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Yorucha
weekly shiur

A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

Ribbis in Commerce: Part IV

BANKS, UNIONS, & CORPORATIONS

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THE ADVENT OF BANKS:

Approximately 150 years ago, banks started becoming common in the Jewish areas of Europe. Many *teshuvos* were written at the time that discussed the possible *ribbis* prohibitions involved as well as possibilities for leniency.

The Kitzur Shulchan Aruch writes explicitly that a Jew may not borrow or deposit any money with a bank that has any Jewish ownership. Other Acharonim disagree and suggest several different reasons why it is permitted.

One reason offered by the Mahari Halevi, the Rogatchover Gaon, and others is because banks are owned by corporations, rather than individuals, and they posit that corporate ownership does not constitute real ownership. Even if a Jew has stakes in the corporation, these Acharonim say that he is not considered a real owner. Since the bank has no real owner, they rule that there is no problem of *ribbis*.

The Shoel U'Meishiv offers a second reason for leniency. They say that even if a Jew owns part of the bank, we can say, based on the halachic concept of "*bereirah*," that a Jewish borrower is borrowing money only from the non-Jewish partners and not the Jewish one.

Some Poskim suggested that if Jews only own a minority share of the bank, it would be permitted to borrow from that bank based on the rule of "*bitul b'rov*," meaning that the Jewish money is nullified by the majority of non-Jewish money. Others disagree with this concept and say that money in a partnership does not become *batul b'rov*.

The Mahrashag rules that even if Jews own the majority of the bank, it still would be permitted to borrow from it if the employees are non-Jews. He bases this ruling on the halachic rule of "*ain shlichus l'akum*," a non-Jew cannot be an agent for a Jew. Therefore, even if a Jew borrows money from the bank, since he is actually given the money by the non-Jewish tellers, we do not say that they are agents for their Jewish employers and, instead, we look at it as if they are giving the borrower money that is *hefker*, ownerless, in which case there would obviously be no prohibition of *ribbis*.

These are just some of many reasons offered by Poskim to permit borrowing money from banks. Many Poskim, however, do take the side of stringency and say that one should not borrow from a bank that has Jewish ownership without a heter iska. If possible, one should try to follow the stringent opinion.

RAV MOSHE'S OPINION:

After the war, Rav Moshe Feinstein wrote a *teshuva* regarding corporations. Although he says that corporate ownership does constitute real ownership, he makes the case that the only true owners are shareholders who have a real say in the running of the company. Those that own only a minute amount of the company do not have any real power to make decisions, and, therefore, they are considered insignificant and are not true owners. Accordingly, it would only be a problem of *ribbis* if a corporation has Jewish shareholders who have large stakes in the corporation.

I have heard it said that the definition of a "significant shareholder" is one who owns 2% or more of the company. I am unsure of the source for this number, but I have heard many prominent Poskim quote it. If this is the case, some large banks would be problematic, as they do have Jewish shareholders who own more than 2% of the company.

According to Rav Moshe, we can perhaps understand why credit unions are more problematic than banks. In a bank, only the large shareholders have a real say in the company's decisions; therefore, Rav Moshe rules that only they are considered true owners. Accordingly, if it could be ascertained that a corporation has no large shareholders who are Jewish, it would be permitted to take a loan from it. In credit unions, however, each shareholder has an equal vote – no matter how large a share he owns. This would mean that they are all equal

owners, and even if Jews only own a very small stake of the credit union, one may be forbidden from borrowing from them.

It should be noted that the Minchas Yitzchok disagrees with Rav Moshe and rules that every shareholder in a corporation is considered an owner and, therefore, it is forbidden to borrow from any corporation with even a small amount of Jewish ownership.

Rav Shlomo Miller shlit"a explained the leniency to borrow from a corporation where Jews only own a minority stake in a different way. He suggested that a corporation is fundamentally different from a standard partnership. In a partnership, each partner owns a certain percentage of the business, with both partners being direct owners. In a corporation, however, the actual owner is the entity known as "the corporation." The shareholders only own the company indirectly, through their stakes in the corporation.

Therefore, Rav Miller suggests that even if one would hold that money does not become *batul b'rov* in a regular partnership, it would become *batul b'rov* in a corporation because a corporation is its own entity with its own identity. If the majority of shareholders are non-Jews, its identity is that it is a non-Jewish corporation, and the Jewish shareholders become nullified since they do not represent the identity of the corporation and are only indirect partners.

According to this proposition as well, we can understand why credit unions are more problematic than banks. Unlike corporations, credit unions are directly owned by the shareholders, which would mean that *bitul b'rov* in this manner would not apply.

Practically speaking, it seems that the common practice is to borrow money from banks and to rely on Rav Moshe's leniency. When it comes to credit unions, there is much room for stringency and it is better not to borrow from such an institution if there is any Jewish ownership.

CREDIT LINES:

It is common for partners who form a business together to be dependent on outside loans to get their company off the ground. It sometimes occurs that only one partner is able to obtain a line of credit under his name. If one partner procures a loan from a bank, is he allowed to insist that the other partners pay back their share, plus interest, to him?

The Taz writes that when a partnership has one managing partner who takes out a loan from a non-Jew on behalf of the partnership, he is allowed to collect payments plus interest from the other partners; however, there is a dispute amongst the Poskim how far-reaching this ruling is.

Some Acharonim, including the Shulchan Aruch Harav and Chavos Daas, say that this leniency only applies where the money will be repaid from profits generated by the business. If the partnership makes no profit, and the managing partner wants to be paid back from the other partners' principal investments, these Poskim rule that he would not be able to collect interest.

The Divrei Chaim and others disagree and say that the Taz's leniency extends even to cases where he wants to collect payment plus interest from the principal investments of his partners. He does, however, agree that payment could only be taken from the assets already invested in the partnership, and not from personal money that belongs to the partners.

When I recently reviewed this topic, it came to my attention that even the stringent Poskim may only forbid collecting interest from the principal if the managing partner did not explicitly stipulate that he would recoup his debt from that money. If he originally said that he would take payment and interest from the principal, and his partners agreed, it seems that even they would agree that he may do so. While it would seem that one may rely on this leniency and collect interest even from the principal if this was clearly stipulated, it would still be a good idea to make a *heter iska* to avoid all *shailos*.

LLCS:

Rav Moshe Feinstein famously writes in a *teshuva* that it is permitted to lend money to a Limited Liability Company (LLC) and charge interest. Other Poskim argue and forbid this.

It sometimes occurs that an individual wants to start a business and opens an LLC before he has any assets. If he borrows money, he makes no personal guarantee of repayment and has no personal liability or assets that can be collected in lieu of payment. It seems to me that everyone would agree that there is no problem of *ribbis* in this case. Even those who disagree with Rav Moshe and say that it is forbidden to lend to an LLC with interest, only say so because the man behind the LLC has to put his business' assets up as collateral and is thereby taking responsibility for the loan. If he has no assets and takes no responsibility, this would actually be considered an investment, not a loan, and would not be subject to the prohibition of *ribbis*.

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