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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 to him: Orphans do not have license to take money that is not theirs, and those who do so will follow their parents to death.

Rav Nachman said to him: tell me now, what was the actual case?

Rav Anan said to him: Mar Ukva’s orphans owned a copper 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, but if a fee for renting, there should be no charge for depreciation, and if a charge for depreciation, there should be no fee for renting!<sup>1</sup>

Rav Nachman said to him: 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.

Rabbah bar Shila said in the name of Rav Chisda, and some say that Rabbah bar Yosef bar Chama said in the name of Rav Sheishes: One may lend money of (young) orphans (with an

iska arrangement) under favorable terms for the orphans – near to profit and far from loss (even though that is considered Rabbinic interest for other lenders).

The *Gemara* quotes a *Baraisa* 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. Rav Yosef said to him: We establish a court for them, and we give them the money zuz by zuz.<sup>2</sup> Rabbah said to him: But the principal will be quickly depleted? Rav Yosef responded: So what would you, master, do? Rabbah said to him: We seek out a man who

was akin to a rental fee on lent money, which is tantamount to interest.

<sup>2</sup> We hold it for them, and use it to provide for their needs.

<sup>1</sup> 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

possesses broken pieces of gold, take the gold from him, and entrust to him the orphan's money on terms that are near to profit and far from loss. But a distinct object cannot [be taken as a security], lest it was [merely] entrusted to him, and its owner may come, state its identifying mark [which proves his ownership] and take it away.

Rav Ashi asked: That is well if you find a man who possesses broken gold; but if you do not, is the orphan's money to be frittered away? — Rathert, said Rav Ashi, we seek out a man whose property is secure, who is trustworthy, obedient to the law of the Torah, and has not suffered (upon himself) a Rabbinical excommunication and the money is given to him in the presence of a Beis din. (70a1 – 70a3)

#### **Who may Pay Interest**

[The *Mishnah* discusses categories of interest that are permissible with gentiles.] 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 gentile recipient. In addition, explicit interest on a loan may be charged from a gentile, even a *gair toshav* (who has renounced idol worship, but who has not converted). Finally, the *Mishnah* says that if a Jew has borrowed money from a gentile with interest, another Jew may borrow that money only through the gentile creditor, but not through the Jewish debtor. (70b1)

Since the *Mishnah* 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 *Gemara* challenges this from a *Baraisa* that says that if one receives *tzon barzel* animals from a gentile, 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 this is not difficult, as 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 *Mishnah* refers to a case where the recipient took responsibility for any losses, while the *Baraisa* 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 *Mishnah* did not need to go so far as a case of a gentile recipient to find a permitted case of *tzon barzel*, but could have simply differentiated in the first case itself, by saying: When does this hold good [that 'tzon barzel' may not be accepted from a Jew], only if he [the investor] does not bear the risk of unpreventable accidents or depreciation; but if the investor accepts these risks, it is permissible?

Instead, Rava says: In both cases [viz., as taught in our *Mishnah* and the *Baraisa* with reference to firstborn] he [the investor] does not accept the risk of accidental damage or depreciation; but with respect to the firstborn animals, this is the reason that the offspring are exempt from the law of the firstborn: since if he [the breeder] did not render the money, the gentile would come and seize the cow [entrusted to the breeder in the first place], and should he not find the cow, seize the offspring, it is a case of 'the hand of a gentile coming in the middle,' and wherever that is so, there is exemption from the law of firstborn. (70b2)

### **Avoiding any Interest**

The *Gemara* 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.

What is meant by “he who favors the poor”? 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 said: Huna told me that this verse refers even to one who collects interest from a gentile.

Rava challenged Rav Nachman from the verse that says *lanachri tashich - to a gentile “sashich.”* Now, what is meant by ‘sashich’: surely that ‘you may receive interest’? — No: ‘you may give interest.’ - [What!] Cannot one do without? — It is to exclude ‘your brother,’ [to whom you may] not [give interest]. As for your brother, is it not explicitly stated, but to your brother you shall not give interest? — [To intimate] that both a positive and negative injunction are violated.

The *Gemara* then challenges Rav Nachman’s statement from the *Mishnah*, which states: One may borrow from them or lend to them on interest, and so with a resident alien.

The *Gemara* offers two answers:

1. Rav Chiya, the son of Rav Huna, says that the *Mishnah* 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 gentile with interest is to limit interactions with gentiles, to prevent the Jewish creditor from learning idolatrous habits. The *Mishnah* is referring to a Torah scholar, whom we are confident will not be negatively influenced by his non Jewish debtor.

The *Gemara* 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 gentile (*Ami*), then to a poor person over a rich person (*Ani*), and to a local poor person over a poor person somewhere else (*Imach*).

The master said: [If the choice lies between] my people and a gentile — “my people” has preference. - But is it not obvious? — Rav Nachman answered: Huna told me it means that even if [money is lent] to the gentile on interest, and to the Jew without [the latter should take precedence]. (70b2 – 71a1)

### **INSIGHTS TO THE DAF**

#### ***Estate Money and Interest***

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

Tosfos (70b Tashich) asks why the *Gemara* was concerned with reconciling this Rabbinic law with the verse and *Mishnah*, and answers that the *Gemara* 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 gentile, 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 *Gemara*, among others. Our *Gemara* is an instance where the Sages prohibited an action explicitly permitted by the Torah – i.e., charging a gentile 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 gentile interest, since that is indeed explicitly permitted by the Torah. Instead, the Sages prohibited a Jew from lending to a gentile 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 *Gemara* based on his principle. According to Tosfos, when the *Gemara* challenged Rav Nachman from the verse, the *Gemara* was stating that since the Torah explicitly

allowed a Jew to charge a gentile 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 gentile interest in some cases, to avoid explicitly such a prohibition.

Rav Moshe Feinstein (Igros Moshe OC 1:134) says that the *Gemara'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 gentiles 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 gentiles. 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 gentile 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 gentile 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.

## DAILY MASHAL

### The Joy of Fulfilling A Mitzvah

The *Chasam Sofer* (Rabbi Moshe Sofer), one of the great *gaonim* in his generation, always preached and practiced charity and kindness towards his fellow man. His door was always open to the poor and the needy for help and advice.

Once, on a cold wintry day, in the city of Pressburg, the *Chasam Sofer* was studying the Talmud with his two sons when he heard an urgent knock on the door.

"It must be a poor man seeking alms," he remarked to his children as he opened the door. Imagine his surprise when he saw the leading member of his congregation standing at his door, looking like a beggar.

"Do not be surprised at my appearance, Rabbi," he said. "I am in great trouble, and I need your help. I would like to talk to you privately."

Motioning to the man to enter, the *Chasam Sofer* told his children to leave the room while he made the merchant comfortable. "What happened to you? Why are you looking so sad?" he asked him.

"A terrible misfortune has happened to me," he said in a crying tone. "I was a very wealthy man, and as you know I became a banker. But through a series of misfortunes, I lost all of my money and now I am penniless. I have practically become a beggar."

"Do not lose faith in G-d," answered the *Chasam Sofer*, while pity welled up in his heart. "You still have your good name; people will remember all the charity you have given, and they will surely give you a helping hand. G-d may have taken your money only temporarily to test you."

"It isn't my money, which I am worried about," cried the banker, "but about the money of others, the widows and orphans who trusted me. It is also gone. I will have to sit in the debtor's prison."

"No! No!" cried the *Chasam Sofer*, "it will never happen that the most charitable man in the community, its leader and banker, will sit in prison."

To be cont....