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

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**Shiur #22: Free Loans, Collateral, and Collectible Loans**

**The Relationship Between *Tzedaka* and Loans**

In last week’s lesson we introduced the mitzva of providing loans to those in need. We noticed that a number of sources present such a loan as the ideal form of *tzedaka*, while others indicate that extending a loan is not *tzedaka* at all, but an independent mitzva. Now that we have discussed the sources of the mitzva to lend as they appear in the context of *tzedaka*, we will proceed to investigate the source that presents the provision of interest-free loans as an independent mitzva.

In the context of *Parashat Mishpatim*, which primarily discusses numerous monetary laws, the Torah sets out the rules that pertain to extending a loan. These verses appear following the prohibition of mistreating widows and orphans, and the severe punishment received by one who mistreats them. Following the mitzva of interest-free loans, the Torah gives instructions regarding the taking of collateral against a loan.

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 first word in the verse, “if,” usually indicates a condition that may not come to fruition, but is dependent on an individual’s choice (see Malbim here). If this is so, the verse does not require that one to lend money to others, but merely states that if one does so, he may not collect interest.

This reading, though, is difficult to accept, as the verses in *Parashat Re’eh* (*Devarim* 15:7–11) that we previously encountered clearly indicate that, when approached by the needy, one *must* open his hand and provide a loan. In fact, as we saw in the previous lesson, providing such a loan often is the preferable way to give charity, as it allows those who would refuse handouts to accept assistance with dignity.

Due to the difficulty of reading the verse in *Shemot* conditionally, Rabbi Yishma’el (*Mekhilta*, quoted by Rashi), explains that though the word “if” generally indicates an optional or conditional act, here it is used for an obligation:

Every time the Torah uses the word “if,” it indicates that which is optional, with three exceptions, and this is one of them …

The *Mekhilta* goes on to cite the passage in *Devarim* as the basis for understanding this verse as describing an obligation:

“If you provide a loan …” indicates that which is obligatory, not optional.

You might say so, but perhaps it is only optional? When the Torah states, “Extend to him any credit” (*Devarim* 15:8), it indicates that which is obligatory, not optional.

However, if the verses in *Parashat Re’eh* suffice to require lending, why is the mitzva included in *Shemot* as well? Let us look further into *Parashat* *Mishpatim* for an answer.

**Lending on Collateral**

Although the Torah commands us to provide loans, it makes clear that a lender is to have means at his disposal to ensure that he can collect borrowed money. Nonetheless, there are limits. Immediately after the discussion of loans in *Parashat Mishpatim*, the Torah gives instructions to a lender who has taken collateral:

If you take your neighbor’s garment as security, by the time the sun sets you shall return it to him, for it is his only covering, it is his garment for his skin – with what should he lie? – and it shall be that if he cries out to Me, I will hear, for I am gracious. (*Shemot* 22:25–26)

In his remarks in the *Mekhila*, Rabbi Yishma’el comments on the juxtaposition of the laws of collateral and the mitzva of lending:

The Torah wishes to teach you that you should do your mitzva [of lending], and you are entitled to receive back what is yours.

Although the Torah focuses on the needs of the poor and champions the right of the needy to request and almost demand assistance, it also guards the generous giver from those who might take advantage of him.

Notwithstanding, though collateral is intended as a means of leverage against a borrower who has not paid back a loan, the Torah’s laws regarding collateral can make it very difficult to apply pressure this way. The Torah requires that any garment needed by the borrower for the night be returned by then; Rambam codifies this law as also requiring that any item that is essential to the debtor’s livelihood be returned when the debtor requires it. This arrangement significantly reduces the creditor’s leverage for collecting a loan to a very needy individual.

Why would a person take collateral at all if it must be returned every night? There are a few reasons. First, the laws of remittance of loans, which ordinarily cancel outstanding loans at the close of the sabbatical year, do not apply when collateral has been taken. Second, if collateral is taken, then even if the debtor dies, his heirs can collect the loan. Further, Ibn Ezra cites Rav Sa’adya Ga’on as noting that taking collateral prevents the borrower from borrowing from someone else against the same item.

Conversely, the limitations on collateral discourage a creditor from taking collateral if he does not need the money: he will then prefer to avoid the hassle. Finally, we should note that a creditor may choose to take collateral out of compassion. Otherwise, if a borrower takes advantage of those who help him, he may find himself unable to receive help from others in the future.

**Not Hounding the Borrower**

A further example of the Torah’s extreme compassion for those in need is the verse’s requirement that a lender not act as a creditor toward one who has borrowed from him (“do not act toward him as a creditor”). In his commentary here, Rashi cites the Gemara’s practical explanation of how to fulfill this mitzva:

You shall not demand it of him forcibly (*Tanchuma* 9, *Shemot Rabba* 31:6). If you know that he lacks [money to repay you], do not appear to him as if you have lent to him, but as if you have not lent to him, i.e. do not embarrass him. (*Bava Metzi’a* 75b)

In such a situation, a creditor is required to go so far as to avoid encountering the borrower, so that he will not be embarrassed. Rav Hirsch notes that while in every other society the borrower hides from the creditor, in Jewish society the opposite is true.

Further, says the Torah, if one does hound a person who owes him money, God will hear the debtor’s cries and punish the lender. This is quite an extreme punishment, considering that the money was lent without interest and that any leverage is employed only to recover the lender’s own money. Why does the Torah go to such lengths? Moreover, given the severity of this obligation, why does the Torah use the word “if,” as if to indicate that extending loans is optional?

**“If”: A Binding Conditional Mitzva**

In explaining the Torah’s choice of diction, some commentators point out that though there is an obligation to lend money, it is subject to outside factors, such as the circumstances of the lender, the needs of society, and the character of the would-be debtor.

Thus Ibn Ezra explains that “if” merely indicates that the ability to lend depends on the availability of funds. In effect, he reads, “If the Lord has given you wealth so that you can lend to the poor …” (See also Sforno.)

Due to the objection that many mitzvot also are subject to certain capabilities, others have offered different explanations. The *Sefer Chasidim* explains:

This is to cover the following contingencies: if you are dealing with a rogue who never pays his debts or one who has plenty of money but pretends to be poor; or one who has no money but has food, but would rather do business and keep his children short of food … in such cases it is better to give him food and not lend to him, even if you put him to shame by providing him food as charity every week. Since he is dishonest, he deserves to be shamed …

The *Sefer Chasidim* clarifies that the mitzva of lending is contingent upon the real needs of an honest individual who seeks a loan that he intends to pay back without being chased.

*Or Ha-chaim*, meanwhile, conjectures that the Torah’s choice of words relates to the reason some individuals have money to lend, while others do not:

Perhaps the Torah also seeks to provide an answer to those who ask why some people seem to enjoy far more riches than they can possibly need in their lives. One who asks such a question may wonder … what is the educational value of giving a person excess wealth? Our verse provides the answer to this question.

Generally speaking, God in His great kindness provides generously for the needs of all His creatures. He allocates a fixed amount for these needs. When a person has not qualified to receive his needs at the hands of God directly, because he is guilty of sinful conduct, God does not recall the amount that would have been allocated to such a person, but redirects it to another. As a result, the person who does not receive his livelihood from God directly either suffers deprivation or is forced to receive his livelihood through another channel. Receiving one’s livelihood through a fellow human being instead of from the hands of God is demeaning for the recipient.

… God gives the wealthy person an opportunity to use his wealth constructively by performing charitable deeds. This is the true meaning of “If you provide a loan to My people, the poor person who is with you.” The Torah suggests that if we find ourselves in possession of more than we need, we ought to lend it to someone whom the Torah, i.e. God, describes as “My people.” The meaning of this verse is that if you become aware that you have more money than you need for your personal requirements, it is clear that the excess originally belonged to another person, i.e. “the poor person who is with you.” This is a clear hint that you should open your hand to lend to the poor person part of what used to be his or was intended for him …

Maharal, in his *Gur Aryeh* supercommentary on Rashi, explains that the word “if,” although generally conditional, is used here because lending should stem from the kindness of the lender, not from a sense of obligation:

For if a person would fulfill these dictates because he is obligated to fulfill the decrees of the King, this would not be the desire of God, for God wants man to fulfill the commandment out of his own desire to do so …

Indeed, if a person would do these three acts out of a sense of being commanded to do so by the King, unwillingly, this would not be something of which God could be proud.

Maharal then discusses why these commandments in particular, although binding, should be performed out of a desire to provide assistance, rather than a sense of obligation. With regard to interest-free loans, he writes:

If someone would loan money because he is commanded to do so, it would not be a mitzva, as the mitzva of providing loans must be performed out of the desire of a good heart, as it is written (*Devarim* 15:10), “and let your heart not feel bad.”[[1]](#footnote-1)

The use of “if” for only this particular interpersonal mitzva to connote a desire to assist fits well with the understanding of *tzedaka* presented in the previous lesson. Specifically, *tzedaka* requires that men of means care about those who are struggling and be willing to provide generously for them. Helping another person in this way is an ultimate act of true happiness, because by doing so one emulates God ([see Year 1, Shiur 20](http://www.vbm-torah.org/archive/chavero/20chavero.htm)).

In the words of Rabbi Yitzchak Arama:

God’s wish is not that man indulge in all sorts of perverted physical gratifications, but rather that he derive satisfaction from helping people less fortunate than he, such as widows and orphans. He should help restore their lives to a level equal to that of their more fortunate peers. Our own experience in Egypt, if nothing else, should provide us with sufficient motivation. Just as God listened to our outcry then, He will listen to the outcry of the stranger, the orphan, and the widow, should they feel compelled to appeal to Him on account of our callousness. This concept extends to require that we help people in need with loans etc. without becoming oppressive creditors … (*Akeidat Yitzchak* on *Shemot*, Chapter 46)

**Abarbanel’s Explanation**

All of the above explanations assume that despite the use of the word “if,” there is an obligation to provide loans to those in need. For them, loans are an alternative to, or a heightened form of, *tzedaka*.

Unlike them, Abarbanel interprets “if” literally, as referring to an optional act. Further, he comments that the laws surrounding a loan, coupled with God’s promise to listen to any borrower who calls out to him, show that a loan is in fact a gift that may be returned.

Notably, Abarbanel takes issue with the statement by Rabbi Yishma’el that “if” denotes an obligation. He explains instead that this word is used because the basic mitzva in such a context is to provide money as a gift, not as a loan. Only if a needy individual is unwilling to accept a gift – or the benefactor is unwilling to provide a gift – does a loan become relevant. When it does, it comes with its own set of requirements, such as not behaving as a creditor toward a recipient who cannot pay.

Given the limitations on one’s right to harass a borrower, it stands to reason that a creditor will resort to collateral as leverage to ensure the loan is returned. Yet if the borrower is extremely needy and requires the collateral for his night garments or bed sheets, the Torah limits the lender’s right to use it as leverage, requiring that he return it every evening.

In effect, Abarbanel indicates, because God prefers that one extend a gift, rather than a loan, various laws exist to cause the loan to become a gift. With the conclusion of the sabbatical-year cycle, if the loan has not been returned and collateral has not been received, the debt will in practice be cancelled.

This holds true, though, only if the borrower is very poor. If the borrower is not needy, but simply in need of capital, then he should be lent money, but there is much more leeway to ensure that the loan will be returned. In such a case, the creditor is not obliged to return the collateral every day, and his retention of the collateral prevents the loan from being remitted during the sabbatical year.

**Two Types of Loans**

Based on Abarbanel and a number of other sources, we can conclude that there are two different types of loans. One is a form of *tzedaka* that allows one to provide money to those who are unwilling to accept a gift. This is the type of loan that is discussed in *Parashat Re’eh*.

The second type of loan is a distinct mitzva from *tzedaka*. It serves to assist those who are not poor, but nevertheless are in need of additional funds. There is no reason that such a loan not ultimately be collected, and the Torah therefore provides means for ensuring repayment – while limiting these means so that they are not used against the poor, who in actuality should receive gifts rather than loans.

This differentiation between different borrowers may be the underlying reason for the Torah’s use of the word “if.” Though there always is a mitzva to lend, even to a wealthy individual, lending to the poor is a conditional mitzva, as explained by Abarbanel. A person who extends loans in accordance with the Torah presumably will leave the money lent to a poor man as a gift if he is unable to pay, but nevertheless has avenues to collect from a wealthy borrower.

In this way, the Torah protects the poor against a lender who initially intended to take back his loan at all costs because he did not view the loan as *tzedaka*, or who initially extended a loan as a form of a gift, but later forgot his initial lofty motives. In effect, the Torah’s laws on debt collection reflect who needs the money more: the lender or the borrower.

**Are Loans Included in *Ma’aser*?**

The preceding discussion provide context to help us understand several laws relating to loans. Viewing loans as a form of *tzedaka* indicates that they can be counted toward *ma’aser* (tithing; see *Eliya Rabba* OH 156:18). Further, viewing loans as a form of *tzedaka* limits the amount of money one ought to lend, since the *halakha* states that people of average means generally should not give more than twenty percent of their income as *tzedaka* (*Shulchan Arukh* YD 149:1).

Nevertheless, if a person has money that he will not need for the next two years and another individual requests a loan that stands to be repaid by then, one still should lend to him. This lending is not a form of *tzedaka*, but a discrete mitzva: that of providing free loans.

In next week’s lesson, with this discussion in mind, we will consider a number of other relevant laws, such as the prohibition of taking interest and the remittance of loans, and identify what these *mitzvot* seek to achieve.

1. In an earlier lesson ([Year 1, Shiur 9](http://www.vbm-torah.org/archive/chavero/09chavero.htm)), we discussed whether all *mitzvot* should in fact be performed out of personal desire, rather than out of a sense of duty. [↑](#footnote-ref-1)