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Ribbis in Commerce: Part III

LOANS FROM NON-JEWS ON BEHALF OF JEWISH BORROWERS

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COSIGNING ON A LOAN WITH RIBBIS:

The Gemara in Bava Metziah says that it is forbidden for a Jew to be an *areiv* (guarantor) on a loan that another Jew received from a non-Jew with interest.

The Rishonim disagree about how to explain this Gemara. The Rashba says that it is only talking about an atypical deal, wherein the non-Jewish lender only has the right to demand payment from the cosigner, and not from the actual borrower. According to this, in a standard loan where the lender can collect from either the borrower or the cosigner, there is no prohibition of cosigning. Rashi disagrees and says that it is forbidden to be a cosigner on a loan that includes *ribbis* even if the non-Jewish lender has the right to collect from either the borrower or the cosigner.

To explain this *machlokes*, we need to understand why this type of loan is prohibited in the first place.

The reason it is forbidden to cosign on a loan that contains *ribbis* is because we view it as if the lender is lending money to the cosigner, who is then lending money to the borrower. Accordingly, when the borrower pays back his debt, he is actually paying it to [or alternatively, on behalf of] the Jewish cosigner. If the payment contains interest, this would be forbidden.

The Rashba argues that this would be true in a case where the lender is dealing only with the cosigner. In such a story, it is clear that the lender only gave the loan because he trusts the cosigner; therefore, the cosigner is considered the real borrower. Although the money is given to the actual borrower, he is essentially receiving it as a loan from the cosigner; therefore, when the cosigner repays the non-Jewish lender, and then the borrower repays him with interest, he is clearly violating the prohibition of *ribbis*.

Rashi, however, says that the same logic applies even when the lender can collect from either the borrower or cosigner. Even if the borrower can deal directly with the lender, we still view it as if he borrowed the money from the cosigner, and when he repays the debt with *ribbis* we consider it as if he is paying interest to the cosigner, which would be forbidden. The Rashba would disagree in this case and hold that there is no problem of *ribbis*.

The Poskim debate whether we rule like Rashi or the Rashba. The Shulchan Aruch cites both opinions but appears to give more credence to the opinion of Rashi. Therefore, it is worthwhile to be stringent like the view of Rashi and use a *heter iska* even for a standard loan where the borrower pays directly to the lender, because the lender may choose to collect from the cosigner.

CO-BORROWERS:

Today, it is common for banks to ask for a "co-borrower," rather than a cosigner.

Since the banking reforms that followed the mortgage crisis of 2008 went into effect, many banks no longer recognize the cosigner structure, and instead ask mortgage applicants to find a co-borrower. A co-borrower is different from a cosigner in the sense that he has a higher level of responsibility for the loan and is considered to be an equal party in the loan, rather than simply a person who guarantees the loan.

Some contemporary Poskim say that although one may not initiate such an arrangement, *b'dieved*, it would be permitted if the actual borrower will be making all the payments, without coming on to his co-borrower, there is no problem of *ribbis* and no need for a *heter iska*.

They base this ruling on the words of the Taz, Shach, and Nekudas Hakesef. These Poskim say that in a regular case of *arvus*, there is only a prohibition if the *areiv* may actually end up paying the loan with interest and the borrower pays him back. If, however, the borrower pays the debt directly to the non-Jewish lender, there is no prohibition. According to the Nekudos Hakesef, this is true even in the case of the Rashba, where the lender cannot demand payment from the borrower, still, if the borrower does go on his own and pays the debt with interest, there is no transgression of

ribbis.

Sefer Mishnas Ribbis presents a number of questions on this opinion of the Taz, Shach and Nekudas Hakesef, and brings proof that the prohibition of *ribbis* would apply even when the borrower makes a direct payment to the lender, but normative halacha seems to follow the view of the Taz, Shach and Nekudas Hakesef.

Accordingly, in the case of co-borrowers, an argument could be made that because the bank is lending the money to both borrowers, either of them can make a direct payment to the bank, and, according to the Taz, Shach and Nekudas Hakesef, that would not be a violation of *ribbis*, so long as they will not be reimbursed by their co-borrower. However, other contemporary Poskim disagree and say that the framework of this arrangement is different and would not have this leniency. These Poskim contend that when the bank lends to two co-borrowers, it is, in effect, lending 50% of the money to one borrower, and the other 50% to the other borrower. When the co-borrower gives all the money to the actual borrower, he is, in effect, lending him his share of the loaned money; therefore, if the actual borrower makes a payment, he is technically paying 50% of the payment indirectly to his co-borrower, who is then giving it to the lender. Since the payment contains interest, he is paying *ribbis* to his co-borrower, which would be prohibited.

The Tashbetz, however, does not seem to be bothered by this problem. In fact, he says that a case of co-borrowers is even more lenient than a regular case of a cosigner, and accordingly, he rules that the actual borrower can make payments directly to the lender, and he implies that he may even pay back the co-borrower for any payments he made to the lender. This is in contrast to a case of a typical cosigner, in which we explained that only direct payment from the borrower to the lender would be permitted, while payment from the borrower to the cosigner would be prohibited.

The Shulchan Aruch actually discusses a case of two joint borrowers who take out a loan together. He rules that they are considered to be cosigners to each other and says that if the setup is like Rashi – meaning that the lender can collect from either of the two – it would be forbidden to make a payment. This leads us to ask, why does the Tashbetz rule differently and claim that payments from co-borrowers are permitted?

The Shaar Deah attempts to answer this question by saying that typically when there is a cosigner on a loan, it can be assumed that the lender only made the loan because of the cosigner's guarantee. If not for him, he would never have lent the money. For this reason, it is considered as if the cosigner borrowed the money and lent it to the borrower, which may create problems if the borrower makes a payment with interest, as he is in effect making the payment to the cosigner. He says that the Shulchan Aruch is talking about a similar case, where the lender only made the loan because there were two borrowers, and he would not have given a private loan to either one without the other; therefore, they both become cosigners – i.e. lenders – to each other, which could cause problems of *ribbis* if they make a payment with interest. The Tashbetz, however, is talking about a case where the lender would technically have lent the money to either co-borrower. It just so happens that they came to him together and took out the loan jointly. Since this is the case, neither one is considered a lender to the other, and they both are looked at as having borrowed directly from the non-Jewish lender; therefore, there are no *ribbis* problems in this framework.

If this is the case, the Tashbetz's leniency would not apply to contemporary bank loans, as the bank is only extending the credit because of the guarantee of the co-borrower. Still and all, while we cannot say that co-borrowers are better than cosigners, we can say that they are on the same level; therefore, if the halacha follows the opinion of the Taz, Shach, and Nekudas Hakesef that direct payments are permitted, it would also be permitted for the actual borrower to make direct payments to the bank, as long as he will not be making any payments to his co-borrower.

The Erech Shai adds that even if the co-borrower does make a payment, there would only be a prohibition if he tries to recoup his money from the actual borrower. If he makes the payment without expecting to be reimbursed, there is no problem. Generally speaking, a co-borrower on a mortgage is a close family member or friend, and such close connections usually do not expect to be reimbursed if they are forced to make a payment. Nevertheless, situations do arise when the co-borrower is reimbursed for a payment, and a *heter iska* would definitely be needed for such times.

USING SOMEONE ELSE'S CREDIT CARD:

In the business world, it is common for people to borrow someone else's credit card to make a payment. For example, if someone needs to make a large purchase for his Amazon business, he may not have enough room on his card, so he'll borrow his friend's card, and will later pay him back for the charge. Obviously, if he puts a $1,000 purchase on the card, he can then pay him back $1,000 in cash. But what if it takes him a while to get the money, and by the time he is ready to pay back, the card has accrued $100 in interest fees? Is he permitted to pay his friend $1,100?

The Gemara in Bava Metziah discusses a case where a Jew borrows money from a non-Jew with interest and then lends that money to another Jew. The Gemara writes clearly that even though the first borrower has to pay interest to the non-Jew, he cannot charge interest to the Jew he subsequently lent the money to.

When a credit card lends money, it is lending the money to the cardholder. By allowing one's friend to use his card, one is lending the money he borrowed from a non-Jew to his Jewish friend. Accordingly, even if the cardholder is charged interest by the credit card company, he is not permitted to take interest from his Jewish friend when he repays the money he owes. One would, therefore, definitely need a *heter iska* if he wants to lend his credit card to his friend and have him pay the interest charges.

One possible exception would be if the cardholder made his friend an authorized user of his account and got him his own card with

his name on it. This could possibly be compared to the Rashba's case, where the cardholder is like an *areiv* for his friend, but is not the actual borrower. Since the company knows about his friend and authorizes him as a borrower, he is the actual borrower, with his friend only serving as his *areiv*. Even though the company will only demand payment from the cardholder, this is still somewhat similar to the Rashba's case of *arvus*. As we explained previously, in such cases it is permitted for the borrower to make direct payments to the non-Jewish lender; therefore, it could be argued that the friend would be allowed to make a direct payment to the company even if it contains interest.

However, Rav Shlomo Miller *shlita* told me that he is not comfortable with this leniency, as he believes it is not at all clear that the credit card company knows who is making the purchases and who they are lending the money to; therefore, it is very difficult to say that the authorized user is borrowing the money from the credit card company and not from his friend, the cardholder. For this reason, it is preferable to make a *heter iska* even in this case.

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