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Shevat 5780 Issue 2

THE BUSINESS HALACHA REVIEW

THE AVISSAR FAMILY RIBBIS AWARENESS INITIATIVE

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THE BUSINESS HALACHA

REVIEW

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About the Bais HaVaad

With over 50 Dayanim, Poskim, and kollel members – a group of some of the most accomplished talmidei chachamim in the United States today – the Bais HaVaad has become the epicenter for the study, analysis and application of halacha in our contemporary society.

In addition to the national Kehilla Division, the Bais HaVaad provides a full suite of business halacha services, including contracts, partnership agreements, heter iskas, wills, and all Shabbos arrangements, ensuring that a halachic life is fully accessible and practical for all.



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A MATTER OF INTEREST

The Laws of Ribbis

*By Harav Dovid Grossman,
Rosh Bais HaVaad*

What is ribbis?

THE TORAH PROHIBITS BORROWERS AND LENDERS FROM ENTERING INTO A LOAN TRANSACTION WITH A FELLOW JEW THAT INCLUDES AN INTEREST OBLIGATION (VAYIKRA 25:35-36, DEVARIM 23:20, SHEMOS 22:24). EVEN IF THE LOAN WAS ALREADY ILLICITLY MADE, IT IS FURTHER PROHIBITED TO FOLLOW THROUGH AND ACTUALLY PAY OR RECEIVE RIBBIS. IN MANY CASES, EVEN IF SUCH PAYMENT WAS MADE, IT MUST BE RETURNED TO THE BORROWER.



THE SEVERITY OF THE PROHIBITION

THE TORAH IS REplete WITH STATEMENTS THAT COMMUNICATE THE EXTREME SEVERITY OF THE RIBBIS PROHIBITION:



A person involved in a ribbis transaction can transgress as many as six Torah prohibitions.



One who lends or borrows with interest denounces the G-d that took the Jewish people out of Egypt (Bava Metzia 71a).



One who borrows or lends with ribbis is cursed that his assets dwindle (ibid).



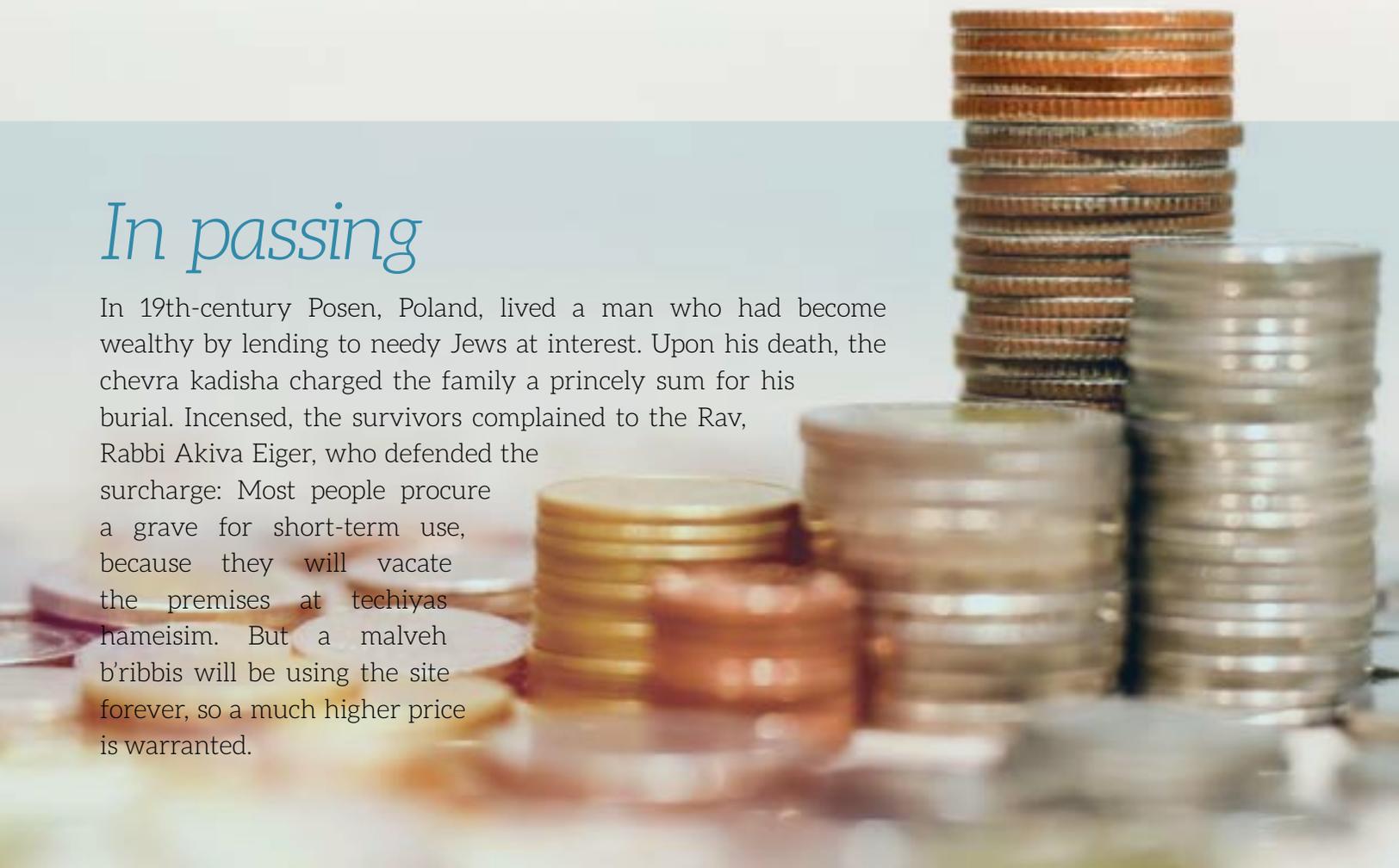
Yechezkel (18:6-17) equates ribbis with the three cardinal sins and the Talmud (Bava Metzia 61b) equates it with murder.



One who lends with ribbis will not rise at techiyas hameisim (Pirkei D'Rabbi Eliezer 33).

In passing

In 19th-century Posen, Poland, lived a man who had become wealthy by lending to needy Jews at interest. Upon his death, the chevra kadisha charged the family a princely sum for his burial. Incensed, the survivors complained to the Rav, Rabbi Akiva Eiger, who defended the surcharge: Most people procure a grave for short-term use, because they will vacate the premises at techiyas hameisim. But a malveh b'ribbis will be using the site forever, so a much higher price is warranted.





10 forms of ribbis

There are various types of ribbis. It is important to be able to identify exactly which form of ribbis is involved in each specific transaction, as the laws /as well as the recourse/ may vary accordingly.

The various forms of ribbis include:

- 1 **RIBBIS KETZUTZA** fixed interest; forbidden mid'Oraisa
- 2 **RIBBIS SHE'AINA KETZUTZA** unstipulated ribbis; forbidden mid'Rabbanan
- 3 **TZAD ECHAD B'RIBBIS** one-sided ribbis; cases where the existence of ribbis is subject to a specific occurrence
- 4 **RIBBIS MUKDEMES** paid in advance of a loan
- 5 **RIBBIS M'UCHERES** paid after the loan was made, but not required under its terms
- 6 **AVAK RIBBIS** "dust" of ribbis; cases prohibited mid'Rabbanan
- 7 **RIBBIS DEVARIM** a verbal gift like effusive thanks, a blessing, or an honor
- 8 **RIBBIS DERECH MEKACH UMEMKAR** ribbis derived from a sale
- 9 **HA'RAMAS RIBBIS** ribbis by trickery
- 10 **MECHZEI K'RIBBIS** acts forbidden because they appear to be ribbis, though they aren't



RIBBIS FACTS

WHO IS SUBJECT TO RIBBIS? All participants in the transaction violate issurim: lender, borrower, witness, guarantor, and scribe or attorney.

BANKS AND PUBLICLY TRADED COMPANIES As ribbis is only prohibited where both parties are Jewish, one may borrow at interest from a publicly-traded bank or financial institution.

FUTURISTIC RIBBIS STIPULATIONS One may also not enter into a contract today to charge or pay ribbis when a loan is made at some future date, as with a capital call.

RIBBIS ON OTHER BORROWED ITEMS It isn't only loans of money that are subject to the prohibition. Any item that is loaned with the expectation that,

like money, it will be consumed by the borrower and a substitute delivered in return, is subject to the laws of ribbis. Thus, lending a pound of sugar to a neighbor in exchange for two pounds in a week is forbidden. But lending something for pay where the very item that was loaned is to be returned—a car, a gown, a house—is Halachically deemed a rental and permitted.

HETER ISKA Most ribbis problems can be averted by executing a heter iska agreement. This document structures the transaction as an investment, with a trivial risk to the investor, rather than a loan. This obviates the possibility of ribbis. The particulars of heter iska are beyond the scope of this article; consult a ribbis professional for guidance.

Ribbis in unexpected places

Many common financial transactions involve ribbis, so pitfalls abound for the unaware. Following are some common business activities that can, depending on the circumstances, constitute ribbis.

- **COSIGNING** cosigning on a loan or car lease, even where the lender isn't Jewish or is a publicly-traded financial institution
- **CREDIT CARDS** using a friend's credit card (see sidebar)

- **STRAW PURCHASING** purchasing a home in someone else's name
- **PARTNERS** borrowing done by

one partner on behalf of the partnership

- **LATE FEES** charging ongoing late fees in a contract (a one-time late fee for each occurrence is permitted)
- **RETURNABLE ITEMS** selling goods with an unconditional money-back guarantee
- **BORROWING MONEY** in a foreign currency
- **FACTORING** purchasing receivables
- **CASH DISCOUNTS** charging different prices for cash and credit
- **EARLY BIRD DISCOUNT** offering a heavily discounted price for paying before a certain date
- **PREPAYMENT DISCOUNT** paying today to lock in a reduced



Interesting accounts

Reuven allows Shimon to make a purchase on his credit card. Shimon will pay the issuing bank directly, including the interest charged by the bank, several months hence. Both men reckon that there is no ribbis problem, because the bank isn't owned by Jews.

But halacha views this case differently.

The bank has never heard of Shimon; the responsible party on the account is Reuven. When Shimon uses the card for his purchase, the bank is lending the money to Reuven, who, in turn, lends it to Shimon. The interest Shimon has undertaken to pay the bank is, in fact, interest on his loan from Reuven. By paying Reuven's interest debt to the bank, Shimon is actually paying interest to Reuven on his own loan. A heter iska must be implemented.

Reuven and Shimon are partners in a new venture. The partnership is not creditworthy, so to fund it, they agree that Reuven will take out a personal loan, and in the event that the business cannot pay, Shimon will pay half the debt.

Here, too, the bank is lending to Reuven and Reuven is then lending to Shimon. A heter iska will solve the problem.

TO DISCUSS YOUR SPECIFIC RIBBIS SITUATION
WITH A BUSINESS HALACHA PROFESSIONAL,
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Let's be
in touch!

As may be evident from this overview, hilchos ribbis are complex. Issurim are often violated unknowingly in the regular course of transacting business. The Dayanim of the Bais HaVaad stand ready to offer halachic guidance and to draft agreements.

In the z'chus of carefully observing these mitzvos, may we merit the bracha promised in Tehilim, as related in Bava Metzia 71a:

תניא ר' שמעון בן אלעזר אומר כל מי שיש לו מעות ומלוה אותם
שלא ברבית עליו הכתוב אומר (תהלים ט"ו:ה)
"כספו לא נתן בנשך ושוחד על נקי לא לקח
עושה אלה לא ימוט לעולם"

It was taught in a braisa: Rabbi Shimon ben Elazar says, "Whoever has money and lends it without interest, regarding him does the verse say (Tehilim 15:5), 'His money he did not give at interest, and he didn't take a bribe for an innocent; one who does these shall not falter forever.'"

Returning Jew

Q. Reuven is a recent ba'al teshuva. Prior to learning about ribbis, he had loaned a great deal of money to another Jew at interest. The loan remains outstanding. May he collect the ribbis?

A. One who lent with interest may not collect the interest, even if the borrower offers it as a gift. This applies even to ribbis d'Rabbanan (Y.D. 160:5; Shach 160:6).

If the lender already collected the interest, there is a difference between ribbis prohibited by the Torah—which must be returned—and that prohibited by the Sages, which needn't be. In the former case, the borrower even has recourse through Bais Din to retrieve the interest he paid (Y.D. 161:5; Pis'chei Teshuva ibid.). Like any other victim of theft, he can forgo the claim so as not to dissuade the lender from repentance (Y.D. 161:7). Where the ribbis was prohibited by the Sages, Bais Din will not force remuneration, but according to most authorities, the lender bears a moral obligation to return it (Y.D. 161:2; Pis'chei Teshuva 161:4).

Depending on the how much longer the loan will be outstanding, it may be possible to execute a new heter iska that incorporates the interest owed. A competent ribbis professional should be consulted.