THE CALL CENTER
for
HILCHOS RIBBIS
UNDER THE AUSPICES OF HARAV PINCHOS VIND SHLITA

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בד"צ ובית הוראה
לענייני ריבית
בראשות הרה"ג רבי פנחס וינד שליט"א
סניף ליקוואוד וגלילותיה

R' Y.Y. Jacob

Q&A

Q. I recently borrowed money from a friend. As I was reviewing the contract, I saw that he wrote that if I do not pay on time there would be a one-time late fee. When I approached him that this could pose an issue of ribis, he told me that he has a lease agreement approved by a prominent Bais Din that has a late fee included in the terms, so it must be fine. Is my friend correct or not?

A. No. It is incorrect to compare the two cases. In the case of a loan, it would be prohibited to charge a one-time late fee, and the loan document would need to be revised. However, rentals are different, and a one-time late fee would be allowed to be included in the lease agreement.

Explanation: Technically speaking, charging a one-time late fee would not be ribis. The definition of ribis is charging the borrower for the use of the money, whereby he gains some right to use it. This can be done either by charging a one-time fee, or a fee which depends on the length of time the borrower uses the money. Therefore, since charging the borrower a one-time late fee does not give him any more rights to use the money and it is not charged based on the length of time the borrower holds onto the money, (rather to prevent the borrower from missing a payment deadline) it should be allowed. Yet, whenever we are dealing with a loan that would be a Biblical prohibition to charge ribis, Chazal prohibited even a one-time late fee. However, when we are dealing with a loan that if interest is charged, it would be prohibited only on a Rabbinic level, then a one-time late fee would be allowed. Consequently, by renting where charging interest would only be a Rabbinical prohibition, one would be allowed to charge a one-time late fee. However, in the case of a regular loan where charging ribis is Biblically prohibited, it would be אסור. Nevertheless, a recurring late fee that grows based on how long it takes for the borrower to pay back, would be prohibited in all cases, as this resembles regular interest. (Some say charging a recurring late fee *is* actual ribis, as such a condition shows that the real intent is to charge interest.)

Furthermore, even a loan that the interest originally started out as a Rabbinic prohibition, can still at times turn into a Biblical prohibition based on the concept of זקפן עליו במלוה, which would even make a one-time

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Paying ribis on stolen money

Q. My neighbor went away for יו"ט and asked if I could watch $3000 of his cash while he was away. Mistakenly, I put it together with my money and used part of it for my יו"ט expenses. When he came back, I realized my mistake, but I had no way of paying him back until I got my next paycheck the coming month. When I finally have the money to pay back, I would like to give him a little extra, as I caused him to wait for his money. Is there any ריבית issue with that?

A. It would be allowed, as the prohibition of ribis only applies to paying interest on a loan, not on money that was stolen. But as we will see from the following questions and answers, there are many exceptions to this rule and every case should be judged independently.

Q. I have a great relationship with my local bank, and I am eligible for a high interest rate on monies deposited into my money market account. Knowing this, my friend asked if I could deposit his money into my account and give him the interest his money incurred. To avoid any ribis problems, we made up that I would only act as a שליח to take his money and put it into my account but would not take responsibility for any of the money. However, being that I was short on cash for one of my investments, I could not control myself, and I decided to take his money and "borrow" it for my personal investment. I need to return the money that I stole. Would I be allowed to give my friend, in addition to what I took, the amount equal to the interest he could have earned and then lost because of my theft? My reasoning is that the money that was taken without permission was stolen and not borrowed, and there never was a loan to prohibit it.

A. Although your reasoning seems to be correct and it should be allowed, nevertheless it would still be prohibited to give back anything more than the original amount. The reason for this is, since money was given for the purpose of getting interest for a loan with a non-Jew, albeit a loan that one may take interest for, receiving any interest from a איד for monies related to that transaction, can be perceived as if a איד borrowed the money on condition to pay interest, even though there was no loan to the איד. Therefore, חז"ל prohibited it, based on the concept of מחזי כריבית. There are some ראשונים that hold that even in this case it is ריבית ממש.

Q. I was late in paying rent, and I would like to give my landlord extra money for being late. Would that be an issue of ריבית? Or since I had no right to pay late, would it be considered a theft for the days I held onto his money, and there would be no issue of ribis as we know there is only an issue of ריבית for a loan?

A. It is still prohibited. Since in general, one does not need to pay the rent on the first of the month, rather one has a few days to pay, there will always be a few days that one is allowed to hold on to the money. Thus, the money he is (permissibly) holding onto is considered a loan and it is no different than any other loan that was not paid on time, which the general rules of ריבית apply.

Q. I needed to show that I have cash in my account, so I asked my friend if he could deposit fifty thousand dollars into my account which I would not be allowed to use. In addition, we stipulated that I will not be responsible for anything that happens to the money beyond my control (אונסים) just for standard losses (גניבה ואבידה), which if that occurred, I would return the money. Also, we decided on a fee that he would receive for the service he is providing. Although this arrangement is permissible, I, however, mistakenly used the money he deposited. Would I still be allowed to pay him the original amount we made up for the service or not?

A. No. One would not be able to pay the benefactor the fee originally agreed upon. Although in essence he had no permission to use the money and technically the money was stolen not borrowed, still, since they originally agreed that he would be paying a fee for the money to sit in his account - which was permissible because he was not allowed to use the money - now that it ended up being used albeit not as a loan it still looks like a loan. Therefore, if the receiver gives back anything more than the principal amount, it will look like ribis.

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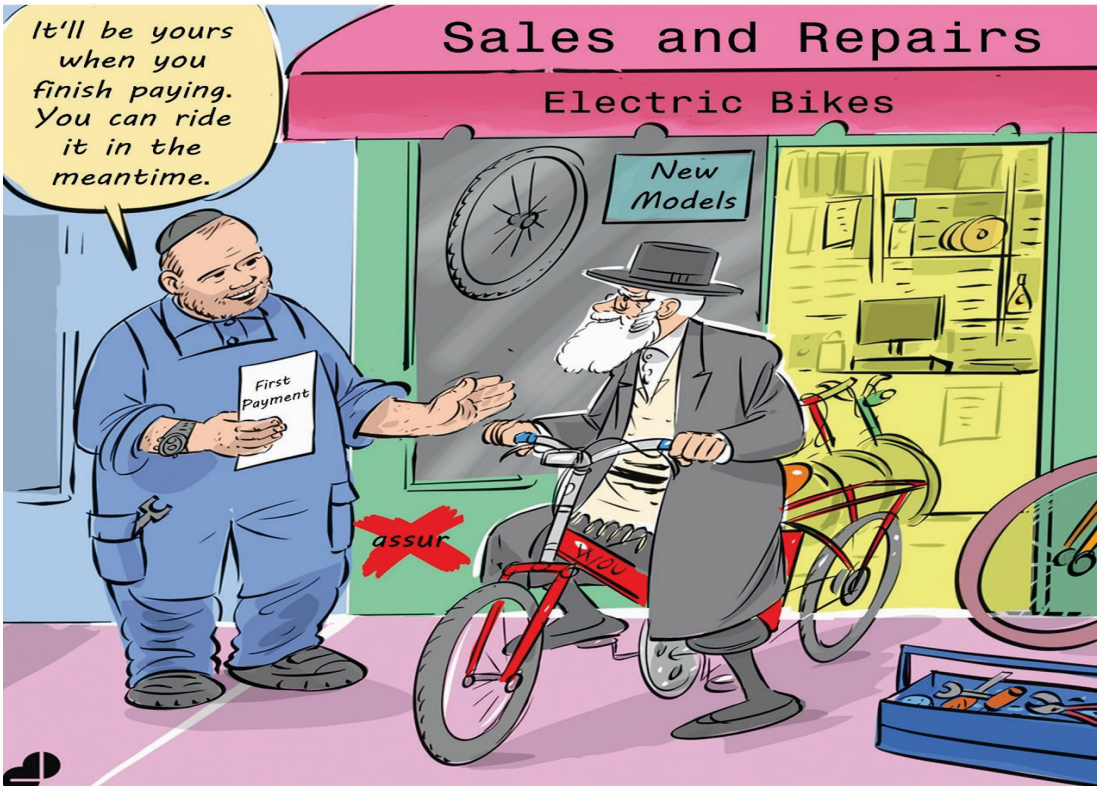
late fee prohibited. An example would be, if a seller sold three items to a buyer on credit three different times, and the buyer and seller agree at some point to combine all three outstanding debts into one debt, then this would turn it into a regular loan, which would make any interest charged a Biblical prohibition, and in turn would prohibit a one-time late fee.

Even in a scenario that a one-time late fee is allowed, if by paying the late fee the borrower can hold on to the principal for longer it would be prohibited. An example of this would be that if the lender says to the borrower, "If you do not pay by a certain date I am going to charge a late fee, yet by paying the fee it will entitle you to hold on to the principal for another month." A common example is a concept called 2/10 net 30.



Did you know? If one only pays for part of an item and it was agreed upon that the sale will not be finalized until paid in full, then he is considered a lender, and it would be prohibited for him to use the item in the interim.

חגליון נדבה לזכות ולעילוי נשמת

ר' דוד ע"ה בן יבלט"א ר' פנחס שליט"א
נלב"ע י"ט ניסן תש"פ

ר' משה יצחק גרשון בן ר' אברהם יהודה ז"ל
(Jacobowitz)