

VOLUME I: NUMBER 18: A BORROWERS OBLIGATION TO REPAY

by Rabbi Aron Tendler

Question:

Reuven borrows money from Shimon for six months. At the end of the six months, Shimon does not come to Reuven to collect the money. Is Reuven obligated to approach Shimon to repay the loan, or is he permitted to wait until Shimon approaches him?

Answer:

- A. A. If the borrower knows that the creditor expects to get the money back and has no intention at all of letting him keep the money as a present, nor does he have any intention of extending the time of the loan, the borrower is Halachically obligated to approach the creditor and voluntarily repay the loan, even though the creditor has not yet requested payment. If the borrower is not sure whether or not the creditor will forgive the loan and allow him to keep it, he is not obligated to approach the creditor to repay, and may wait until the creditor approaches him. However, even if he is not sure what the creditor's intention was, but knows that the creditor has since forgotten about the loan, he is obligated to at least approach the creditor to remind him about the loan.
2. The creditor is permitted to demand payment of the loan, even many years after it was due, and we do not say that since there was no claim during those years, he must have forgiven the loan. However, in order to ensure that no trickery is involved, the Dayan (Rabbinic Judge) that is judging such a case should try to clarify why the creditor did not claim his loan earlier.
3. If a creditor states that he forgives a loan, even if this statement was made to himself, and nobody heard it, the loan is forgiven and the borrower does not have to pay. However, if the creditor says that he gives up hope of ever being repaid by the borrower, this is not considered forgiving the loan and the borrower is still Halachically obligated to pay.
This is only true if the borrower's situation has not changed at all between the time of the loan and now. But if the borrowers situation has taken a downturn, [For example, the borrower has suffered unforeseen financial losses that are now causing people to give up hope of ever having their debts repaid.] and the creditor says that he does not believe that he will ever be repaid,

this is considered forgiveness of the loan and the borrower is no longer obligated to pay.

Sources:

The Shiltei Giborim at the end of Bava Kamma writes the following; "If someone lends someone money and does not request repayment - the borrower is not obligated to voluntarily repay the loan. Since the creditor does not claim the loan, we can assume that he intends that the money be a present." The Shach (Choshen Mishpat 232:2) quotes this Shiltei Giborim and writes that he does not understand it. The Nesivos Mishpat (ibid. 3) similarly finds this statement puzzling. The Kitzos HaChoshen (190:2) seems to concur with the Shilteie Giborim. However, the Nesivos Mishpat there (190:1) states unequivocally that the Torah places a clear obligation on a borrower to repay his debts even without being asked by the creditor.

It seems clear that even the Shiltei Giborim is of opinion that there is an obligation to repay a loan even before being asked. The point that the Shiltei Giborim is bringing to light is that there are times when the fact that the creditor has not requested the loan is in an indication that he is not interested in repayment, and in those situations, the borrower would not be required to approach the creditor to offer the money, as long as the creditor does not request it. However, if the borrower knows that the creditor was expecting repayment - but has since forgotten about the loan, or for technical reasons has been unable to approach the borrower to request repayment - even according to the Shiltei Giborim the borrower has an obligation to voluntarily repay the debt, and may not wait until it is requested.

Therefore, someone who borrows money from a Gemach (Free Loan Fund) whose funds are designated for loans and not grants, or from a private individual, in a situation where it is clear to the borrower that the creditor is expecting payment - the borrower must repay immediately when the loan is due, and may not wait until the creditor approaches him. Even if the borrower is unsure as to what the intent of the creditor is, and thinks that there is a possibility that he has forgotten about the loan, he must approach the creditor and remind him about it. The borrower should judge from the creditor's response, whether or not he expects to be paid.

Regarding Answer B and C, these Halachos are clearly discussed in the Shulchan Oruch, Choshen Mishpat 97:3, 98:1-2, and in the Rema there (2). See also the Kitzos HaChoshen 163:1, and the Rema there, and the Chazon Ish in Bava Kamma 10:14.

This week's class is based on a column by Rabbi Tzvi Shpitz, who is an Av Bet Din and Rosh Kollel in the Ramot neighborhood of Jerusalem. His column originally appears in Hebrew in

Toda'ah, a weekly publication in Jerusalem. It has been translated and reprinted here with his permission and approval.

This class is translated and moderated by Rabbi Aaron Tendler of Yeshivas Ner Yisroel in Baltimore. Rabbi Tendler accepts full responsibility for the accuracy of the translation and will be happy to fax originals of the articles in Hebrew to anyone interested.

Feedback is appreciated! It can be sent to atendler@torah.org.

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***Please Note:* The purpose of this column is to make people aware of Choshen Mishpat situations that can arise at any time, and the Halachic concepts that may be used to resolve them. Each individual situation must be resolved by an objective, competent Bais Din (or Rabbinic Arbitrator) in the presence of all parties involved!**