

## Are Late Fees and Penalties a Problem of Ribbis?

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**Question:** Many service agreements and contracts contain provisions, such as late fees and penalties.

Can including these penalties in the contract lead to issues of *ribbis*?

**Answer:** It is common to have conditions, fees, and penalties in service agreements with terms that could be an issue of *ribbis*. Even if the two sides don't intend for the penalties to ever go into effect, it might still be forbidden under the prohibition of facilitating a *ribbis* arrangement. For this reason, it is worthwhile to look over any contract for issues of *ribbis* before signing.

Generally, late fees or penalties can be put into a contract in a permitted way by making them *ribbis derech k'nas*, interest in the form of a penalty. If the fees are not phrased as an extra payment, but rather as a penalty for not paying on time, it is permitted in a case where the *ribbis* is *d'rabanan*. In most service agreements, there is no loan and these agreements are similar to a sale of services or goods. Since *ribbis d'ohraysa* applies only in cases of transactions in the form of a loan, such contracts would only be *ribbis d'rabanan*, and there would be no problem if it is *ribbis derech k'nas*. While this is true of one-time fees for a late payment, if the fee is recurring – for example, if there is a new fee charged every 30 days that the payment is outstanding – it would look like the penalty is actually a payment for another 30-day time extension and not a *k'nas*. This could be a problem of *ribbis* that would require a proper *heter iska*.