those in need. Equally, the Torah wishes to cultivate the recipient’s character, facilitating a loan when he is unwilling to accept gifts, and giving him confidence in his ability to repay while maintaining his desire to do so. The Torah is not concerned only with the mechanical act of lending, but with its impact on the character development of all involved.

In addition to the basic requirement to lend, there are numerous *halakhot* that govern the parameters of loans. Two of the most critical *halakhot* are the prohibition of lending on interest, and the remittance of loans. Unfortunately, these *halakhot* frequently seem to be gravely misunderstood, and their place in the Torah’s overall view of loans too often is overlooked.

**The Prohibition of Taking Interest**

In issuing the mitzva to lend, the Torah makes very clear that loans must be free of any interest. It states:

If you provide a loan to My people, to the poor person who is with you, do not act toward him as a creditor; do not lay interest upon him. (*Shemot* 22:24)

The Torah does not prohibit only usury, i.e. lending at extremely high interest rates, but any sort of predetermined interest payment. Later, the Sages prohibited many other practices that are relatively dissimilar to the basic scenario of lending on interest. Evidently, the prohibition against lending to a fellow Jew on interest is so severe that the Torah and the Sages took pains to distance Jews from it.

This severity is seen in that the prohibition applies not only to the lender, but even to the borrower, who is forbidden to accept a loan on interest, as well as anyone else who is a party to such a loan, including witnesses to the transaction and any judge who might uphold it.

Although the verses focus on a needy individual (“the poor person who is with you”), the prohibition applies even to loans to the wealthy. Notably, even in the other cases where the Torah states the prohibition (*Vayikra* 25:36–37, *Devarim* 23:20), it never permits lending on interest to a person who is capable of paying.

Certainly it is a great act of kindness to lend without interest, but we might legitimately wonder, especially in our cultural milieu, what lies behind this prohibition. After all, a person may rent out his tools or bicycle or other property. Why, then, should he not be allowed to rent out his money? If the prohibition applied only to loans for those in need, then this would be more understandable, but in fact the Torah forbids taking interest on any type of loan.

The question becomes more pointed still when we consider that the lender could simply use his money to buy something else, and then rent out that object. By keeping his property in the form of money, he causes himself to be prohibited from thus investing it. Why?

One explanation offered is that there is a practical reason to distinguish between renting of capital and renting of goods. Goods lose value with wear and tear, whereas money never loses its value, although its buying power may change. For this reason, it has been argued, a person has the right to rent out objects that may be ruined, but money, which is not subject to wear, may not be rented.

Although this logic seems partly correct, it is not entirely satisfactory. After all, a coin – especially in Biblical and Talmudic times – could be defaced, and thus lose value. Further, due the fluctuating buying power of money, a person may in fact lose value by lending his money.

**An Act of Brotherhood**

Since economic logic fails to explain the Torah’s prohibition, it seems that the logic of this mitzva is one of education and character-building.

The commentators discuss whether one who lends on interest is comparable to a robber who took money that was not his, or to a person who consumed non-kosher food or violated another such prohibition. Essentially, the question is to whether the Torah views lending on interest as illegitimately profiting at the expense of another person, or as an ordinary action that would be morally acceptable if not prohibited by divine decree.

There is a wealth of discussion on this topic, but we will make do with suggesting that the Torah’s other depictions of this prohibition reveal its true nature:

You shall not lend upon interest to your brother – interest of money, interest of food, interest of anything that can be lent upon interest. Unto a foreigner you may lend upon interest, but unto your brother you shall not lend upon interest, so that the Lord, your God, will bless you in all your endeavors in the land to which you are going to possess it. (*Devarim* 23:20–21)

The Torah stresses here that the only individual to whom one is obliged to lend without interest is one’s brother. The same point is stressed in *Vayikra* 25:36–37:

Do not take from him interest or increase, but fear your God, and let your brother live with you. Your money you shall not give to him for interest, and for increase you shall not give your food.

The meaning is clear: brothers who fall on hard times must be helped with extreme kindness. Indeed, lending without interest is hard to understand as anything but an act of brotherhood: a Jew does not charge interest to a fellow Jew.

One of the terms that the Torah uses to refer to interest is *neshekh*, which the commentators explain is from the same root as *nosheikh*, “to bite.” A person who borrows on interest starts with a small loan, but this may quickly balloon into a huge debt from which he is unable to extricate himself. Thus it is logical that one be allowed to rent out his money, but one should never even think of doing so to a brother. We can view the ban on interest as reflecting the practical societal necessity that brothers help each other in time of need, or else as a means of causing the Jewish people to be deserving of divine blessing by creating a caring society. In addition, there is a personal message: the Torah wants us to value our brotherhood more than monetary gain.

That we are permitted to lend on interest to non-Jews is not due to discrimination against them, but rather is built upon the premise that lending without interest is an extreme kindness. Mandating such extraordinary kindness makes sense only if it is limited to family members.

**The Place of Money**

Another educational element of the prohibition, which appears in numerous sources, is that money should be viewed not as a goal in its own right, but rather as a means to an end. A person may be tempted to amass great wealth simply for the purpose of having money, but the Torah does not approve of doing so. One is entitled to use his money to buy something, then rent out that property, but must not view one’s money as a self-contained means of attaining more wealth through lending on interest.

Rav Hirsch points out that the verse in *Parashat Mishpatim* (22:24) that discusses interest first addresses the individual, then states the prohibition of interest in the plural, to the entire Jewish community. He comments:

From this we see that, from the aspect of general law, the Torah does not regard collecting interest as an intrinsically wrongful act. Interest is not antithetical to the concept of justice, but is antithetical to the basic principle on which Jewish society is to be built.

He adds that the mitzva is rooted in the perspective that all money belongs to God. If a person is granted excess money to lend to others, then he should view the extension of such loans not only as an act of goodwill, but as a duty to his nation – “My people” – the member of God’s community.

Rav Hirsch continues:

The prohibition of interest should be counted among those *mitzvot* – such as Shabbat, the sabbatical year, and the jubilee year – that serve as testimony and reminders of God’s dominion over the world and over Israel.

After a lengthy discussion of this concept, Rav Hirsch notes a societal benefit of the prohibition of taking interest:

Aside from the fact that the prohibition against interest is a testimony of God’s dominion, the tremendous effect of this prohibition against interest on the people’s economic and social life is incalculable. Whereas the preceding laws (verses 20–22) serve to eliminate discrimination, which usually is rooted in people’s origin and fate, the prohibition against interest nullifies the corrupting influence of money, which is the prime cause of social inequality, and breaks the immense power of capital. If this prohibition is strictly kept, all capital is in itself useless and unproductive, and is of use only if wedded to labor. Labor is thus made the primary and essential factor of social prosperity. Capital is forced to recognize the equal value of labor. The wealthy man must either engage in labor himself, for only thus will his money bear fruit for him (otherwise it remains dead capital), or associate himself with the working capacity of one who lacks wealth, share with him profit and loss, and for his own benefit further the lot of labor.

A depressed labor market triggers an even more serious depreciation of capital, and capital can never profit from the ruin of labor. The prohibition against interest nullifies the basis for the existence of that shocking contrast where the wretchedness of the working class is found side-by-side with the most luxurious opulence.

Essentially, Rav Hirsch explains that the prohibition of interest makes for a fairer society, as capital can be used only for creative investment or to pay for labor, and cannot be used just to make more money. This reality narrows the gap between rich and poor. One can only wonder to what extent Rav Hirsch’s intention was to respond to the arguments of Marx’s *Communist Manifesto*, which was written in his lifetime.

**Business Loans: The Spirit of the Law**

Now that we understand the Torah’s distinction between loans given to the poor and those given to others, it is important that we re-examine the context of the interest described by the Torah. Is the ban on interest targeted at loans to the poor and needy, yet applicable to all loans because the Torah does not differentiate? Or is this a prohibition targeting all loans equally, with the Torah declaring that even a person with a slight cash-flow problem should not be charged interest?

Either way, lending on interest is forbidden. However, there may be a practical difference between the two understandings with respect to how willing we should be to use legal maneuvers to circumvent the prohibition, such as the modern *heteir iska*.[[1]](#footnote-1) In practice, there is a difference of opinion among the sources with regard to which view is correct.

A legal ruling (*Aseh Lekha Rav*, vol. 1, no. 60) by Rav Chaim David HaLevi *zt”l*, who served as chief rabbi of Tel Aviv, explains the rationale behind *heteir iska* by positing two types of loans similar to those we have outlined. The first is a loan made to an individual who is poor or has fallen on hard times and needs financial assistance. The Torah very clearly says that money should be lent to such a person without interest, and Rav HaLevi determines that the use of *heteir iska* in such a case is illegitimate.

On the other hand, a person may seek large sums because he wishes to start a business or invest. If collection of interest were never permitted, such an individual would never find anyone willing to lend him money: others would sooner use their money for themselves than give it to him as a free loan. “From this stems the simple notion of a joint business venture, which is essentially a partnership of two individuals based upon an established halakhic vehicle.”

Rav HaLevi adds, however, that difficulty arises in situations that are neither business ventures nor cases of borrowing for basic sustenance. If a person seeks a loan to purchase a home or to marry off a child, for instance, *heteir iska* is not appropriate, but there are other tools to use when a free loan is not forthcoming.

Although Rav HaLevi’s argument is logical, it is clear that the Torah forbids lending on interest under any conditions, even if a person borrows money for a business venture. It might be explained that the Torah’s reason for issuing an outright prohibition on interest is to protect the needs of those who should not be paying interest. Based on this line of reasoning, if there are legal means of providing interest-bearing loans to those who seek loans for profit, then these do no violence to the spirit of the law.

Abarbanel, however, differs. Although he is one of the main sources we used in the previous lesson to illustrate that there are two different types of loans, when it comes to the prohibition of interest he sees no difference. Abarbanel unequivocally states that under all circumstances, the spirit of the law is opposed to lending to another Jew on interest. From a careful reading of his words, we can see how his opinion is influenced by the verses in *Devarim* that we saw earlier:

If the borrower is a wealthy man, although one is prohibited from charging him interest, because of [the Torah’s instruction] “but unto your brother you shall not lend upon interest,” one nevertheless need not return his collateral every evening … (commentary to *Shemot* 22:24)

Abarbanel’s focus on brotherhood as the basis of the prohibition on interest leads him to conclude that the Torah never allows one to lend to a brother on interest.

Nevertheless, as we have noted, lending without interest also creates a responsibility on the part of the recipient. A person who receives a free loan might mistake the lender’s kindness for license to treat his money without the reverence of one who must do everything to return it. In next week’s lesson we will discuss the Torah’s outlook regarding the responsibility of a loan’s recipient. We then will then continue on to one of the most important issues concerning the balance of responsibility between lender and borrower: remittance of loans in the sabbatical year.

1. A means of providing a loan for a joint business venture in whose context collection of interest can be made permissible in effect. [↑](#footnote-ref-1)