



Lending Money Without Witnesses

לעילוי נשמת
 יואל אפרים בן אברהם עוזיאל זלצמן ז"ל

Question: I learned that it is forbidden to lend money without witnesses. Yet, many *shomrei mitzvot* do so. How can this be, and how should I act?

Answer: Rav Yehuda (Bava Metzia 75b) forbids lending money without witnesses, as a violation of *lifnei iver*, causing the borrower to sin if he denies owing the money. Reish Lakish says that the lender brings curse upon himself, as people may suspect him of fabricating the loan. The Rambam (Malveh 2:7) and Shulchan Aruch (Choshen Mishpat 70:1) cite the prohibition and curse and apply them (based on a story in the *gemara*) even to a borrower who is a *talmid chacham*. They permit a loan only with witnesses, collateral, or, preferably, a contract. So, your understanding appears correct.


Your observation, that few good Jews are


careful about this prohibition, is also documented for hundreds of years by *Acharonim*, some of whom offer explanations, which they admit do not fit well with the Rambam/Shulchan Aruch. Following are some unlikely reasons for leniency compiled in Tzitz Eliezer (VII:47) and Yabia Omer (VII, CM 7):


1. Nowadays we know whom we can trust;
2. The *gemara* discusses frequent lenders.
3. The *gemara* discusses a rich person, regarding whom borrowers may rationalize not paying.
4. It is permitted when the restriction impacts one's business;
5. The oath instituted after Rav Yehuda's time for one who denies a loan, prevents lying.


However, what I believe is the most important reason for leniency is that it is rare for classical problem of *lifnei iver* to exist here. A basic rule of *lifnei iver* is that it does not apply if there a good chance one's counterpart will not sin as feared (Avoda Zara 15b). The *gemara* also says that people rarely simply deny borrowing money (Bava Metzia 3a; see Erech Shay to Shulchan Aruch ibid.). This helps explain the following opinions: 1. *Lifnei iver* applies here only on the level of *midat chasidut* (Ritva, Megilla 28a); 2. Reish Lakish holds there is only a curse (if the lender persists to claim after denial) and no *lifnei iver* (Pilpula Charifta to Bava Metzia 75b); 3. The *lifnei iver* element does not apply to people


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who are clearly honest (Bach, CM 70).

Even within the strict opinions, we find practical ideas to allow permission. The Rambam and Shulchan Aruch, without a known Talmudic source, allow lending based on collateral alone. The Maggid Mishneh says this solves the problem of not having witnesses. Since they do not state that the collateral must cover the entire loan principal, it follows that classical *poskim* suffice with a partial solution.

The case for leniency is bolstered by a factor that is probably more prevalent in recent times than in ancient ones. It is likely insulting to a borrower to require a loan contract for a moderate amount of money. If everyone followed the *gemara*, borrowers could hardly be insulted by the lender's requiring contracts or witnesses. However, since in practice, borrowers rarely ask for them and given the *mitzva* to lend money while maintaining the borrower's dignity (see Shemot 22:24), the mandates impinge on each other. (See Minchat Shlomo, I:35 regarding "collateral damage" from stringency on *lifnei iver*). On the other hand, it is difficult

to allow one to ignore a codified *halacha*. We therefore suggest plans to keep the *halacha* while maintaining dignity.

If one lends a small amount of money, have in mind that if the borrower forgets about it, to turn the money into a present or *tzedaka* (see Ketubot 67b regarding about loans becoming presents). If the loan is too large to be willing to waive, in our times, it is standard to naturally have documentation, i.e., checks and bank transfers. According to most approaches (see Yabia Omer *ibid.*), witnesses did not fully prevent the borrower from refusing to pay, but were used to jog his memory or make it difficult not to pay. Checks and bank transfers should suffice for this end, especially if one writes "loan" on the memo line, which is not insulting. ■

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