YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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YHE-HALAKHA: TOPICS IN HALAKHA

Shiur #01: THE PROHIBITION OF *RIBBIT* BY RABBINIC DECREE

Based on a Shiur given by HaRav Aharon Lichtenstein

 When dealing with the prohibition of *ribbit*,we must address various levels of the law:

1) *Ribbit* by Torah law.

2) *Ribbit* by rabbinic decree.

3) The various allowances regarding *ribbit* (e.g., *heter iska.*[1]

The Gemara in *Bava Metzia* 63b[2] cites the words of Rav Nachman:

Rav Nachman said: The general principle of *ribbit* is: Any payment made for waiting is forbidden.

 In other words, whenever a person is compensated for the very fact that he lent money to his fellow – this is *ribbit* that is forbidden by Torah law. Thus too is it stated in the *Tur* and the *Shulchan Arukh.*

In this *shiur*, we will deal with *ribbit* that is forbidden by rabbinic decree, and through that try to understand the limits of the Torah prohibition of *ribbit.*

**IS THERE AN OBIGATION TO RESTORE UNLAWFUL RIBBIT TO THE BORROWER?**

 Over and beyond the prohibition that exists regarding *ribbit* that is forbidden by Torah law (*ribbit ketzutza*, fixed interest in an amount or at a rate agreed upon between the lender and borrower), the Gemara (61b) discusses the question whether *ribbit* can be taken away from the lender by the judges and returned to the borrower. That is to say, can the borrower sue the lender in court to return the *ribbit* that he had paid him in exchange for the loan:

Rabbi Elazar said: Fixed interest (*ribbit ketzutza*) is taken away by the judges; quasi-interest (*avak ribbit*) cannot be taken away by the judges. Rabbi Yochanan said: Even fixed interest cannot be taken away by the judges.

 We see from here that all agree that *ribbit* by rabbinic decree (*ribbit* that is not fixed) cannot be taken away by the judges. As for *ribbit* by Torah law, the Amoraim disagree. The law was decided in accordance with the position that such *ribbit* can be taken away by the judges. Why should it be possible for the court to remove *ribbit* from the lender and restore it to the borrower? Two possible understandings may be suggested:

1) Since the collection of *ribbit* is forbidden, the money was taken unlawfully, **so that it is not the money of the lender,** and must be returned to the lender. This is a logical understanding, but a number of talmudic passages imply that the lender does in fact acquire the money, but nevertheless is obligated to restore it.

2) The Gemara on p. 62a states that Rabbi Elazar who maintains that *ribbit* may be taken away by the judges derives this from the verse, "That your brother may live with you" (*Vayikra* 25:36) – return it to him, so that he may live. This implies that **the money is in fact regarded as belonging to the lender.** An even better proof may be adduced from the Gemara (*ad loc*.) that states that if the lender dies, his heirs are not required to return the unlawfully collected *ribbit*,[3] in contrast to stolen property that the heirs are required to return (provided that there was no *yiush* and change in possession). So too, the Gemara states that if someone lent money at interest and received a cloak instead of money, according to Abaye he is not required to return it, whereas according to Rava he is required to return it, but only because of *marit ayin –* for appearance's sake – lest people say that this is a cloak of *ribbit*. This implies that according to basic law, the lender is not at all required to return the cloak.

**THE HALAKHA**

The *Shulchan Arukh* (*Yore De'a* 161:5) rules that unlawfully collected *ribbit* is recoverable, but the courts do not collect from the lender's property. The Vilna Gaon writes in the name of the Rashba that the court does not collect the *ribbit* from the lender's property, because the whole reason that the *ribbit* is recoverable is the verse, "That your brother may live with you." This is also the position of the Ritva (in *Kiddushin* 6b), who writes that a man may betroth a woman with money that he had received as *ribbit*, because the money is his.

 The Rambam in his *Sefer Ha-mitzvot* does not count the obligation to restore unlawful *ribbit* as a separate mitzva. The Ramban disagrees,[4] arguing that just as in the case of theft, there is an obligation to return the stolen property, so too in the case of *ribbit*, there is an obligation to return the unlawful interest. This may be understood to mean that while in both cases there exists an obligation to return the illicit gains, the two obligations are different in their very essence.

 The *Megillat Esther* writes (*ad loc.*) that the Rambam does not count the mitzva to return *ribbit* because he includes it in the mitzva to return stolen property. This contradicts what we have stated that there is no similarity between the two obligations to return the illegal gains, and objections may be raised against the *Megillat Esther's* argument from the talmudic passages cited above.

The question whether the *ribbit* belongs to the lender or whether he is required to return it to the borrower, depends on the question whether the transaction itself is legally valid, though it involves the violation of a prohibition, or whether the Torah cancels the entire transaction.

**REGARDING RIBBIT BY RABBINIC DECREE**

 As for *ribbit* by rabbinic decree, the Gemara states that it is not removed by the judges. In light of this, we can understand the law of *ribbit* by rabbinic decree. According to the first understanding proposed above, the difference between *ribbit* by rabbinic decree and *ribbit* by Torah law is clear: fixed *ribbit* does not belong to the lender, whereas interest that is not fixed (= *ribbit* by rabbinic decree) does belong to the lender.

 According to the second understanding, however, in both types of *ribbit*, the lender has a monetary right to the interest, but the obligation to return the *ribbit*, based on the verse, "That your brother may live with you," exists only in the case of fixed *ribbit.*

**EXAMPLES OF *RIBBIT* BY RABBINIC DECREE**

***RIBBIT* THAT WAS NOT FIXED AT THE TIME OF THE LOAN**

 The *ribbit* that is forbidden by Torah law is *ribbit*, the amount of which is fixed at the time of the loan. A question arises regarding the definition of the time of the loan: If the lender comes to collect his debt and agrees to push off collection in exchange for the payment of *ribbit*, is this regarded as the time of the loan, or is the time of the loan only the time at which the money is given to the borrower?

**WHERE THE LENDER MAKES NO PROFIT**

 The Mishna (64b) states that the lender may not live rent-free in the borrower's courtyard. The Gemara distinguishes between the case where the agreement was reached at the time of the loan and the case where the agreement was reached at a later point. The Gemara also says that this law applies even in a case where "the one gains and the other loses nothing" (a courtyard that is not usually rented out and a person who needs a place to live). It may be understood that such *ribbit* is forbidden only by rabbinic decree, and not by Torah law. So too in the case of "this one gains nothing, but the other one loses" (a courtyard that is usually rented out and a person who is not in need of a place to live), about which the Gemara says that this too involves a prohibition of *ribbit.*

What emerges from this is that by Torah law the prohibition applies only when "the one gains and the other loses" (a courtyard that is usually rented out and a person who needs a place to live) and it is only by rabbinic decree that the prohibition applies even in a case where the one gains nothing and in the case where the other loses nothing. The *Rishonim* discuss the question what is the law when the one gains nothing and the other loses nothing (a courtyard that is not usually rented out and a person who is not in need of a place to live). According to the Rambam (*Hilkhot Malveh ve-Love* 6:2), this case is regarded as quasi-*ribbit*, because for another person this would be considered a gain, but other *Rishonim* disagree.[5]

**WHERE THE EVENTUALITY OF RIBBIT IS UNCERTAIN**

 The Gemara (62a) says that if the borrower offers the lender his field as collateral for the loan, allowing him to consume produce of the field without deducting anything from the loan to cover the consumed produce, this is regarded as *ribbit* by rabbinic law. Rashi (*ad loc.*) explains that this is not regarded as fixed interest because it is possible that the field will not yield any produce. Thus, we have another case of *ribbit* by rabbinic decree – when there exists uncertainty whether the *ribbit* will ever be collected.

 The Gemara in *Arakhin* 31a discusses the question whether there exists a problem of *ribbit* in the case where a person sells a house in a walled city and then later redeems it. In practice, it is possible to view the purchaser as having lived in the house for a period of time for free, and the money that he had paid and was later returned to him as a loan, so that his living in the house constitutes *ribbit*! It would seem that this depends on the question whether redemption constitutes a resale, in which case there was no loan and no problem of *ribbit* (and the Torah obligates the buyer to sell it back to the seller), or whether redemption constitutes a cancellation of the original sale, in which case there is a loan and *ribbit.*

The Gemara there cites a dispute between Rabbi Yehuda and the Sages. Rabbi Yehuda maintains that there is no *ribbit* in this case because at the time of the sale it was not known with certainty that the field would be redeemed, whereas the Sages maintain that this is indeed *ribbit* by Torah law (which the Torah permits by way of a special scriptural decree). How are we to understand the position of the Sages? Surely, when there is no certainty that the interest will be collected, the prohibition of *ribbit* is only by rabbinic decree!

It is possible to distinguish between the cases. When there is definitely a loan, but uncertainty exists whether there will be *ribbit*, such *ribbit* is forbidden only by rabbinic decree. But in the Gemara's case in *Arakhin*, the uncertainty relates to the question whether there will ever be a situation of a loan (i.e., whether the seller will redeem his property), but if there will be a loan, there will certainly be *ribbit.*

**"A SE'AH FOR A SE'AH"**

The Gemara on p. 75a speaks about the case of "a *se'ah* for a *se'ah*." The Mishna there forbids the lending of a *kur* of wheat which is to be returned at threshing time, lest the price of wheat rise in the meantime, in which case the borrower, by repaying an equal amount of wheat, will be paying back more than he had borrowed. If, however, the borrower owns wheat at the time of the loan, but does not have access to it, he may stipulate, "Lend me wheat in return for other wheat until my son comes," and the loan is permitted.

 It seems that the prohibition in the case of "a *se'ah* for a *se'ah*" stems from the fact that we view money as having a fixed value, and commodities as having value that varies. So too it seems that there is no prohibition in the case where the borrower obligates himself to pay the value of a *se'ah*, for then in any case he must pay that amount. A question arises whether the prohibition is violated only if the price truly rises or even if not. The Gemara discusses various monetary systems, and concludes that in all places there is a certain currency that is defined as money and everything else that is defined as commodities (for example, in our day, if someone in Israel lends out dollars and is repaid with the same sum of dollars, he encounters a problem of *ribbit*).

**ONE MAY INCREASE THE RENT, BUT ONE MAY NOT INCREASE THE PURCHASE PRICE**

 The Mishna (65a) states that one may increase the rent, but one may not increase the purchase price. That is to say, when someone rents out property, he is permitted to stipulate that he will grant a reduction in the rent in return for advance payment. But if he sells the property, such an arrangement is forbidden. This *ribbit* is also forbidden only by rabbinic law, for by Torah law the prohibition applies only to a loan.

***RIBBIT* BY RABBINIC DECREE – EXPANSION OR FENCE**

 There also exists *ribbit* by rabbinic decree at a lower level, e.g., saying "thank you" or the like. The question may be raised whether such cases of rabbinic *ribbit* as well as the ordinary cases of rabbinic *ribbit* are regarded as an expansion of the Torah prohibition of *ribbit* or simply a fence – a decree lest one come to Torah *ribbit.* The Rambam (*Hilkhot Malveh* 6:1) explicitly writes that this is only a decree. It may be possible to distinguish between the various cases of rabbinic *ribbit.* For example, the case of "a *se'ah* for a *se'ah*" may be a mere decree, because the lender gives and receives in return the same thing. But the *ribbit* in the case of a sale may be an expansion of the *ribbit* in the case of a loan.

 This question might have a practical ramification. We have seen that *ribbit* by rabbinic decree cannot be taken away by the judges. The *Rishonim* on p. 62a discuss the question whether there is any value in returning the *ribbit* in order to fulfill one's obligation to heaven. The *Shulchan Arukh* (161:2) rules affirmatively, and the Vilna Gaon writes that the law here is similar to the law governing fixed interest, for even according to the opinion that fixed interest cannot be taken away by the judges, there is a value in returning the *ribbit* in order to fulfill one's obligation to heaven. A distinction may be made regarding this issue between cases of rabbinic *ribbit* that may be considered an expansion of fixed interest where there is an obligation to return the *ribbit*, and cases of rabbinic *ribbit* that may be considered a mere fence, where it is reasonable to assume that there is no obligation to return the *ribbit.*

### SUMMARY

 In this *shiur* we have surveyed the laws of *ribbit* by rabbinic decree, and the various cases in which such *ribbit* is forbidden. We discussed the central issue whether rabbinic *ribbit* is an expansion of Torah *ribbit* or an independent fence the essence of which is to guard against the Torah prohibition of *ribbit*, but the laws of which are different. In light of this, we examined various laws, such as the obligation to return the *ribbit* or the need to fulfill one's obligation to heaven.

FOOTNOTES:

\* This *shiur* was delivered in the Yeshiva on the 4th of Cheshvan, 1995, and summarized by Matan Glidai. It was not reviewed by HaRav Lichtenstein.

[1] A separate *shiur* will be devoted to this issue.

[2] Unless marked otherwise, all references in this article refer to *Bava Metzia*.

[3] In certain situations, they are required to return the property out of respect for their father.

[4] In commandment no. 17 omitted by the Rambam, the Ramban bases the obligation to return the *ribbit* on the verse, "That your brother may live with you."

[5] The Ramban writes that there is quasi-*ribbit* only if the borrower loses something, but in the absence of any loss, there is no *ribbit* at all, and the transaction is forbidden only because it looks like *ribbit.*

(Translated by David Strauss)