

HALOCHOSCOPE

Congregation Shaaray Teffillah, Pittsburgh, PA

This week's question:

Someone requires braces for his teeth. The treatment involves numerous visits to his orthodontist over a two-year period. The fee is \$3,500. It is customary to make a ten-percent down-payment and monthly payments on the remaining balance. The patient offered to make a considerably larger down-payment if the orthodontist would reduce the total fee. Is this permitted according to the Jewish laws of *Ribis*, taking or paying interest? If he has already put down the larger down-payment, may the patient take the discount, or should he still pay the full amount?

What are the issues?

- (A) What is *Ribis Ketzutza*, and to whom does this prohibition apply?
- (B) *Avak Ribis*, Rabbinically forbidden Ribis.
- (C) *Tarsha*, a case of permissible Ribis.
- (D) *Sechirus*, *Sachir* and *Kablan*.

(A) Ribis Ketzutza

A loan of money for interest is forbidden Scripturally. Both the lender and the borrower violate at least two negative commandments directly relating to Ribis. In addition, they are aiding one another in transgressing; a violation of the commandment of *Lifnei Iveir*, which forbids one from being an accessory to another's transgression. Here, each of them is making it possible for the other to violate the two or more Ribis commandments. There are possible further violations as well. Witnesses signing a document of debt, a countersigner and others involved can also be implicated in the violation. [See Baba Metzia 60b and 75b.]

There are so many intricate details to these laws that many Sefarim have been published devoted to these laws. It makes for a fascinating study, and we will only be able to scratch the surface in dealing with the Sh'eila at hand.

Only when the interest is agreed on at the time of the loan is it forbidden Scripturally. This is called *Ribis Ketzutza*, stipulated interest. There is no difference between a fixed amount of interest or a percentage per time-period of the loan (e.g., 2% per month). Once the interest has been stipulated, it may not be collected at any time: during the time the borrower has use of the money, at the time that the loan is due or paid, or even after the loan has been paid off. Even if there was a stipulation that interest should be paid but no amount was agreed upon, there is an opinion that considers it Ribis Ketzutza. Not only a loan of money, but any goods may not be loaned for interest, such as food-stuffs: one may not lend 5 lbs of sugar and demand 6 lbs of sugar as payment. [See Baba Metzia 60b, etc (Perek 5) commentaries.

Shulchan Aruch Yoreh Deah 160-161 etc. See Bris Yehuda 3:1, note 3-4 and 5:1, note 2.]

It is permissible to borrow or lend money with interest from or to a gentile. This is explicitly stated in the Torah. However, the Talmud forbids taking interest from a gentile and says that one who does so will eventually lose the money. The reasoning behind this ordinance is to discourage Jews from associating with gentiles, so that they do not learn from their behavior. Nonetheless, there are exceptions to this Rabbinic ordinance. One is allowed charge interest to gentiles to provide for the minimum requirements for one's livelihood, but not more. Another exclusion: A *Talmid Chochom* will not associate with the gentile and be influenced by him and may therefore take Ribis from gentiles. Only Ribis Ketzutza may not be taken from a gentile, but Avak Ribis, even according to the Talmudic law, is permitted. However, for a number of reasons, since medieval times, it is assumed by the Poskim that it is permissible to take interest from gentiles. [See Baba Metzia 70b, 71a Rashi and Tosafos. Rambam Hil. Malveh 5:2. Shul. Aruch Y.D. 159:1. commentaries.]

(B) Avak Ribis

This term is used to describe the gain one can make that has the flavor of interest, but is not forbidden Scripturally. It is, however, forbidden Rabbinically. There are a few major categories of Avak Ribis including: a. *Ribis She'einah Ketzutza*, when no Ribis is stipulated before the loan, but the borrower pays interest anyway, or the lender demands it. [E.g. see Baba Metzia 67a.] b. *Ribis Mukdemos Ume'ucheres*, when the interest is not stipulated with the loan but is paid before even borrowing the money or after repayment. This is assumed by the majority of Poskim to be Miderabonon [See Baba Metzia 75b, etc.] c. *Derech Mekach Umemkar*, certain types of sales agreements are forbidden because of Avak Ribis. Cases include when the seller takes an advance of money for goods which are unavailable at the time of the agreement, such as fruits before the season, and when they become available the price will be much higher than the price the seller is charging. The buyer is therefore profiting from letting the seller use his money in the interim. Other cases are *Mechzi Keribis*, where, although legally all the transactions do not involve even Avak Ribis, ultimately money rather than goods was exchanged and there was a net gain. For example, one may put money down for available goods at their current price, and take delivery at a later date when the goods are more expensive. This is true even if they stipulated that delivery should be made even if the goods go up in value and at the time of the agreement the seller did not have the goods. However, if the seller wishes to pay the buyer the value of those same fruits in cash at the new price, the problem of Mechzi Keribis arises. This is a matter of Talmudic debate with varying decisions in the Poskim. This raises questions about some futures in commodities trading, although one should not draw conclusions from here that it would be forbidden. [See Baba Metzia e.g., 60b, etc. 63a. Shul. Ar. Y.D. 175:6] d. *Ha'aramas Ribis*, where there is no real *Agar Natar*, i.e., no monetary gain is being made in return for allowing someone the use of one's money for a time period. For example, if someone wishes to borrow \$100. A merchant agrees instead to loan him \$100 worth of goods and immediately proceeds to buy them back for \$90 because he knows that the borrower needs the money. At a later date, the borrower will repay his original \$100 loan. In the meantime, the merchant has taken advantage of the situation to earn \$10. This is also forbidden Rabbinically, although it is questionable

whether it is considered Avak Ribis. [See Baba Metzia 62b. Shul. Aruch Y.D. 163:3]

The main difference between Ribis Ketzutza and Avak Ribis is that after it has been paid by the borrower, Ribis Ketzutza is recoverable in Bais Din, the Jewish court, whereas Avak Ribis, once paid is non-recoverable.

(C) Tarsha

There is a way of doing business on credit which does not fall into the category of Ribis Derech Mekach Umemkar. This is known as Tarsha. Let us say that one is selling an item that does not have a fixed cash price. For example, it is known that if someone is willing to pay cash on delivery for a diamond, he will be given a reduced price, but usually people take the stone on credit for sixty days before paying. One is allowed to charge the higher price in return for waiting the sixty days, provided one does not clearly offer a definite reduction for immediate payment. If the article in question has a known cash price, then it is as if the seller tells the buyer, "If you pay now, it will be less than if I give you credit." which is forbidden. [See Baba Metzia 65a-b 63b, Tosafos. Shul. Aruch. Y.D. 173:1, etc.]

(D) Seehirus, rent; Sachir, an employee; Kablan, a contractor

Although it is forbidden to offer two prices, one for immediate payment and one on credit, one may offer two rates of rent. The reason for this is that rent is not really due until after the tenant has made use of the house. If, therefore, the landlord chooses to charge less for early payment, it is his choice. The later rate is really the full amount rather than "interest" on the credit. [See Mishna Baba Metzia 65a commentaries.]

In the same way, an employee may be paid a lower rate of salary if he wishes to take his pay at the beginning of his work rather than at the end. He must, however, start working before he takes the pay. The logic here is the same, i.e., he really can only demand his pay after he has done his day's work, so that is the real price of his work. It is the choice of the worker to accept less for early payment. If, however, one pays the employee before he begins work, it is as if one is loaning him the money in return for his work, in which case he may not work longer than the real value of the pay or he will be giving the employer Ribis. This is because the employee is not obligated to do this particular job and could pay the money value of his work. However, once he has commenced working, he must finish the job, so it is not considered a loan. [See Baba Basra 86b-87a, Baba Metzia 10a commentaries, Poskim, Shul. Ar. Y.D. 176:7-8, 160; Shach 37; Shulchan Aruch Harav Hil. Ribis 14.]

It appears that a contractor has the same law as an employee [from the language in Shulchan Aruch Harav.] This means that a contractor may also charge a lower rate for early payment once he has begun the work. It is possible that a contractor working on the property of the person who contracted him is already able to accept a reduced early payment before the work begins but after he has brought his tools to the property. [Based on Tosafos Baba Metzia 48a.] If the contractor uses his own money for materials, it depends on the proportion of the money he is paid. If the materials are only a small part of the charge and most of the charge is for labor, there is no problem. If, however, the main charge is for the outlay of the contractor, including materials and his own employees' wages, the early payment might constitute a loan in return for his supplying the materials, etc. later, and would be forbidden. [See Bris Yehuda 26:3, note 7]

In our case: If the orthodontist is a gentile, there is no question of taking a reduction even before the work begins. If he is a Jew, Tarsha would not help in our case because both the patient and the orthodontist specified that the price was going to depend on the amount of the down-payment. However, after the work begins, when it is a question of paying a higher or lower rate to a contractor, the above rules apply. In this case, the materials used are only a small part of the charge and therefore pose no problem. The patient may, therefore, take the discount if he paid his down payment after the work had begun, i.e. after the first office visit. If the first visit is being billed separately, and he paid the down-payment in advance of his next visit, he may not take the discount if the orthodontist is Jewish.

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ANNOUNCEMENTS

SCHEDULE:

SHABBOS MINCHA	8:30 PM
SHACHARIS SUNDAY	8:00 AM
SHACHARIS MONDAY - FRIDAY	7:00 AM
MINCHA SUNDAY - THURSDAY	8:40 PM
CANDLE-LIGHTING CHUKAS	8:36 PM
Plag Hamincha- Earliest time for candle-lighting	7:20 PM
MINCHA EREV SHABBOS CHUKAS	7:00 PM

SHIURIM:

GEMORO MAKOS	SUNDAY	7:15 AM
HALACHA B'IYUN	MONDAY	9:00 PM
HILCHOS SHABBOS	SHABBOS	8:15 AM
HALACHOS OF BUSINESS	THURSDAY	4:30 PM

The community is invited to the Leo Unger Memorial Lecture about R. Shraga Feivel Mendelowitz, Sunday June 27th, 8:00, in the Kollel. Speaker: Rabbi Yitzchok Chinn.

This issue of HALOCHOSCOPE has been sponsored by Mr. and Mrs. Tzvi Shuldiner in honor of the wedding of David Soklof, their son-in-law's brother, on June 27th.

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Any and all comments and suggestions are welcome and can be addressed to :
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