

Ribbis in Commerce: Part I

PREPAYMENTS & BORROWING MEASURE-FOR-MEASURE

Rav Yosef Kushner

RIBBIS DERECH MEKACH U'MEMKAR:

The prohibition to lend or borrow money with interest is of Biblical origin; however, the Torah only prohibits a *ribbis* transaction if it is in the form of a loan, where one party borrows money or goods and pays back more than he borrowed. Other forms of transaction, such as a sale, lease, rental, or employment agreement that involve interest are not forbidden Biblically. However, the Chachomim added additional cases onto the Torah prohibition. They forbade people from engaging in many transactions that resemble *ribbis*, even though these transactions are not in the form of a loan.

One of these decrees was *ribbis derech mekach u'memkar* (interest in the form of a sale).

PESIKA:

One of the forms of *ribbis derech mekach u'memkar* that the Chachomim prohibited is known as *pesika* (prepayment).

When one prepays for an item and only receives the item he bought later, it has the appearance of a loan. It looks as if he is lending money to the seller, and the seller looks like he is repaying the debt when he later presents the purchased item to the buyer.

If the buyer would prepay \$100 for an item worth \$100, and several months later receive the item that is still worth \$100, this may not seem like a problem. But what if the value of the item goes up in the interim? What if the buyer pays \$100 for an item, and by the time he receives it several months later it is worth \$120? This would have the appearance of *ribbis*. It looks as if the buyer lent \$100 to the seller, and then was repaid with an item worth \$120. Since this looks like *ribbis*, it is forbidden by the Chachomim.

This problem is very relevant today, when we are faced with both shortages and acute inflation. To illustrate: If someone wants to buy an appliance from an appliance store, and they don't have it in stock, they may tell him that he can prepay, lock in the current price of \$1,000, and have the appliance shipped to him when it becomes available. With today's hyper-inflation, it is very possible that by the time he receives his appliance it will be worth \$1,200. This could be a serious problem of *ribbis*.

SETTING THE MARKET:

The Mishnah (Bava Kama 72B) speaks about the issue of *pesika* and says that one cannot prepay for a delivery of fruit until "the marketplace is set." The Rishonim explain that before one can prepay on the produce, this particular type of fruit must be available in the marketplace and it must have a set, established price.

Alternatively, if the seller himself would have this fruit in stock, it would certainly be no problem to have the buyer prepay and deliver it to him later. But even if he doesn't have it himself, if others have it and there is an established price, it would also not be a problem.

Accordingly, if someone wants to buy a refrigerator and they don't have the model he wants in stock, it would be permitted to prepay and have them order it for the buyer as long as other stores have this particular model available for a specific price. The Mishnah says that the reasoning behind this is because the seller can tell the buyer that he could have gone out today and picked up the appliance for him from another store, so we can consider it as if the transaction was finalized today.

Furthermore, if the store has a display model of the same refrigerator on the floor, but they don't want to give the customer that fridge because they want to keep it as the display piece, they certainly can accept prepayment and order another one for the buyer. Since they technically could have

sold him the model they own, and they have set a price for it, there would clearly be no problem of *ribbis*.

There would only be a problem if this particular store doesn't have any models of this fridge available, and no one else has it available right now either.

TWO OBSTACLES TO AVOID:

We find a Gemara (ibid 63B) that explains the issue slightly differently than the Mishnah. The Gemara explains why prepayment is permitted when the fruit being purchased is available elsewhere by saying that the buyer can tell the seller that he is gaining nothing by prepaying and ordering from him. He could make the claim that he has the ability to go to a store where the item he wants is available right now and purchase it there, thereby negating the need to buy anything from this particular store. The standard definition of *ribbis* is that the lender gains something by loaning his money to the borrower. In this case, the buyer/lender is gaining nothing by prepaying/lending; therefore, it bears no resemblance to *ribbis* and would not be forbidden by the Chachomim.

It is interesting that the Mishnah explains the leniency by citing the claim of the *seller* – that he could get the item today from another seller – while the Gemara explains the leniency by saying the claim of the *buyer* – that he is gaining nothing from the prepayment.

Rav Akiva Eiger, the Bais Meir, and others explain this incongruity by saying that the Mishnah and Gemara are dealing with two different issues. We can look at the matter as two distinct problems that must be circumvented to avoid the prohibition of *ribbis*.

Firstly, we must ascertain that the transaction in question is not an actual loan. As we said, a transaction in the form of a loan that contains *ribbis* is forbidden by the Torah. Such a transaction is much more severe than one that is only Rabbinically prohibited, and leniencies would not be allowed. Therefore, the Mishnah explains that when the buyer prepays, he is not actually giving the seller a loan because the seller has the option of finding the same product from places where it is currently available; therefore, this transaction is a sale and not a loan, and it would be possible to apply leniencies. This takes care of the first potential *ribbis* problem and explains why there is no *issur d'ohraisa*.

Now that we know there is no Biblical prohibition of *ribbis*, the Gemara discusses the ramifications of the Rabbinic prohibition as they would apply to this case. For a transaction to be *assur m'derabanan*, it does not need to be in the form of a loan; however, the Gemara explains that in this case there would not even be a Rabbinic prohibition. This is because the buyer can claim that he is not gaining anything by prepaying, as he could have gone elsewhere and bought it today. Since he can make this claim, there is not even a problem of *ribbis d'rabanan*.

In any event, we can conclude that if the refrigerator our

protagonist wants to purchase is either on display in the store or available for sale today in other stores, there would be no problem with prepayment. If it is not available anywhere at the current time, prepaying would seem to be a problem.

OTHER APPLICATIONS OF PESIKA:

There are numerous other applications of *pesika* that could apply to practical cases.

Before the release of an anticipated book, it is common to create hype by accepting payments for presales of the upcoming release. Similarly, before a new model car or stroller comes out, stores often accept payments for presales. If no copies of that book or models of that car or stroller are available for sale yet, this would constitute a problem of *pesika*.

If a store has one copy of the book it received early to place on display, or the dealership has one car or stroller to put in its showroom, that would mitigate the problem because the customer could technically buy that single copy or model that the store has. In such a case, the seller would be permitted to accept prepayments from many customers individually, as each individual customer could technically have been sold the one available copy or model; however, the store has to make sure that the lone copy remains in the store and is not accidentally sold or given away.

It is common for magazines and newspapers to sell yearly subscriptions, where the customer buys a year's worth of papers in advance, prepays and receives a discount. Of course, the 52 weeks of weekly papers the subscriber is purchasing are not yet available on the market, as they haven't been written yet. This would seemingly be a problem of *pesika*.

I have heard some people try to justify this practice by saying that the price the customer receives is not actually a "discount." They claim that the subscriber is receiving a cheaper price because he is buying in bulk, as is common with many items; therefore, they say that the customer is not receiving any benefit in price because he prepaid, and this would solve any problems of *ribbis*.

Those who make this claim fail to realize that this explanation will not alleviate the issue of *pesika*. The prohibition of *pesika* is that it is forbidden to prepay for an item if it is not yet available in the marketplace because the item could potentially go up in price before the buyer receives it. Once he receives an item that is worth more than he paid, that would be a Rabbinic prohibition of *ribbis*. As long as the possibility exists that an item that is not yet on the market will go up in price before the buyer gets it, there is a prohibition to prepay and thereby lock in a price early. The explanation of the discount actually being a bulk price does not take care of this problem.

A way around this problem would be for the publication to take the subscriber's credit card number but only charge him every week after the paper is available on the market.

The same type of problem could come up when camps take

prepayments for "early-bird specials" and in numerous other applications; therefore, this is something one should keep in mind before engaging in any transaction that involves early payment.

To watch the video or listen to the shiur given by the Dayan, visit:

www.baishavaad.org/yorucha-topics

Or signup to receive them via whatsapp: 📞 732.232.1412



SIGN UP NOW TO LEARN IN-DEPTH

📞 888.485.8223(VAAD) ✉ YORUCHA@BAISHAVAAD.ORG 📍 BAISHAVAAD.ORG/YORUCHA

Want to receive practical Q&A daily videos on the Yorucha topics?

📍 baishavaad.org/daily 📞 732.232.1412