

Loans and Promissory Notes

Ref: *Sefer Mishpatim, Hilchot Malveh Veloveh, Chapters 14 and 16*

There are 5 situations where a lender needs to take an oath to collect his due, even although he possesses a promissory note.

Reminder

Oaths with regard to Loans *Sefer Mishpatim, Hilchot Malveh Veloveh, Chapter 26*



- Borrower has paid back part of the loan and claims to have paid the full amount.
- Borrower has one witness who testifies that the debt was repaid.
- When the lender needs to collect payment and borrower is away.
- When property is being expropriated from purchasers (i.e. 3rd party).
- When debt needs to be expropriated from heirs.

If lender wants to collect his payment on day payment was due, he can collect without taking an oath. Thereafter he would have to take the oath.

Reminder

Pack on Oaths



If lender holds promissory note and borrower claims he already paid, borrower can demand that lender takes an oath. Court then makes borrower pay.

Verification of a promissory note is through witnesses verifying their signatures on the contract.

Of course, once the promissory note has been used to collect debt, it cannot be used again.

The Promissory note is also invalidated if the possessor is established as a liar.

If promissory note was lost then lender is in a weak position (even if there are witnesses and even if a *kinyan* was made). Borrower just needs to take a *shvuat hesset* and he is freed from payment.

Examples of different circumstances which could occur between lender and borrower where a promissory note is involved. Each case needs different oaths etc to be taken to resolve the problems.

RESPONSIBILITY FOR DEBT.

Normally the borrower is responsible for the debt until it is returned to the lender.

The borrower or lender may want to involve a third party ie to repay a third party indirectly. In most cases, three-way deals are binding. Various circumstances could arise which need analysis with promissory note, to assess whether debt has been paid. It depends on a few factors:

- Who has possession of it. (Normally it is in the hands of the lender until it is paid off.)
- Have witnesses signed that it has been repaid.
- Can witnesses be found to certify.

- Was note found in a pile of 'paid' documents or filed with unpaid.
- Were there notes regarding payment on the document etc.

If the lender says one of the promissory notes in my possession had been paid but I do not know which, then all of them would have to be presumed paid i.e. it now all becomes responsibility of lender.