

Lending to Poor

Ref: *Sefer Mishpatim, Hilchot Malveh Veloveh, Chapters 1–3*



To lend money to a poor person.¹ Not to press a poor person to return the loan.² To press a Gentile for collection of a debt.³

To lend money to a poor person is a greater *mitzvah* than to give him *tzedakah* (charity). This is because the loan may prevent him from falling to the point where he would have to beg.

There is a duty on the side of the lender not to be hard on the borrower, and on the borrower to give away his possessions to repay the debt.

‘A wicked man borrows and does not repay’ and ‘Treat the money belonging to your friend as dearly as one’s own.’

Reminder

Pack on *Tzedakah*



However, when a lender demands repayment from the borrower in court, even if lender is wealthy and borrower is poor, the judges do not show mercy and they force the borrower to give up ‘all’ his property to repay the debt.

There are some essential belongings which are not expropriated. E.g. the clothes of debtor’s wife and children.

For himself, he would be allowed.

- Food for **30 days**
- Appropriate clothing for **12 months**
- Couch
- Bed plus mattress

Reminder

Pack on Expropriation of Property



DEBTOR CLAIMS HE HAS NOT EVEN ESSENTIAL POSSESSIONS.

The basic law, if this is the case, is to believe the debtor.

- He does not need to bring proof.
- He is not required to take an oath.
- We do not imprison him.

Even if creditors claim that debtor does possess property in his home, we do not enter his home to seize this, but one may stand outside.



However, when the *Rabanim* saw that deceit was increasing, they instituted that an oath like a Scriptural oath should be taken.

 **Reminder**
Pack on Oaths



In addition, the judges have the prerogative to assess the debtor. If they feel that he is sincere they can desist from asking him to take the oath. Similarly, if debtor is deceitful the judges can force him until he does the *mitzvah* of returning debt and avoid making a false oath.

When lending money, it is therefore important to have clear terms.

- Have witnesses observe transaction
- Debtor to give creditor collateral (*mashkon*)
- Loan to be supported by a *shtar* (promissory note) – this carries more weight than a collateral.

MASHKON (SECURITY)

 | Not to take *mashkon* (security) from a widow.⁷

If he cannot return the security he is punished with *malkot*.

 **Reminder**

Pack on Punishment for *Sefer Mishpatim*.



Similarly, if one lends money say to a colleague, one should not take collateral of essential items that would prevent him from eating.

 | Not to take utensils used for making food.⁸

When it comes to lending to a colleague, even a poor one, the following possibilities exist.

- If the colleague gives the *mashkon* voluntarily at the time of the loan, none of the following prohibitions apply.
- If *mashkon* not taken straight away, then there will be certain prohibitions and these will especially apply to a poor man.

 | Not to forcibly take security from a borrower.⁴

One is not allowed to enter the borrowers house to take security. He should not even collect this himself. Instead he should charge the court to collect the security.

 | To return security to the borrower when he needs it.⁵

When the creditor has the *mashkon* of a poor man, he should not prevent the debtor from having use of the article. If he needs it for the night he needs to make sure that he gets it before the night and vice versa for the day.

 | Not to delay returning the security to a poor debtor when he needs it.⁶

What is the point then to have collateral of a poor person if one must keep returning it?

- 1) It prevents debt from being nullified in *shmitah* year.
- 2) Debtors sons will not be able to inherit it.

 **Reminder**

Shmitah - Sabbatical Year. Ref: *Sefer Zeraim, Hilchot Shmitah*, Chapter 1-7
Pack on *Eretz Yisrael*



The above laws do not apply:

- If debtor consented to the item of security i.e. taken at time loan given (and not later).
- To a guarantor
- Fees owed to a colleague.

Here one can enter their home and take what is owing by force.