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ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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

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**Shiur #24: Remittance of Loans**

**The Responsibility of the Recipient of a Free Loan**

In last week’s lesson, which discussed the mitzva of extending interest-free loans, we touched on the responsibilities of a person who receives *tzedaka* or a loan. We also noted that it is easy for the recipient to overlook this responsibility due to the fact that the loan is given without interest. On the other side of the dynamic, providing interest-free loans is an extremely difficult mitzva. One is essentially requested to forego the use of his money and give it to another person who may not be able to return it, while collecting no charge in return.

As we saw in previous lessons, there are two different *mitzvot* to give loans. One involves giving money to the poor in lieu of an outright gift; the second is that of a loan to a person who, though not poor, requires additional money at the moment, perhaps for a business venture. Although there is a mitzva to lend to him, unlike in the previous case, the Torah is specifically concerned that the loan be repaid, and provides mechanisms to ensure that this happen.

Here, having discussed the responsibilities of the lender at length, we will address the responsibilities incumbent upon the recipient in greater detail. On the most basic level, the must repay the sum in full and punctually. Because the Torah provides for two different types of loans, a person who receives an interest-free loan may be inclined to view it – incorrectly – as a gift. In the absence of interest, the recipient lacks a powerful incentive to return what he has borrowed as quickly as possible.

True, we already have seen that lending money that may not be repaid is an ultimate act of kindness. However, this is true only when the money is given to a needy person. Only in such a case does the Torah allow a person to receive a loan but not return it until he has the wherewithal to do so. In such a case, buoyed by the lack of interest, the recipient is truly aided by the funds and will not be driven further into debt by interest. However, in instances where the lender does not view the money as charity, but as a very temporary loan (and where he potentially cannot afford to give it as a gift), the lack of interest may cause damage by dampening the borrower’s eagerness to return the loan.

Just as a borrower might take advantage of the lack of interest, he might take advantage of other *mitzvot* meant to prevent abuse by lenders. If in fact he feels that he can avoid payment without incurring severe ramifications, then his behavior will not only hurt the lender, but also impact detrimentally on society by discouraging people from lending money. Further, this behavior might result in severe damage to the character of the recipient.

Certain *chesed* organizations that work to teach responsible financial behavior have developed a method for preventing such a development: when a person gives a loan to a recipient who does not seek charity, the means of reimbursement should be made clear at the onset. One should think twice before providing a loan to someone who is not in need of charity without receiving postdated checks and agreement to a strict schedule of reimbursement.

True, it may feel as though doing so cheapens the act of kindness. Yet setting down such guidelines helps the borrower to feel his responsibility to return the loan. Additionally, having a reimbursement schedule allows people to lend more, because they feel secure in the knowledge that they are almost guaranteed to receive their money in return.[[1]](#footnote-1)

**Not Withholding Loans**

A certain difficulty with our perspective on the borrower’s responsibility is posed by the *mitzvot* associated with the remittance loans, which can free borrowers of the obligation to return money they have borrowed. At the moment that the year following a sabbatical year begins, all loans that are due but have not been paid are cancelled, as described in the Torah:

At the end of seven years you shall perform a release [*shemitta*], and this is the substance of the release: that every creditor release his hand from that which he has lent to his friend. He shall not exact from his friend or from his brother, because he will have declared the time of the release for the Lord. (*Devarim* 15:1–2)

In commenting on this mitzva, many stress the great obligations of the lender, who not only must forfeit interest on a loan, but must forfeit the loan itself if it is not repaid by the close of the sabbatical year. Even beyond absolving borrowers of the need to return loans, the Torah prohibits Jews from refusing to extend loans when the sabbatical year approaches out of fear that the loan will not be returned.

However, there is more to be said. To obtain a better understanding of these concepts, we will now delve into some basic sources regarding the remittance of loans.

The reality of remittance consists of three *mitzvot*: two forbidding loan collection, and one that concerns withholding loans. Namely, one positive mitzva (“release”) requires the creditor to cancel the loan, one negative commandment (“he shall not exact”) forbids him to demand payment, and another prohibition (several verses later) bars one from refusing to lend as the sabbatical year approaches. In the context of this last mitzva, the Torah goes so far as to refer to one who withholds a loan as lawless (*beliyya’al*), a harsh term used for idol worshippers (see Lesson 20):

Beware lest there be a lawless thought in your heart saying, “The seventh year, the year of remission, approaches,” and you begrudge your destitute brother and do not give to him … You shall surely give to him, and let your heart not feel bad when you give to him, for in return for this matter, the Lord, your God, will bless you in all your deeds and in all your endeavors. (verses 9–10)[[2]](#footnote-2)

This mitzva, we understand, is directed at a person who would be willing to extend a righteous, non-interest-bearing loan, but is afraid that if he does so at the moment, he will not recoup his money. Why is such a thought so bad that it is described in the same manner as idol worship?

**Lawlessness: Who and When?**

In truth, although this prohibition applies most immediately to the period before the sabbatical year, it is interspersed with various other *mitzvot* of *tzedaka* (see Lesson 19). Based on the context, most commentators understand that the prohibition applies to any inappropriate act of withholding *tzedaka*. Indeed, most of the rationales they offer for the use of the word “lawless” for a person who hesitates to lend seem applicable to *tzedaka* in general.

Maharal explains that the term is germane because the person in question fails to recognize the bond of brotherhood that is emphasized in these verses. One who refuses to help other Jews who are in need expresses alienation from his brothers and a failure to recognize the kinship and shared responsibility of all Jews. His refusal, then, is essentially an act of rebellion against the Jews as a people.

*Yismach Moshe*, meanwhile, attributes the refusal to lend to arrogance. Based on his understanding, the use of the word “lawless” can be understood through the prism of the dictum that equates arrogance with idolatry. In a word, one who is excessively proud and therefore unwilling to assist the needy is comparable to an idolater.

Others attribute the would-be lender’s insensitivity to a sense of predetermination – believing that the needy are unworthy of money – which is akin to idolatry. Similarly, Nachshoni quotes Rav Shmelke of Nikolsburg as explaining that the prohibition “let your heart not feel bad when you give to him” refers to a person who refuses to help the poor because he believes that their sorry lot is a result of their bad deeds.[[3]](#footnote-3)

*Ha-ketav Ve-hakabbala* seeks to prove, based on the flow of the verses, that the prohibition is directed at a person who has lent on collateral – so that the loan will not be remitted – and yet still refuses to lend, on the pretext that the poor will have equal access to his produce during the approaching sabbatical year and do not deserve a loan on top of that.

Rav Shlomo Zalman Auerbach (*Minchat Shlomo* 1:47), meanwhile, notes that the prohibition has limits. It does not apply when one has legitimate reasons to fear that the borrower will not repay the loan, he explains. Instead, it pertains only to one who entertains the lawless thought that a trustworthy Jew will not repay a loan only out of the would-be lender’s fear of the sabbatical year’s approach, not due to any justified concern regarding the would-be borrower. This mitzva, then, addresses a person who would stop himself from performing an act of kindness due to ungrounded fears.

Based on the Torah’s placement of this prohibition in the context of the sabbatical year, despite its more general applicability, we may conclude that the remittance of loans is an important part of the Torah’s model of how to show concern for others. Why is this? Why should the remittance of the sabbatical year be characterized as an act of profound kindness rather than one where lenders are sold out and borrowers are let off the hook?

**The Borrower’s Obligation**

Notwithstanding our initial impression of the remittance of loans, the Mishna (*Shevi’it* 10:8) clarifies that it applies only to lenders. Borrowers are not in fact freed of any and all obligations:[[4]](#footnote-4)

[If a borrower wishes to] return a loan after the sabbatical year, [the lender] should say to him, “I release the obligation.” If the borrower replies, “Nevertheless [I wish to repay it],” then the lender should accept the repayment, as it states, “this is the word[[5]](#footnote-5) of the release*”* (*Devarim* 15:2) …

The Mishna thus derives from the Torah’s terminology that remittance of loans is substantially a matter of words: the lender is required not to refuse repayment, but merely to state that he releases the obligation.

The next *mishna* further clarifies that not only may a borrower repay his loans, but such behavior is praiseworthy:

One who repays a debt after the sabbatical year – the Sages are pleased with him.

If the sabbatical year cancels loans, though, why should one be encouraged to return a loan subsequently? The reality is that there still is good reason to return the money, as Rabbeinu Bachya (*Devarim* 15:2) comments:

If the borrower does not repay his debts even though he is legally in sound financial condition, he risks that the lender will shame him by spreading the word that his borrower took advantage of the lender’s good nature and simply ate up his money.

On a practical level, since the lender borrowed the money with intent to repay it, it is in his best interest to do so if he can. Only if the borrower cannot afford repayment does he stand to benefit from the technical cancellation of the obligation.

**Loans: Voided or Silenced?**

Whereas Rabbeinu Bachya understands the *mishna* on a practical level, the Gemara’s treatment of it calls into question the basic assumption of our initial question: that the sabbatical year truly cancels loans.

In *Gittin* (37b), Rabba is quoted as stating that if a lender says that he releases an obligation and the borrower decides to take advantage and not repay the loan, the lender can *tali* him until he agrees to pay. The definition of *tali* is debated by the commentators, but Rashi understands it to mean that the lender may hang the borrower up high until he acquiesces. The obvious question then is, what right does a lender have to pressure a person who seeks to take advantage of the cancellation of his debt?

The simplest understanding of the Gemara is that remittance consists of a verbal obligation by the creditor not to exact a loan from anyone incapable of paying it. This remittance is a remarkable kindness by the Torah and the lender that allows the borrower an opportunity for a new financial beginning. However, though he bears no legal obligation to repay the money, he does have a moral obligation if he is in a position to reimburse his benefactor. Therefore, a solvent individual not only can repay a loan after the close of the sabbatical year, but even may be pressured to do so.

Rav Hirsch (*Devarim* 15:2) makes this argument very clearly:

One who releases a debt in the seventh year allows the debt to be “released from his hand,” but this release is strictly a one-sided action. The creditor, the *ba’al*, who holds the legal claim to the debt and thereby has become the debtor’s master, *renounces* forever his right to *exert* this claim. The debtor, however, remains forever morally in his debt … Moreover, it is not the Torah’s intention to exempt people who can pay from the moral obligation of paying their debts, and from such people the creditor is entitled to expect that they will not exploit the privilege granted to them by the sabbatical year.

The Torah requires that the creditor declare a remittance, but this does not exempt the debtor from his duty. In this respect, the law of the seventh year differs from that of interest, as there the debtor is forbidden to pay interest just as the creditor is forbidden to accept it …

At the end of each sabbatical-year cycle, the repayment of every previously contracted debt remains only as a moral obligation: payment of the debt is left to the discretion of him who incurred it. Because of the trust that the Torah thus places in him, the debtor, instead of feeling weighed down by the burden of his debt, feels morally uplifted. Repaying the debt of his own free will now be a matter of personal honor for him.

A similar view finds expression in the opinion of the *Yerei’im* (in old editions) that remittance entails only ceasing to demand repayment:

It appears to me that “remittance” does not mean “forgiving” [a loan]. Rather, the Holy One commands that one “release” – i.e. leave it alone, not demand it, until he returns it of his own accord – as it is written, “release … he shall not exact,” for whenever the Torah uses the word *shemitta*, it means “to leave alone,” not “to relinquish altogether,” as it is written, “and during the seventh [year], you shall release [the land] and abandon it” – meaning, “you shall leave it alone.”[[6]](#footnote-6)

Thus the above *mishna* and the fact that the verses speak only of release give credence to the understanding that the sabbaticalyear does not in fact cancel loans at all. This idea is stated beautifully by Rav Kook (*Ein Ayyah* on *Pei’ah*):

The purpose of the sabbatical year is not prevention of repayment of the loan and swaying of property rights, for the foundation of the Torah and its laws is the upholding of the property rights of every individual with respect to what is truly his. Rather, while ownership rights are upheld, there must be a spirit of generosity to prevent society from incurring damage due to wealth. Thus the main purpose of the remittance of loans is that the loan not be demanded …

The consensus of the opinions we have cited is that loans are not cancelled so much as creditors are forbidden to force repayment, so that insolvent borrowers can have a fresh start. If a loan is originally intended as charity, but given only as a loan to avoid offending the recipient, then even the lender can be happy when it is cancelled. If the lender intended that the loan be returned, then he has a new mitzva: to display the tremendous courage of stating, “I release the obligation,” recognizing that the borrower is incapable of returning the loan.

As the lender utters his release of the loan, the borrower is given the feeling that no one will pressure him to repay it. Yet at the same time, when he is capable of doing so, he is morally bidden to return it. By doing so he earns the approval of the Sages, and shows that he understands not only his rights, but his responsibilities as well.

Based on this analysis, the Rabbinic *prozbul*, which is so often seen as a legal maneuver uprooting the original intent of the Torah, is not in fact so. The Torah knows that being able to lend depends upon the knowledge that one’s money will again be accessible when one needs it; therefore the Torah itself provides means (such as taking collateral) of ensuring that a loan be repaid even after the sabbatical year. The same reasoning – “so that people do not lock the doors on those who seek to borrow” – stands behind Rabbinic institutions such as *prozbul*.

The beauty of *prozbul* is that it allows a person who has given a loan to decide whether he wishes to say, “I release the obligation” and leave repayment to the borrower, or use legal means to ensure repayment because he feels that his need for the money is greater than that of the borrower.

**Charity Throughout the World**

One of the aspects of the remittance of loans that give us a better appreciation of *tzedaka* is its universality. Whereas the verses regarding general *tzedaka* appear to be limited to the Land of Israel, the remittance of loans is not thus limited, and instead applies to all places.

Though the remittance of loans is chronologically associated with the agricultural sabbatical year, in which agricultural work pauses and land is left accessible to all, it nevertheless applies even where the agricultural *halakhot* of the sabbatical year do not, i.e. outside of the Land of Israel. *Sifrei* (*Devarim* 111–112) and the Gemara (*Kiddushin* 38b) in fact entertain the idea that the financial *halakhot* of the sabbatical year have the same geographic limitations as its agricultural *halakhot*, but ultimately make clear that despite the connection between the two, the remittance of loans applies throughout the world.

Still, as indicated above, the mitzva of *tzedaka* that is found in the same chapter of *Devarim* as the remittance of loans does make explicit mention of “your land.” Rabbeinu Bachya (*Devarim* 15:10) clarifies the relationship between the Land of Israel, the mitzva of *tzedaka*, and the *halakhot* of the sabbatical year:

An alternative understanding of the words “in your land” is: “*even* when you are in your land.” I.e. even in your land, when you already have demonstrated that you believe that the earth is the Lord’s by releasing your debtor from his debts and allowing all to pick the harvest of your field every seventh year, the Torah still commands you to perform deeds of charity as outlined in the present paragraph.

If you must perform charity even in an environment where you have demonstrated the virtue that charity symbolizes, then when you are in the Diaspora and cannot demonstrate this virtue in any other way, you are most certainly obliged to practice charity even more meticulously …

The meaning of the subordinate clause introduced by the words “beware …” (verse 9) is that the Torah must warn that we are urged to be meticulous regarding this commandment even in the Land of Israel so as to preclude certain thoughts that might occur in your mind. You might reason to yourself that since you must release debtors from their debt to you and must relinquish your field for a whole year, how could you be expected to fulfill the commandment to give charity according to the standards demanded by the Torah? Surely this would cause you to find yourself in the poor house! In order to preclude such thoughts, the Torah promises that on the contrary, God will extend His blessing to you precisely because you have meticulously performed his commandments – not in spite of this. If you were to leave the needy person to appeal to God instead of to you, having denied him, this would constitute a sin on your part.

The Torah concludes by saying “in your land,” i.e. “even in your land,” where you have already given up so much of what you would normally consider yours, you are not to withhold your generous contributions to the poor. It follows that your duty to be generous to the poor while you are in the Diaspora is even greater, as you have fewer means of manifesting this positive virtue.

As Rabbeinu Bachya notes, in the Land of Israel there are numerous agricultural gifts to the poor that build and express one’s generosity. Outside of the land, it is only through more limited avenues, most importantly *tzedaka* and remittance of loans, that one can support the underprivileged and come closer to God by thus developing his character.

In the next lesson, following our lengthy discussions of *tzedaka* that began with the agricultural *mitzvot* of *Parashat Kedoshim*, we will return to Chapter 19 of *Vayikra* and discuss additional monetary laws and how they build the Jewish spirit of holiness.

1. Also see Rav Aharon Lichtenstein’s general discussion of the obligations of a person who receives charity: <http://www.vbm-torah.org/archive/halak67/04halak.htm>. [↑](#footnote-ref-1)
2. Normally, the Gemara assumes that each appearance in a mitzva of the word “beware” or “lest” constitutes an independent prohibition. In this case, Rav Shlomo Zalman Auerbach (in his glosses to *Mishneh Kesef*) states that though it is improper to contemplate withholding a loan because the sabbatical year is coming, only following up on such a thought with action is forbidden per se. [↑](#footnote-ref-2)
3. This assumption is reminiscent of the logic of Turnus Rufus that is refuted by Rabbi Akiva in *Bava Batra* (10a). [↑](#footnote-ref-3)
4. A thorough understanding of the remittance of loans requires an appreciation of the agricultural aspects of the sabbatical year, but here we will make do with an independent analysis of the former. [↑](#footnote-ref-4)
5. Translated above as “substance,” the word *devar* also has the meaning of “word” or “speech,” the implication being that this is the extent of the lender’s obligation. [↑](#footnote-ref-5)
6. Also see Rosh, who disagrees with this view. [↑](#footnote-ref-6)