Preferred Equity: Why Don’t the Elements of Risk Take Away Potential Ribbis Issues?

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Question: In these preferred equity cases, although there are some guarantees in the deal, there are also elements of risk in a deal, including the deal falling apart or a building collapsing and losing all the money. Why is that not enough of a reason to say that there shouldn’t be an issue of ribbis?

Everytime you lend money, there is some sort of risk that at the end of the day you won’t get it back. However, even though nothing is 100% guaranteed, since there are certain assets that are guaranteeing my investment (my assets are being insured by your assets), it can be viewed as having an issue of ribbis.

It doesn’t say anywhere that if the loan is structured with only specific places to get it back, it’s not an issue of ribbis. (For example, if an LLC goes bankrupt, we don’t have anywhere that it says clearly that now there is no issue of ribbis, because there was such a risk from the beginning that this could’ve happened.)

Reb Moshe has a famous *heter* that you may be able to lend with ribbis to a corporation.

One example that the Rishonim talk about, is where someone sends a mashkin (collateral) for the loan. Even if he doesn’t take any responsibility for it, it is a problem, as you are guaranteeing it. Tosafos mentions a *heter* that if it is done through a *goy*, and the goy takes responsibility for the loan, it would be ok.

Another typical example is *batei arei choma* (places that had a wall since the time of Yehoshua Ben Nun). These places have a special halacha that I sell you the house and I can come back and redeem the house within a year even though it is ribbis. However if I do that, I should be able to collect rent, as otherwise he was just using my house for free. The gemara says that he was using the house for free and it *is* ribbis, but it is a special heter in this case. There is no personal liability for this loan, the only thing is that if you don’t redeem the house, he’ll take the house from you. If the house falls down, he will lose his money, so why doesn’t that risk make it not ribbis? It seems to be that as long as there is . The gemara say that this is true even by *bnei hair*, even where people are selling a shul with the right to buy it back. Even if the sale is negated afterward, and *lemapahrea* it would be viewed as a loan, who would be responsible to pay the money? The kehilla. For this among other reasons, the Minchas Yitzchak has an issue with Reb Moshe’s *heter* to lend to corporations.

Personally, I believe that anytime there is some sort of security or guarantee up front, like perhaps a case of preferred equity, it may be more stringent, and perhaps even Reb Moshe would agree the *heter* apply.

Question: So if the person with this situation came to you, are you telling him to stay away from this deal?

Answer: No, there is always a solution with Ribbis. The *heter iska* has to be structured in the proper way for the specifics of the case. But usually if you prepare in advance, and know what you want to do, there will be a way to do it in accordance with halacha.