

Ribbis Fundamentals: Part II

CLASSIFICATIONS OF RIBBIS

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TWO CATEGORIES OF RIBBIS:

When discussing the prohibition of *ribbis*, it is important to differentiate between two distinct categories. The first category is *ribbis min Hatorah* or *ribbis d'ohraysa*, the second is *ribbis d'rabanan*, which is also known as *avak ribbis*. The category of *ribbis d'rabanan* also consists of several subcategories, as we will detail below.

RIBBIS D'OHRAYSA:

Ribbis is only forbidden *mid'ohraysa* if two main conditions are met. First, the money has to be given in the form of a *halva'ah* (loan). Second, it must be "*ketzutzah*," which means that the amount of interest has to be predetermined and agreed upon.

To give a very simple example, if someone lends his friend \$100, and at the time of the loan they agree that the borrower will pay the lender \$120, that is a case of *ribbis d'ohraysa*. In this case, the money was given in the form of a loan and the amount of interest was discussed and agreed upon. Similarly, if someone lends his friend one bushel of apples and they agree that the borrower will repay two bushels, this is *ribbis d'ohraysa* because the apples were given in the form of a loan and the amount of interest was agreed upon.

DEFINITION OF HALVA'AH:

The definition of a loan is that the borrower is not expected to return the exact same entity that he receives from the lender. For example, if someone lends his friend \$100, he does not expect to get back the same \$100 bill as repayment. Instead, it is understood that the borrower will use that money and pay the lender with a different \$100 bill. By definition, this is a *halva'ah*. The same is true of someone who borrows a bushel of apples. It is understood that the borrower will use

the apples and will return other apples in their place. Thus, this constitutes a loan according to halacha.

On the other hand, if someone gives his friend his car to use for a day, with an agreement that he will return the car plus \$20 for its use, this is not a loan at all. Rather, it is a rental. Since he is returning the actual car that he borrowed, he is really paying rent for the use of the car and is not considered to be paying interest on a loan.

Another part of the definition of a loan is that the borrower returns the same type of item he borrowed. If someone is given apples and returns apples, that is a loan. If someone is given apples, and returns money in exchange, or vice versa, that is a sale – not a loan. Since paying money for apples is not a loan, even if the buyer pays more money in exchange for being granted more time to pay, it is not *ribbis d'ohraysa* (although it may be forbidden *m'derabanan*). The same is true of someone who is given apples and pays back oranges. Since he is not returning the same type of item he was given, this transaction is a trade/sale. It is not a loan and, even if extra oranges are given in exchange for an extension of time to pay, it is not *ribbis d'ohraysa*.

THE TERMS OF KETZUTZAH:

The classic example of *ketzutzah* [predetermined], is when a borrower and lender agree at the time of the loan that more money will be repaid than was lent out. It makes no difference if the extra payment is the same entity as the item that was lent. If one lends his friend a bushel of apples on condition that he repay him the bushel of apples plus a bushel of oranges, that would also be *ribbis d'ohraysa*.

If a loan was extended for a certain period of time, and during that time period, the lender agrees to grant an extension in exchange for a higher payment, most Poskim rule that this also constitutes *ketzutzah* and is forbidden *m'dohraysa*.

RIBBIS D'RABANAN:

Forms of interest that do not fit the terms of *ribbis d'ohraysa* will often still be prohibited as *ribbis d'rabanan*. To be forbidden *m'derabanan*, the deal does not have to take the form of a loan and the amount does not have to be agreed upon in advance.

An example of *ribbis* in the form of a sale, which would be forbidden *m'derabanan*, is if a seller tells a buyer that he can either pay \$10 for his purchase today or \$12 next week. Since he is essentially paying for the additional time to pay, that is forbidden, but since it wasn't in the form of a loan, it is only forbidden *m'derabanan*.

An example of interest on a loan that is not *ketzutzah* would be if a borrower sends flowers or any other type of gift to the lender, with the understanding that he will extend the deadline when the loan is due in return. Although the interest was on a loan, since it was not an agreed upon amount it is only forbidden *m'derabanan*.

ONCE THE RIBBIS IS RECEIVED:

A basic difference between *ribbis d'ohraysa* and *ribbis d'rabanan* – besides for the obvious difference of whether one has to be stringent in a case of *safek* – is what to do with the interest if it was already given and accepted. In the case of *ribbis d'ohraysa*, if a borrower accepted the interest, he must give it back. If he doesn't want to, *beis din* can force him to give it back.

It should be pointed out that it is possible for the lender to accept *ribbis* while the principal of the debt is still outstanding. For example, a lender might lend someone \$100, saying that he must pay him \$1 in interest each month, and then pay back the principal after six months. In such an instance, the interest is paid before the principal.

In the case of *ribbis d'ohraysa* where the interest is paid before the principal, the lender has the right to subtract that amount from his debt. In our example, if he paid \$1 a month for six months, he can deduct that amount from the \$100 he owes, and he now only owes \$94.

In cases of *ribbis d'rabanan*, however, the lender cannot be forced to give back interest after he received it. While there is an obligation to return the money "*latzeis yedei shomayim*," to fulfill the demands of Heaven, there is no obligation that can be enforced by a *beis din*.

Whether a borrower can deduct *ribbis d'rabanan* that he already paid from a loan he still owes is the subject of a *machlokes* amongst the Poskim. Since this is a *machlokes*, the borrower would have the upper hand since he is the *muchzik* on the money, as it is still in his possession, and he could not be forced to pay the full amount of the principle after he paid some interest.

This would mean that if someone sells an item and tells the buyer that he can pay \$10 today or \$12 next week, and the buyer accepts the \$12 option, if the full \$12 has already

been handed over to the seller, there is no way to force him to give it back, although he should return the \$2 *latzeis yedei shomayim*. If the buyer paid the \$2 interest already, but has yet to pay the \$10 principle, he has the right to only pay \$8 and keep the other \$2.

RIBBIS MUKDEMES AND RIBBIS M'UCHERES:

There are two other categories of *avak ribbis* that are known as *ribbis mukdemes* and *ribbis m'ucheres*.

Ribbis mukdemes, literally "early *ribbis*," refers to a case where the borrower gives the lender a present before he extends him the loan. If he gives this present as a way of persuading him to give the loan later, and the lender does extend the loan because of this incentive, it would be classified as *ribbis mukdemes* and would be forbidden as *avak ribbis*.

Ribbis m'ucheres, literally "late *ribbis*," is the opposite. It refers to a case where a borrower gives a present to the lender after the entire loan has already been paid back, out of gratitude for the loan. Although the loan is no longer outstanding, and the borrower is not buying any additional time with his gift, it is still forbidden as *avak ribbis*. Unlike other forms of *avak ribbis*, if one already accepted either *ribbis mukdemes* or *ribbis m'ucheres*, he is not obligated to return it even *latzeis yedei shomayim*.

Most Poskim say that *ribbis mukdemes* is only forbidden if it is made clear that the gift is being given in order to convince the lender to give the loan, and *ribbis m'ucheres* is only forbidden if it is made clear the gift is given after the payment as gratitude for the loan. In the case of *ribbis mukdemes*, the borrower would have to explicitly say he is giving the money in order to receive a loan or express that sentiment with a gesture. Alternatively, if he gave a present of such value that he normally never would give it or if he gives it right before asking for a loan – or, in the case of *ribbis m'ucheres*, right afterwards – it is obvious that he gave the gift with that intention. If, however, it is not clear that the present is connected to any loan request, even if the lender only gave the loan because of the present and the borrower only gave it with the intention of getting a loan, it would not be forbidden as *ribbis mukdemes*. While this is the majority view, a minority of Poskim argue and say that even this is forbidden. Therefore, it is best to be stringent and not give any present before asking for a loan, but it cannot be said that it is forbidden to accept such a present as long as it is not clear that it is connected to a request for a loan. The Chochmas Odom adds that if someone gives you a small present and later asks you for a loan, you don't have to suspect that the present was connected to the loan.

EXTRA MONEY AT THE TIME OF PAYMENT:

While most Poskim say that to be considered *ribbis mukdemes*

or *ribbis m'ucheres* it must be clear that the gift is related to a request for a loan, this is not true if the gift was given at the time of repayment of a loan. If anything extra is given at that time, it is much more obvious that it is being given in relation to the loan. Giving a present then would always be forbidden and if the lender accepted this present, according to some Poskim he would be obligated *latzeis yedei shomayim* to return it.

An exception to this rule would be if it is evidently obvious that the gift given together with the payment has no connection to the debt. For example, a parent may ask his married child to pick him up a loaf of bread at the grocery store, and the son will go out and lay out the money. When his father pays him back, if instead of giving him a couple of dollars for the bread, he hands him a \$100 bill and tells him to keep the change, it is very clear that the father is giving the extra money because he wants to help his son, and not as an interest payment; therefore, it is permitted.

OTHER POSSIBLE LENIENCIES:

If both the borrower and lender do not remember how much money is owed, the borrower is permitted to pay back as much as necessary to be sure that he has paid his debt, and he need not worry that he is overpaying and thereby transgressing the prohibition of *ribbis*.

It is said in the name of the Chazon Ish that if the lender tells the borrower that he owes him \$50, and the borrower knows he is making a mistake and he really owes him \$40 but he doesn't want to contradict him and get into a fight over \$10, he is allowed to pay the extra \$10 without concern about it being *ribbis*. Similarly, if a person takes a loan of \$200 from a distinguished person who hands him a stack of twenties, and when the borrower counts the money he realizes that the lender miscounted and only given him \$180, if he doesn't feel comfortable telling the distinguished person that he made a mistake, he is permitted to pay him back the full \$200. In these instances, the reason he is overpaying is not as a payment for an extension of time, and, therefore, there is no problem of *ribbis*.

The Poskim also say that if someone rounds up by a few cents out of convenience alone, there is no problem of giving *ribbis*. For example, if someone's friend goes to the store for him and buys him an item for \$7.95, he is allowed to give him \$8. Since the only reason he is giving his friend the extra few cents is because it is easier for him to give dollars than to rummage for change, this is not considered paying *ribbis*.

If someone makes a delivery of goods later than expected and wants to be generous and add some extra to make up for the delay, this would be permitted, because it is in the form of a sale and he is merely giving more goods. Whereas, if someone

buys a product but delays paying for some time and, when he finally does pay, wants to add on a little extra money to make up for the lateness, the Poskim debate whether or not this is permitted. If someone pays his worker late and wants to give him a bonus for waiting patiently for his paycheck, it would seem to be subject to this *machlokes*. However, some say that giving extra money to a worker can be passed off as a tip, rather than a payment, which would make it more permissible than the other cases.

GIVING FAVORS:

A borrower is not permitted to give or do anything for the lender in exchange for the loan. This includes doing favors for him.

If, however, he would have done the favor in any case – whether he had been given the loan or not – it would be permitted. This means that if someone does a favor for his friend that he always does for him, or if he does something he would do for anyone (even if he never did it for this particular person), it would be permitted because the favor is clearly not related to the loan.

If one does the favor in public, it is more stringent because of the problem of *maras ayin*, giving the appearance of a prohibition. To avoid this problem, it has to be evident to all that the favor is not related to the loan. If the borrower is doing the lender a favor that he has done for him in the past, and the public is aware of this, it would be no problem. If he is doing him a favor that he hasn't done for him before, but one that he would have done in any case, it is only permitted if everyone who sees him do it knows that he would have done it even without the loan. For example, if someone owes his father-in-law money and gives him a *bracha* at his daughter's *chuppah*, it can be assumed that everyone knows he would have done so even without the loan.

The Gemara says that it is also forbidden to say kind words to a lender because of the loan he gave you. For this reason, many people believe that it is forbidden to say "thank you" when someone grants you a loan. Some Poskim are lenient in this regard and say that the words "thank you," as they are used today, are merely a formality, and are not considered to be the type of words that are forbidden. If someone thanks the lender profusely, however, he would be transgressing this prohibition.

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