



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o'h

Tzvi Gershon ben Yoel (Harvey Felsen) o'h

May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Estate Money

Rav Anan said in the name of Shmuel that estate money owned by orphans can be lent out with interest. Rav Nachman said that orphans do not have license to take money that is not theirs, and those who do so will follow their parents to death. When Rav Nachman asked what led Rav Anan to state this in the name of Shmuel, he replied that Mar Ukva's orphans owned a pot, for which Shmuel was the administrator. Shmuel rented it out, but also weighed the pot before and after the rental, and charge the renter for the loss in the pot's weight. By charging the renter for the loss in weight, Shmuel was considering the pot to be in the possession of the renter; just like lent money is in the possession of the debtor. Therefore, the rent was akin to a rental fee on lent money, which is tantamount to interest. Rav Nachman explained that what Shmuel did was permissible for anyone - even fully grown orphans - since the orphans did not charge the renter for the loss in strength of the pot's metal due to cooking, indicating that the pot was still in their possession. Therefore, assessing the loss in weight is not interest on a loan, and is permitted.

The *Gemora* says that one may invest estate money of orphans under favorable terms for the orphans (*the first case in the chart below*), even though that is considered Rabbinic interest for other lenders. The *Gemora* quotes a *braisa* that lists categories of investment, in terms of the odds of gain and loss for the investor:

Gains	Losses	Favorable for	Classification of investor
Split Evenly	Receiver	Investor	<i>Rasha</i> - wicked
Split Evenly	Investor	Receiver	Chasid – above the call of duty
Split Evenly	Investor loses 2/3	Even	Standard
Investor gains 1/3	Split Evenly		

Rabbah asked Rav Yosef what one should do with estate money of orphans. When Rav Yosef said we hold it for them, and use it to provide for their needs, Rabbah responded that the principal will be quickly depleted. Instead, Rabbah says that we find a man with whom we can invest the money under terms that are favorable for the orphans, in order to earn income for them. Optimally, we find a man who has chunks of gold, which he can provide as collateral, in case the money is lost. An expensive item is not acceptable as collateral, since the man may just be guarding it for someone else, who can retrieve it, leaving the investment money unsecured. If no such man is found, we look for a man who has a conservative reputation, both in terms of honesty in business, and listening to the court and Torah, and invest it with him. (70a)

Who may Pay Interest

The *Mishna* discusses categories of interest that are permissible with non Jews. The first category is *tzon barzel* – iron sheep. This is an investment arrangement, where an investor provides a commodity to a recipient, at an appraised monetary value. At the end of the term of the loan, the recipient must repay the appraised value of the commodity, as well as half of any profits. Since the original appraised value must be paid back, this arrangement is called iron sheep – metaphorically stating that their value is immutable like that of iron. Since the recipient must repay the appraised value, regardless of any losses, this is similar to a loan, and the portion of the profits given to the investor is akin to interest. Therefore, this may not be done with a Jewish recipient, but may be done with a non Jewish recipient. In addition, explicit interest on a loan may be charged from a non Jew, even a *gair toshav*, who has renounced idol worship, but who has not converted. Finally, the *Mishna* says that if a Jew has borrowed money from a non Jew with interest, another Jew may borrow that money only through the non Jewish creditor, but not through the Jewish debtor.

Since the *Mishna* considers *tzon barzel* to be a loan, it implies that when one receives such property, it is considered his, and not the original owner's. The *Gemora* challenges this from a *braisa* that says that if one receives *tzon barzel* animals from a non Jew, the firstborn children are exempt from the *bechor* sacrifice. This exemption indicates that the sheep and its children are the property of the original non Jewish owner.

Abaye answers that the ownership depends on the terms of the arrangement. If the one receiving the sheep accepts to pay for any loss (*due to an accident or depreciation*), it is considered his; but otherwise, it is considered the property of the original owner. Our *Mishna* is a case where the recipient took responsibility for any losses, while the *braisa* about *bechor* is a case where he did not take responsibility.

Rava disputes Abaye on two counts:

1. If he has not accepted responsibility for losses, the sheep cannot be called immutable *tzon barzel*, since the ultimate payment may be less than the original appraisal.
2. If Abaye is correct, our *Mishna* did not need to go so far as a case of non Jewish recipient to find a permitted case of *tzon barzel*, but could have simply stated a case where the recipient does not accept responsibility for loss.

Instead, Rava says that although the sheep is considered the property of the recipient, since the non Jew can seize the children if the borrower does not pay back the appraised value, the non Jew has a limited ownership share in the children. Once a non Jew has any share in the ownership of an animal, it is exempt from a *bechor* sacrifice. (70b)

Avoiding any Interest

The *Gemora* cites the verse in *Mishlei* that states that one who accumulates wealth by charging interest will ultimately hand it over to one who provides for poor people. Rav explains that this refers to someone like Shvor Malka, a contemporary Persian king who would collect interest from usurers, and use the revenue to support the poor. Rav Nachman says that Rav Huna told him that this verse refers even to one who collects interest from a non Jew.

Rava challenged Rav Nachman from the verse that says *lanachri tashich* - to a non Jew you may pay interest. Rava assumed that we also read this verse as *tishoch* - you should charge interest, indicating the Torah explicitly allows this, since the Torah does not need to tell us that you may pay interest to a non Jew.

Rav Nachman deflects this by saying the verse is read only *tashich* - you may pay interest. This verse is only necessary

for its implication – that to a Jew you may *not* pay interest, adding a positive commandment to this prohibition.

The *Gemora* then challenges Rav Nachman's statement from the *Mishna*, which permits lending to a non Jew with interest. The *Gemora* offers two answers:

1. Rav Chiya, the son of Rav Huna, says that the *Mishna* is allowing lending with interest to the extent that the creditor needs the income for his basic needs.
2. Ravina says the reason for the prohibition on lending to a non Jew with interest is to limit interactions with non Jews, to prevent the Jewish creditor from learning idolatrous habits. The *Mishna* is referring to a Torah scholar, whom we are confident will not be negatively influenced by his non Jewish debtor.

The *Gemora* quotes a different version of Rav Huna's statement. Rav Yosef explained that the verse discussing lending states: *if you will lend money to Ami – my nation, to the Ani – the poor one – Imach – with you*. This verse teaches that the priority in lending is first to a Jew over a non Jew (*Ami*), then to a poor person over a rich person (*Ani*), and to a local poor person over a poor person somewhere else (*Imach*). Rav Huna says that the priority given to a Jewish debtor is even when the non Jewish debtor will pay interest. (70b – 71a)

INSIGHTS TO THE DAF

Estate Money and Interest

The *Gemora* allowed an administrator of an estate to invest the orphan's money in an investment with favorable terms for them, although this is generally Rabbinically prohibited.

The Shulchan Aruch (YD 160:18), based on the Rambam and Rosh, applies this license to all Rabbinically prohibited interest, and extends this to money of charity, money

donated to Torah scholars, and money donated for use in a synagogue.

What did the Torah Permit?

The *Gemora* quotes a statement of Rav Huna that prohibits charging interest from a non Jew. The *Gemora* debates why this is prohibited, and how to reconcile this statement with the verse and *Mishna* that seem to permit such a loan.

Tosfos (70b Tashich) asks why the *Gemora* was concerned with reconciling this Rabbinic law with the verse and *Mishna*, and answers that the *Gemora* assumed that the Sages would not prohibit something the Torah permitted.

The Taz states in numerous places that although the Sages have leeway to enact their own new prohibitions, they may not prohibit something explicitly permitted by the Torah.

The Taz in YD 117:1 applies this to the Rabbinic prohibition on commerce in forbidden foods. Since the Torah explicitly allows one to sell *neveilah* meat to a non Jew, the Rabbinic prohibition had to allow for such commerce when one chanced upon the forbidden food, so as to not fully prohibit an act the Torah explicitly allows.

The Taz in OC 588:5 discusses a question raised by earlier poskim. We find the Sages prohibited the performance of numerous *mitzvos* on Shabbos (e.g., Shofar, Lulav), due to a concern of one accidentally carrying to perform the *mitzvah*. Why did the Sages not apply this to *bris milah*, prohibiting a *bris milah* which falls on a *Shabbos*.

The Taz says that since the Torah explicitly said that one must perform a *bris milah* on the eighth day, even if it is a *Shabbos*, the Sages could not prohibit it.

The Chavos Yair 142 challenges this Taz from our *Gemora*, among others. Our *Gemora* is an instance where the

Sages prohibited an action explicitly permitted by the Torah – i.e., charging a non Jew interest on a loan. Therefore, the Chavos Yair rejects the Taz's thesis.

Later poskim dispute the Chavos Yair's disproof. The Shla, quoted by the Chasam Sofer (YD 106), says that the Sages did not prohibit charging a non Jew interest, since that is indeed explicitly permitted by the Torah. Instead, the Sages prohibited a Jew from lending to a non Jew at all, and only thereby precluded the Jew from *receiving* interest from him.

The Chasam Sofer (YD 106, 109) says that Tosfos themselves (70b Tashich, 64b v'Lo) seem to support the Taz, and actually explain the *Gemora* based on his principle. According to Tosfos, when the *Gemora* challenged Rav Nachman from the verse, the *Gemora* was stating that since the Torah explicitly allowed a Jew to charge a non Jew interest, the Sages cannot prohibit it. The Chasam Sofer says that the reason the Sages were allowed to do so is due to the exclusions built in to their prohibitions (*for livelihood, or for a Torah scholar*). Just as the Sages allowed commerce in forbidden food when the Jew chanced upon it in order to avoid explicitly prohibiting an act allowed by the Torah, so too, the Sages allowed charging a non Jew interest in some cases, to avoid explicitly such a prohibition.

Rav Moshe Feinstein (Igros Moshe OC 1:134) says that the *Gemora*'s answer that we read the verse only as *tashich* – explicitly allowing a Jew only to *pay* interest, means that the Torah never did explicitly allow a Jew to charge interest, giving the Sages the leeway to prohibit it. See Rabbi Akiva Eiger YD 117 on the Taz for more details.

Tosfos (70b Tashich) says that nowadays we lend money to non Jews with interest. Tosfos advances three reasons for this behavior:

1. The economic situation and lack of other professions available to Jews makes the interest

necessary for the creditor's basic needs, in which case it is permitted.

2. Ravina's answer understood that the prohibition was to limit our interactions with non Jews. Since we are forced into such interactions due to economic circumstances, there is no added interaction that will be prevented by refraining from charging interest.
3. The second version of Rav Huna's statement does not prohibit interest from a non Jew at all, but only prioritized an interest free loan to a Jew above it.

The Shulchan Aruch (YD 159:1) rules that charging interest from a non Jew is prohibited by the Sages, unless the creditor needs the interest for his basic needs, or is a Torah scholar. However, the Shulchan Aruch says that it is permitted nowadays, based on the first two reasons of Tosfos (see Shach 2).

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

Q: Is it more difficult to raise an animal the first year, or the second year?

A: The second year.

Q: Why does a newborn small animal require more care?

A: Because its teeth are small.

Q: Can a person say to his fellow, "Here are four zuzim; now go and lend money to So-and-so?"

A: Yes.