

29 Mar-Cheshvan 5776
Nov. 30, 2016



Bava Metzia Daf 65

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Seizing Interest

Abaye says: Someone was owed interest by his friend at a time when four *grivi* (units) of wheat were being sold for a *zuz*. This friend gave him five units (for the payment of his *zuz* of interest). When we take away the interest (as we hold that prearranged interest is taken away by *Beis Din*), we take away four units, as we say that the borrower just gave him a good price. Rava says: We take away all five units, as the entire payment was due to interest.

Abaye also says: If someone was owed four *zuz* of interest, and his friend paid him with his coat, the interest is taken away by *Beis Din* collecting four *zuz* from the lender, not the coat. Rava says: We take away the coat. Why? This is in order that people should not say, “The coat he is wearing is due to his collection of interest.”

Rava says: If someone was owed twelve *zuz* of interest by his friend, and his friend rented him a place for these twelve *zuz* that was really only worth ten *zuz*, when we take away the interest, we take away twelve *zuz*.

Rav Acha from Difti asked Ravina: Why can't the lender say the following to the borrower? “I rented it for this price because the money was anyway profit. However, now that the money is not profit, I would have rented it for the same price as everyone else!”

Rava answered: The borrower can claim, “You realized the price and you accepted it (that this would be considered twelve *zuz*).” (65a)

Mishna

One can add onto rent (for a delayed payment), but he cannot add onto a sale. What is the case? If someone is renting out a courtyard and he says, “If you give me the money now, I will give it to you for ten *sela* a year. If you give me the money every month, it will cost you one *sela* a month (totaling twelve *sela* per year),” this is permitted. If someone is selling his field and he says, “If you give me the money now, I will sell it to you for one thousand *zuz*. If I have to wait until you sell the produce, it will cost you twelve hundred *zuz*,” this is forbidden. (65a)

Rental Due at the End

The *Gemora* asks: What is the difference between the two cases? [Why is the former permitted and the latter forbidden?]

Rabbah and Rav Yosef answer: This is because rent is due only at the end of the rental. Being that it is not yet time to collect the rent until the end of the month, when he collects the (higher price of a) *sela* a month, it is not considered that he is rewarding him for waiting. [It is considered that he paid in the proper time.] When he offered a cheaper price for paying the money up front, he was merely offering a discount. In contrast, a sale is an immediate exchange of money for goods. When he allows him to delay payment, this is forbidden. [He is essentially lending him money with interest.]

Rava says: The *Chachamim* searched for a verse to match this law (that rent is only owed at the end of the rental) and found it. The verse states, “Like a worker year by year.” This



implies that the wages for the first year are only due by the start of the next year (*the end of the first year*). (65a)

The *Mishna* had stated: If I have to wait until you sell the produce, it will cost you twelve hundred zuz, this is forbidden.

Rav Nachmansays: It is permitted to sell something for more money than it costs with payments. [*Rashi notes that he is not allowed to say that if you pay me in full now, it will be cheaper.*]

Rami bar Chama, and some say Rav Ukva bar Chama, asked Rav Nachman: The *Mishna* says: If I have to wait until you sell the produce, it will cost you twelve hundred zuz, this is forbidden!?

Rav Nachman answers: In the *Mishna*, he gave a set amount (*he offered a cash price as well*). Here, he is not offering a set cash price.

Rav Pappa says: The way I offer payments is permitted. [*Rashi explains that he would offer payment at the expensive price of Nissan during Tishrei, which would only be expected to be paid during Nissan.*] This is because I could really store my date beer (*that he sold*) until Nissan, I don't need the money (*and don't have to sell at the cheap price*), and essentially I am just doing a favor for the customer.

Rav Sheishes, the son of Rav Idi, said to Rav Pappa: Why are you determining this by looking at your own status? Look at the status of the customer! If he had money, he would buy at the current cheap price. Being that he doesn't have money, he is buying at your expensive price (*which should be considered interest*).

Rav Chama said: The way I offer payment is certainly permitted. [*Rashi explains that he would sell merchandise based on its price in a strong market. He would then take responsibility for the merchandise until the buyers took it and sold it in the strong market. They paid him when they came*

back. It is therefore considered a loan only when they actually have the money in the place where the price is expensive.] Why? The buyers are pleased that I am still responsible for the merchandise until they bring it to the expensive market. Wherever they go, they receive the benefit of not having to pay taxes and they are the first to be able to sell (*because Rav Chama had special arrangements for his merchants*).

The *Gemora* concludes: The law follows Rav Chama, Rabbi Elozar (*who said that we take away prearranged interest*), and Rabbi Yannai who said: There is no difference between the fruits and its money (*that the cash value of the fruits is equivalent to the fruits, and therefore just as one may receive the fruits later, he may receive their cash equivalent – below 63a - b*). (65a – 65b)

Mishna

If one sold another a field and received partial payment, and then told the buyer that whenever he wants, he should bring the rest of the money and take the field, it is forbidden.

If one made a loan to someone using his field as security, and he (the lender) said to him, "If you do not pay me back within three years, the field will belong to me, this is permitted. This is how Baysos ben Zunin would lend money upon the advice of the Sages. (65b)

Eating the Produce

The *Gemora* asks: In the first case in the *Mishna*, who is eating the fruit during the interim? Rav Huna says: The seller is eating the fruit. Rav Anan says: They put the fruit in the hands of a third party (*to give to the eventual owner, see Rashi*).

The *Gemora* notes: They are not really arguing. Rav Huna is discussing a case where the seller said, "When you bring the rest of the money, you will acquire the field." Rav Anan is



discussing a case where he said, "When you bring the rest of the money, you will acquire the field from now."

Rav Safra taught a *braisa* assembled by Rabbi Chiya regarding the laws of interest. Sometimes they are both permitted (*to eat the fruit*) and sometimes they are both forbidden. Sometimes the seller is forbidden and the buyer is permitted, and sometimes the buyer is forbidden and the seller is permitted.

Rava answered after him (*and explained this braisa*). "Sometimes they are both permitted," refers to a case where the seller says, "Acquire now according to the amount that you gave." [*As the field belongs partially to the buyer and partially to the seller, they both are permitted to eat the fruit.*] "Sometimes they are both forbidden," refers to a case where the seller says, "When you bring the rest of the money you can eat from now." "Sometimes the seller is forbidden and the buyer is permitted," refers to a case where the seller says, "When you bring the rest of the money you should acquire it." "Sometimes the buyer is forbidden and the seller is permitted," refers to a case where the seller says, "Acquire it from now, and the rest of your money should be a loan (*that you owe me*)."

The *Gemora* asks: Who holds they are both forbidden?

Rav Huna the son of Rabbi Yehoshua says: This is unlike the opinion of Rabbi Yehudah, as he says that if there is a possibility that there will not be interest, it is permitted.

(*The braisa states:*) If a borrower gave his house or field as collateral, and the lender (*who was benefiting from the house or field*) said to the borrower, "If you want to sell it, you should sell it only to me for this (*cheaper than market*) price," it is forbidden. If the price is its fair price, it is permitted.

The *Gemora* asks: Who is the one who says that if he says a price (*other than the real price of the house or field*) that it is forbidden?

Rav Huna the son of Rabbi Yehoshua says: This is unlike the opinion of Rabbi Yehudah, as he says that if there is a possibility that there will not be interest it is permitted.

If someone sold a house or field on condition that if he has the money to buy it back, the buyer must sell it back to him, it is prohibited. If the buyer voluntarily said, "If you get the money, I will willingly sell it back to you," it is permitted.

The *Gemora* asks: Who is the author of this *braisa*?

Rav Huna the son of Rabbi Yehoshua says: This is unlike the opinion of Rabbi Yehudah, as he says that if there is a possibility that there will not be interest, it is permitted.

The *Gemora* asks: What is the difference between the first case and the second case?

Rava says: The second case is where the buyer the buyer stipulates that he might return it (*depending on his will at the time*). (65b)

INSIGHTS TO THE DAF Installment plans

Our Mishnah treats installment plans and rules that though the Torah only prohibits interest on loans, Chazal forbade a vendor to raise a price if a purchaser wants to pay in installments. Chazal regarded the higher price for installment payments as including a financial component charged for the period when the payment owed remains with the purchaser, resembling interest.

Still, if an item has no fixed price but can be sold for between \$600 and \$620, one may sell it for \$600 in cash or \$620 in installments. Since it is sometimes sold for \$620 in cash, the same price charged for installments does not resemble interest. A vendor, though, must not tell a client explicitly that the price is less for cash or more for installments but may rather hint his offer without emphasis (Shulchan 'Aruch,



Y.D. 173:1). One method to avoid the prohibition of interest in installment payments is to first mention the price of the article as the price for installments. He may then sell the merchandise more cheaply for cash. By that reasoning and to avoid all semblance of interest, one must not buy in installments at a price higher than that marked on the item or advertised in the shop (see *Toras Ribis* by the geonim Rabbis Hershler and Hishrik, Ch. 8, S.K. 6).

The ruling of HaGaon Rabbi Ch. Sonnenfeld zt"l to the gemach of Sha'arei Chesed: The administrators asked Rav Sonnenfeld about such fees and as he opposed their payment, they charge none to this day. We must emphasize that, at any rate, fees must not be linked to the amount of a loan as such collection resembles interest. They must also be collected separately from loan repayments to avoid all semblance of interest (*Beris Yehudah*, Ch. 9, S.K. 13).

Leasing (hire-purchase)

One of the commonest installment plans is to buy a vehicle by leasing: The purchaser gets his car upon signing a contract and pays monthly installments over a long period that eventually total much more than the car's initial price. This purchasing method is apparently forbidden as each payment includes interest. However, the contract stipulates that the car becomes the purchaser's only after the last payment and, consequently, part of the payment covers the car's price while a part thereof constitutes rental fees and no part thereof is regarded as interest. We emphasize, though, that a leasing contract may have clauses incurring a prohibition of interest (such as pertaining to the customer's full responsibility for the vehicle) which need examination by halachic authorities (see *Responsa Minchas Yitzchak*, IV, 20). Nonetheless, poskim (Maharam Shik, Y.D. 163) advise those wanting to buy on installments to arrange a heter 'iska (investment permit), formulated differently than those commonly used for bank loans.

Increasing the Dowry

The *Mishna* stated: If someone is renting out a courtyard and he says, "If you give me the money now, I will give it to you for ten *sela* a year. If you give me the money every month, it will cost you one *sela* a month (*totaling twelve sela per year*)," this is permitted.

The Rem" a rules: It is permitted to increase the dowry of one's son-in-law. He explains the case: A father vowed to give a certain amount to his daughter as a dowry. He then stipulated with his son-in-law that for every year that he allows the dowry to stay by him (and not collect it), he will give an extra amount. This is permitted, for it is as if he is merely increasing the dowry amount. However, this is only if the condition was made before the marriage. Otherwise, it would be forbidden, because the father-in-law is rewarding the son-in-law for waiting to collect the debt.

THE FORBIDDEN SALE AND THE PERMITTED LOAN

The *Mishna* here discusses two cases. In the first case, a landowner sells a field to a buyer who makes a down payment. The seller says, "Whenever you want, you may bring the money and take your field." The *Mishna* states that this arrangement is forbidden. **RASHI** (DH Machar Lo) explains that the field retroactively becomes the buyer's when he pays the rest of the money. Accordingly, if the seller ate the fruit of the field in the interim time, the seller effectively has taken *Ribbis* for letting the buyer delay payment. If, on the other hand, the buyer eats the fruit of the field during this time, there is a possibility that the *buyer* will be taking *Ribbis*: in the event that the buyer defaults on the sale and does not deliver the rest of the money by the given time, the down payment that he gave will retroactively be considered a loan to the seller, and the buyer (lender) will have eaten the fruit of the field of the seller (borrower), effectively taking *Ribbis* for his "loan" to the seller.

In the *Mishna's* second case, a borrower gives his field as collateral to a lender, and they stipulate that if the borrower



does not pay back the loan within three years, the field retroactively becomes payment for the loan. The fruit of the field is sold and the money held by a third party until the three years pass. If the borrower pays back the money on time, the profit from the fruit goes to the borrower and the field stays in his possession. If he does not pay back, the ownership of the field is considered to have been transferred to the lender three years ago, and the profit of the fruit goes to the lender.

The **TOSFOS YOM TOV** asks the following question. The *Mishna's* point seems to be that when there is a possibility that the ownership of a field will be transferred retroactively when a certain time arrives, neither party may eat the fruit in the interim because of *Ribbis*. Why does the *Mishna* express this point in the case of a sale which is *forbidden* and in a case of a loan which is *permitted*? The point seems to be the same in both cases.

(a) The **TOSFOS YOM TOV** answers that the *Mishna* teaches its point in the first case with regard to a sale because it wants to show that even though the Halachah is often lenient in cases of sales (as Rabbi Yehudah indeed is lenient in this case because he rules that "Tzad Echad b'*Ribbis*" is permitted), in this case the Halachah is not lenient and such a transaction is forbidden. On the other hand, the Rabanan were generally stringent in cases of *Ribbis* of loans. The *Mishna* therefore teaches a second case to show that such a transaction is permitted even in the case of a loan.

(b) Alternatively, the Tosfos Yom Tov explains that the case of a permitted loan is necessary only because of the testimony which the *Mishna* quotes afterwards. The *Mishna* relates that *Baysos* used to manage his loans this way according to the Chachamim. To maintain consistency with the case of *Baysos*, the *Mishna* teaches the second case, in which the law is lenient.

The **CHIDUSHEI MAHARI'ACH** has difficulty with the question of the Tosfos Yom Tov. The *Mishna* teaches the first case involving a sale because it needs to teach the potential

problem of *Ribbis* involved in selling a field. A deal in which the fruit is given to a third party until the ownership of the field becomes clarified is not problematic at all. The *Mishna* therefore needs to teach a case in which the deal is forbidden. The second case of the *Mishna* is also necessary: since the borrower is offering his field as security for a loan which is due only three years from now, it is possible that this type of transaction should be forbidden because presumably the borrower offers a field of greater value as collateral in order to receive a loan for three years. This means that a default on the loan will provide the lender with a field worth more than the loan -- which is *Ribbis*. The *Mishna* teaches that the Halachah in the case of such a loan is lenient and such a deal is permitted.

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QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF to refresh your memory

Q: If a man gives money to a gardener for gourds, and ten gourds of a span's length (*half of an amah*) are priced (*in the market*) at a *zuz*, and the gardener says to him, 'I will give you ten gourds, each an *amah* long (*if you pay me the money now*),' if he actually has them in his possession, it is permitted, but if not, it is forbidden." Why would we have thought differently?

A: I might have thought that since the small gourds naturally grow large, it would be good (*and the transaction will be valid even if he does not presently have the large gourds*).

Q: Why is it permitted for a buyer to say to a seller, "Here are four *zuz* for a barrel of wine (*which you will give me later*); if it turns sour, it is in your ownership (*and the sale is voided*); but if it appreciates or depreciates (*in value*), it belongs to me"? Shouldn't this be a case where it is close to a profit (*if it appreciates*) and far from a loss (*if it sours*)! [*It should therefore be forbidden, for he is obviously not buying it, since he is not taking responsibility if it gets sour – and if*



he is not buying it, the money should be regarded as a loan; if it increases in value, it will be interest!?!]

A: Since he accepts to suffer the loss of the depreciation as well, it is considered as if it is close to a profit and a loss (*and therefore not regarded as interest*).

Q: Rav Yosef bar Manyumi said in the name of Rav Nachman: Even though one who dwells in someone else's courtyard without his knowledge is not required to pay (*since this falls in the category of zeh neheneh v'zeh lo chaseir – he is benefitting, for he might have paid rent to live in such a place, but the owner has not suffered any loss from it, for he was not intending to rent it out anyway*), if the courtyard is owned by his debtor, he must pay rent (*for otherwise, it would appear like ribbis*). What is the novelty of Rav Nachman's teaching? Did we not learn like this in our *Mishna*? If one lends something to his fellow, he should not dwell in the borrower's courtyard for free, and he should not rent it from him for lower than the usual price, for it would be regarded as *ribbis*.?

A: If we would have only our *Mishna's* teaching, I would have thought that the ruling only applies by a courtyard which is normally rented out (*where the owner is therefore suffering a loss*) and we are referring to a person who normally pays for his lodging (*and therefore he is gaining; this is why it would be regarded as ribbis*). However, in a case where the courtyard is not normally rented out and the person does not usually pay for lodging, perhaps the lender would not be required to pay the rent. Rav Nachman teaches us that even in this case, he must pay for the rent (*for otherwise, it has the appearance of ribbis*).

DAILY MASHAL

A PUBLIC FAVOR

Revach L'Daf

Rav Nachman says although if someone lives in his friend's courtyard without his knowledge he is exempt from liability, however, if he lent money to him he must pay rent. Even if the courtyard is not usually rented out he may not live there without paying rent. If it is forbidden for the borrower to do any favor at all for the lender even something that he would have done for him even if he never lent him money? Tosfos explains that it is permitted for the borrower to lend the lender items that he would have lent him even if he had not borrowed money from him and the reason why the lender may not live in his courtyard or grab his servant is because it is something that can't be done privately and since people will know about it is forbidden.

The Maharshah says that the borrower may not honor the lender with a Mitzvah by calling him to the Torah or buying Gelilah for him even if he would have done it even without the loan because it is done publicly and it is similar to living in a courtyard or grabbing a servant.