

THE CALL CENTER for HILCHOS RIBBIS

UNDER THE AUSPICES OF HARAV PINCHOS VIND SHLITA



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סניף ליקוואוד וגלילותיה

הרה"ג פנחס וינד שליט"א

Borrowing solely for the lender

Q. Chaim was renting an apartment for many years that didn't come with air conditioning. Over time, his need for air-conditioning grew, so he asked his landlord if he was willing to put one in for him. Since it was not in the contract, the landlord told him that although he would love to help, he doesn't have extra money to pay for such a system. When Chaim heard his response, he told his landlord that he will be happy to lend him the money to purchase the air-conditioner as long as he pays him back within the next twelve months, and his landlord agreed. A moment later Chaim started to question himself about what he did. Did he just transgress the prohibition of ribbis, as he lent the landlord money on condition that he does him a favor and purchase an air-conditioner for his apartment.

A. If the tenant is still planning on staying in the apartment until after the loan is paid up it would be allowed. But if he plans on leaving before the loan is paid up it would be a problem.

Explanation. The [סימן קס"ו סעיף ג'] rules that any loan that the borrower does not need for himself and is purely for the sake of the lender, is not considered a loan to create a prohibition of ribbis. An example of this is, if one has a rundown house that he doesn't use, and someone else who wants to use it offers him a loan to fix it, he would be allowed to use the house. Since the loan was solely for the benefit of the lender it's not considered a loan which is subject to the prohibition of ribbis, and consequently the usage of the house is not in addition to a loan subject to ribbis. Similarly in our case, since the borrower doesn't need the loan, and he is just borrowing it for the sake of the lender it would be okay.

This all holds true if the borrower has no benefit at all during the entire duration of the loan. However, in a case where the borrower has benefit during the duration of the loan, it will be אסור. Therefore, in the above case, if the tenant leaves before the landlord pays him up in full, and at that point the landlord looks for a new tenant, and charges more rent (since he is offering a better apartment that comes with an air-conditioner), it emerges that he will be benefiting from the loan, during the duration of the loan, and whenever the borrower gains during the period of the loan it's not anymore purely for the lender, thus making it into a regular loan that is subject to the regular laws of ribbis.

It's important to note that the Poskim say that one can't compare one case to another regarding this leniency, as in most cases it's not said.

ר' יעקב יצחק ג'קוב שליט"א

Prepaying to lock into today's rate

Q. Chaim was on the phone with Shimon, a manager at a floor distributing company, trying to convince him that it's a good idea to write a Heter Iska for his business. "Why would I need a Heter Iska?" Shimon asks. "We don't charge any late fees, and we don't give discounts for prepayments." "The only thing we do," he continued, "is if a builder wants to order one hundred thousand square feet of flooring for a project that he's doing in six months and wants to know clearly how much it will cost him, we will allow him to prepay at that day's rate, locking in the price. And don't say that it's ribbis because he's prepaying to lock into a lower rate, because since the product trades as a commodity-on-commodity exchange, the price is constantly fluctuating, and he may actually end up overpaying because he prepaid, making it a non ribbis issue". Is Shimon correct or not?

A. Shimon is incorrect, and this is a true ribbis issue.

Explanation. In fact, Shimon did bring up a valid point which seems to be a גמרא in 'א' in גמרא. בבא מציעא דף סד עמוד א' in גמרא. The גמ' says regarding a case that one prepays for a barrel of wine, that if the buyer is willing to accept the risk of the price fluctuating and lose out if the price goes down, then there would be no ribbis issue. However, it seems to be a clear משנה משנה [ב"מ דף עב:], that states otherwise. The משנה says, that one may not prepay for an item to lock into a price even though the price of the item can fluctuate and go down and the buyer may lose by locking into that day's rate. Thus, there seems to be a contradiction between these two סוגיות, which needs to be addressed.

One of the answers to this question is found in the חות דעת חידושי רבינו מאיר שמחה [דף סד. ד"ה והנה] and [סימן קס"ט ס"ק ל"ח] who say that if the money is being advanced for a specific item (a specific barrel of wine or cow), then it's seen more as a sale than a loan, and just accepting the fact that the price may fluctuate and go down is good enough, even if the price actually later goes up. However, in a case where one prepays for an item, and the seller can give any item of that kind in return (i.e. prepaying for apples where the seller can return any of that specific variety), since there is no specific item that is being sold, we can't view it as the transaction is happening now, rather it's viewed as the money is being lent until the seller gives the item. Since we view it as a loan, just accepting the risk of fluctuation would not be enough not to be considered ribbis. (see also Chavas Daas siman 162 S"K 1). But why not? Why should the risk of accepting the chance of fluctuation not be good enough? Maybe we can suggest, since in general people prepay to get a better price, and even if there is a price fluctuation they usually feel that they will probably gain, and that's the intention of the prepaying, so חז"ל prohibited it in all cases, so that people shouldn't come to lend with ribbis.

[עין בריטב"א ישנים דף עג. ד"ה ושמואל שרי. אמנם שם איירי בשיטת שמואל דלא קיימא לן כוותיה].

**דברי הגאון הרב משה שטרנבוך שליט"א
בהקדמה לספרו קיצור דיני רבית המצויים**

"והנה הצורך להיתר עיסקא לחנונים ובעלי עסקים נחוץ ביותר וראוי לרבנים לתקן בארץ ובחו"ל שכל סוחר יחתום בשטר עיסקא ויתלה בחנות או בית עסק במקום בולט..."

וכפל דבריו בתוך ספרו פרק י"ג סעיף ח' "היות שהיום בזמנינו רוב עסקים כרוכים באיסור ריבית צריך כל בעל עסק וחנון לחתום על היתר עיסקא כללי ולתלותו במקום בולט שזהו תקנת העסק שכל העסקים שיש בהם חשש ריבית הם בהיתר עיסקא"



Did you know? By not having a proper Heter Iska for your business you are at risk of potentially violating the prohibition of ribis.

Attention store owners:

In general, it is strongly encouraged that every business should add to their receipts/ invoices the following.

"Any transaction that may be in violation of ribis are subject to the Heter Iska agreement we have on file."

The reason for this is because the halachos of ribis are very complex and many store owners may not be aware that certain transactions pose an issue with ribis. In addition, even if currently there are no transactions with ribis issues, nevertheless these transactions can come up at any time, as business models can always have small changes that can create new ribis issues.

Did you know? Many standard return policies are questionable, and one needs to rely on different leniencies for them. Therefore, writing that all transactions are structured based on a Heter Iska, would make it more מהודר.

הגליון נדבה לזכות ולעילוי נשמת

ר' פנחס בן ר' דוד ז"ל
ר' דוד בן ר' פנחס ז"ל

ר' משה יצחק גרשון בן ר' אברהם יהודה
ז"ל (Jacobowitz) - יום היארצייט י"א סיון