

HALOCHOSCOPE

Congregation Shaaray Tefillah, Pittsburgh, PA

This week's question:

If one has the funds to do so, is there any obligation to repay a debt which is due before the lender comes to collect, or may he wait until the lender asks him for it?

The issues:

- (A) *Prias Baal Chov Mitzvah* - is repayment of ones debts a Mitzvah?
- (B) *Zrizim Makdimin Lemitzvos*, conscientiousness in the swift performance of Mitzvos.
- (C) *Toch Zmano*, repayment before the due date.
- (D) If the creditor is unaware that there is a debt due to him.
- (E) *Milveh Lchotza'ah Nitnah* - who is considered the owner of the money, the lender or the borrower?

(A) Prias Baal Chov Mitzvah

Is repayment of ones debts a Mitzvah, a religious obligation, or is it purely a civil obligation? There is some debate in the Talmud regarding collection of a loan from young orphans of a deceased borrower. Some restrictions are placed on the creditor, and there are two opinions why. One explanation is that the father may have already paid back some, or all, of the loan, and since he is not here to assert himself we must protect the orphans from the creditor. The other explanation is that the repayment of a debt is a Mitzvah and children under the age of Bar-Mitzvah are not obligated in any Mitzvos. The difference between these two views is in a case where the father admitted that he had not paid the debt right before he died; according to the first opinion the children must pay, but the second opinion will still say that the Mitzvah does not apply to them. From a casual reading of the text it would appear that the first opinion feels that there is no religious obligation to repay a debt. However, on closer inspection the opposite seems true; not only is it a Mitzvah, but there is a strong civil obligation as well. Minors are indeed exempt from the Mitzvah, but they are not entitled to keep the money under "civil" law. Some commentaries simply say that this opinion holds that minor orphans are indeed obligated in this Mitzvah.

Although some Poskim consider this Mitzvah a Rabbinical obligation, most maintain that it is Scriptural. According to some it is derived from the terminology used by the Torah in the commandment to use precise weights and measures - "*Hin Tzedek*", a precise *Hin* measure (a liquid measure) is read "*Hen*" *Shelecha*, your "Yes" should be *Tzedek*, just. This is meant to teach us to be honest, and is a religious as well as moral obligation, which includes repayment of debts. Others derive it from the laws of taking collateral security. The Posuk tells

us not to enter the home of the debtor, "Vchash Asher Ata Noshe Bo Yotzee Bilecha ..." "The person to whom you loaned shall bring it out to you..." Here we see that the Torah places an obligation on the borrower to pay his debts. A third opinion is that it is included in the commandment to return a stolen article; one is liable for denial of a debt in the same way as for denial of possession of a stolen article. This shows that they are considered equal with regard to the obligation to return them to their owners. Yet another opinion includes it in the negative commandment of *Lo Sa'ashok*, do not withhold payment, which applies to any article or money that is owed to another person. This opinion agrees that it is also a positive Mitzvah of some sort, but that in addition there is a negative commandment. [See Erchin 22a-b. Kesubos 86a, 91b, Rashi etc. Baba Batsra 174a, Rashbam. 175b, Ramban. Rambam Hil. Gezeila 7:1-2. Teshuvos Radvaz Vol 2 No 610. Chinuch Mitzvah 228, Minchas Chinuch. Shulchan Aruch Choshen Mishpat 97:15 Pischei Teshuvah 4.]

(B) Zrizim Makdimin Lemitzvos

Those who are conscientious about their Mitzvah performance should always try to do them at the earliest opportunity. This is learned from the eagerness of Avraham Avinu to fulfill the Mitzvah of the Akeida- "He arose early in the morning" (Parshas Vayera 22:3). This is then applied to numerous Halachos where a Mitzvah has a prescribed time period; we are encouraged to do them sooner rather than later. Accordingly, one could assume that the same is true with the Mitzvah of Prias Chov. However, the Mitzvah might only go into effect after the creditor makes a claim. In that case there is still no obligation on the part of the borrower to voluntarily come forward with the money. [See Pesachim 4a.]

(C) Toch Zmano

Before the due-date of a debt, the Talmud assumes that people do not usually repay voluntarily, partly because the principle of Zrizim Makdimin does not apply. It could be implied from here that after the due-date there is a Mitzvah. However, when this assumption is viewed in its context, it seems that the probability of one having repaid a debt early or not is really a question of human nature, regardless of the Mitzvah. This means that one might wish to be free of the burden of the debt and therefore be willing to pay early, or at least on time, if he has the money, even if the creditor has not yet made a claim. However, this is not an obligation. [See Bava Basra 5a-b, Tosafos commentaries, Poskim.]

(D) When the creditor is unaware of a debt due him-

If the creditor was unaware that this debtor owed him anything, and the only way he found out about it was through the admission of the borrower, there is no legal obligation to repay this debt. This is because the Bais-Din is only empowered to enforce a legitimate claim, and here there was no claim made. However there is an obligation *Latzes Yedei Shamayim*, a "moral" responsibility, on the borrower to repay. This does indicate that there is a Mitzvah to pay even when the creditor has not yet made a claim. However, there are two objections to this proof. Firstly, we have a rule that in the case of Prias Chov, as with many Mitzvos, if it is known that the debtor has the means, the Bais-Din may use physical force to make him pay. In a case where it is only *Latzes Yedei Shamayim*, they do not intervene; evidently, this is a different kind of obligation,

not Prias Chov. Secondly, maybe the reason that this borrower is obligated *Latzes Yedei Shamayim* is because otherwise he will keep the money unjustly since there is no way the true claimant can get it. If, however the creditor is aware of the loan but has chosen not to claim it yet, the debtor might have the right to keep the money until it is claimed, with no "moral" obligation. [See Bava Kama 118a. Rambam Hil. Toen Venitan 1:9. Sh. Ar. C.M. 75:10, 97:15. commentaries and Poskim.]

(E) Whose Money Is It?

When one borrows money the borrower is considered the owner of the money. This is in contrast to borrowing an article where, although the article is in the possession of the borrower with regard to responsibility for loss or damage, it still belongs to the lender. Therefore if one wishes to give a ring to a woman for *Kiddushin*, the marriage ceremony, he may not use a borrowed ring, but he may use borrowed money or buy a ring with this money. The reason for this distinction is that a loan is given to the borrower with the understanding that he will be free to spend it as he sees fit. In the meantime there is a *Shibud*, a lien on him or on his property, and he will pay this off later with other money. It is therefore impossible to say that there is an obligation on the borrower to "return" the lender's money when the debt falls due, even if the Mitzvah of Prias Chov is derived from the general Mitzvah of returning articles to their rightful owners.

There is, however, a moral obligation on the borrower to be careful with this money. He may not abuse the freedom given to him to waste it by spending it on useless things. The reason given for this is that the money should rather be available to repay the loan. In addition one should be as careful with other's possessions as he is with his own. Presumably if it is well-used, even if this means that it might not be available at the time of repayment, these are no concerns, because if it is used in a business venture it will eventually earn the money needed for repayment. If it is used for humanitarian purposes, the lender will at least be given some credit for the worthwhile use of his money.

Accordingly, we find that although the money is definitely the borrower's, he must nonetheless take into account the fact that this money belonged to someone else and that it should be available for repayment if there is nothing more worthwhile being done with it. It could, therefore, be argued that if the due-date is up and the money is lying idle, this too is a misuse of the funds. The only way to rectify this situation is to return the money to its "owner", the lender. If this is true, there is a moral obligation to repay a debt before the lender comes to claim it, even if it is not included in the actual Mitzvah of Prias Chov.

In addition, we find references in the Talmud indicating that there is an obligation to voluntarily repay a loan. The implication is that when borrowing money, one should have the intention to pay it back in the same way that one lending money has in mind to collect it. The lender certainly intends to go and claim the money himself if the borrower does not return it of his own accord. In the same way the borrower should have the intention to voluntarily repay the debt if the lender does not come to claim it first. [See e.g. Kiddushin 6b, etc. Rambam Hil. Malveh Veloveh 1:1-2. Avos 2:9,12. Avos D'Rabi Noson 17:1. Kala Rabasi 5. Derech Eretz Zuta 3. Ahavas Chesed Part 2 Ch 24.]

ANNOUNCEMENTS

SCHEDULE:

SHABBOS SHACHARIS	9:00 AM
SHABBOS MINCHA	5:55 PM
MOTZOEI SHABBOS - SWITCH TO EASTERN STANDARD TIME	
SHACHARIS SUNDAY	8:00 AM
SHACHARIS MONDAY - FRIDAY	7:00 AM
MINCHA SUNDAY - THURSDAY	5:05 PM
CANDLE-LIGHTING CHAYEI SARA	4:54 PM
MINCHA EREV SHABBOS CHAYEI SARA	5:00 PM

SHIURIM:

GEMORO MAKOS	SUNDAY 7:15 AM
HALACHA B'IYUN	MONDAY 8:30 PM
HILCHOS SHABBOS	SHABBOS 8:15 AM

The Entire community is invited to a Hachnasas Sefer Torah (dedication of a Sefer Torah) in the Kollel Sunday night October 31st at 8:00pm beginning with a torch-light procession from the Keser Torah Shul (on Bartlett St.) to the Kollel. Following the ceremony there will be a festive desset. (\$18 couvert; call Kollel 521-9514 for details)

This issue of HALOCHOSCOPE has been sponsored by Dr. and Mrs. Bobb. Lebovits in honor of the birthdays of Dovid Zvi and Chana Yehudis on the 18th and 4th of Cheshvan, respectively.

Comments and suggestions are welcome and can be addressed to :

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