



# HALACHA WEEKLY

Parshas Vayechi

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## The Laws of Ribbis (Interest), as They Pertain to the Purchase and Sale of Debt *Rabbi Shmuel Halpern*

The Torah (Shemos 22:24) commands us to lend money, interest-free, to our brethren. I'd like to focus on one specific aspect of *hilchos ribbis*; the buying and selling of debt. May one purchase bonds issued by a Jewish company<sup>1</sup> and have them pay out interest to him? Can a Jew own a debt collection agency, in the event that he will collect from a fellow Jew? How about the buying and selling of mortgages?

### Non-interest-paying debt

Before examining interest-paying debt, we must first analyze purchasing non-interest-paying debt. What *ribbis* issue might there be in such an instance? After all, there is no interest! Let's take a look at some of the sources on this issue.

The Talmud Yerushalmi (Bava Metziah 5:1) states that there are instances where, although something seems like *ribbis*, it is, in fact, permitted. The example given is that one may purchase debt at a discount. Although the buyer subsequently collects the debt in full, and receives more than he paid, it is permitted. The Sefer HaTeruma (codified in Shulchan Aruch Yoreh De'ah 173:4) explains that where the debt is already due for collection, there isn't any novelty to the statement of the Talmud Yerushalmi. *Ribbis* is defined (by Rav Nachman, Bava Metziah 63b) as "payment for waiting," i.e., "renting" out one's

money; where the debt is due immediately, there is no wait, and therefore no *ribbis* issue. The novelty of the Talmud Yerushalmi applies when the debt isn't yet due. Since the debt is being purchased at discount, and is **later** collected in full, there is the potential for a *ribbis* problem. If the purchaser is indeed getting back more than he pays out, why isn't it *ribbis*?

The answer lies in a very fundamental principle in the *halachos* of *ribbis*. Typically, *ribbis* is only applicable when it is paid by the borrower to the lender. In our case, the purchaser is neither the borrower nor the lender. He is merely purchasing the debt-collection rights. This is a purchase like any other, and not in any way a loan. There are, however, some stipulations. One requirement (according to some opinions<sup>2</sup>) is that a formal and *halachically* valid method of *kinyan* (acquisition) be performed. In addition, the purchaser must assume liability for the debt. Should the lender/seller retain responsibility, the debt (for the interim) remains his. The monies paid by the purchaser are considered a loan to the seller until collection time. Since the purchaser will collect more than he paid (loaned), it is *ribbis*. However, the responsibility need not be total. It is sufficient if the purchaser assumes liability in the event the borrower defaults on the loan. The seller may retain liability in the event that the loan that he sold had previously been repaid.

Is there any *halachically* acceptable method for the seller to maintain all liability? One approach would

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<sup>1</sup> In this exact case, the company issuing the bonds would be the borrower. The *poskim* dispute whether the *issur* of *ribbis* applies where the borrower doesn't maintain **personal** liability.

<sup>2</sup> Shulchan Aruch seems to omit any mention of a *kinyan*. This is also the opinion of Chavas Daas 173:4. Shach 173:8

maintains that a *kinyan* is required. Many *poskim* rule that routinely accepted methods of acquisition that are enforceable by secular law are valid as a *halachic kinyan*. See The Laws of Ribbis by Rabbi Y. Reisman (Artscroll/Mesorah Publications) pg. 212.

be to utilize a *heter iska*. In brief, a *heter iska* is a contract between borrower and lender which restructures the loan as an investment. Instead of lending the borrower the money, the lender is tasking the borrower with investing the money on his behalf. The *halachos* of *heter iska* are complex and beyond the scope of this article. What other paths might be available that would allow the seller to maintain liability?

The Chasam Sofer (Yoreh De'ah 6:26) suggests the following approach. Although a Jewish seller may not maintain liability on the loan, a non-Jewish seller may. Therefore, he recommends that the Jew first sell the debt to a non-Jew, in which case the Jewish seller may maintain liability. Subsequently, the non-Jew can sell the debt to another Jew, again with the non-Jewish seller maintaining liability.

### **Interest-paying debt**

Thus far, we've discussed purchasing a non-interest-paying loan from a Jew. What about an interest-paying loan? Can a Jew purchase a fellow Jew's interest-paying debt from a non-Jew?

The Rema (Yoreh De'ah 168:9) rules that indeed, a Jew may purchase such a loan. However, the Jewish borrower must first pay the interest to the non-Jewish lender. The non-Jewish lender can then pass the interest on to the Jew who purchased the loan. The major commentators disagree on how to interpret this ruling. The Shach (Nekudas Hakesef *ibid.*) maintains that the ruling of the Rema applies both to the interest accrued at the time of sale as well as to the interest that will accrue following the sale. Taz (*ibid.*:12) disagrees. He maintains that interest previously accrued can be paid directly from Jew to Jew, as the interest becomes part of the principle. However, all agree that the interest that will amass going forward is an issue<sup>3</sup>. An exception would be where the agreement didn't allow the Jew to pre-pay the debt early; in this case, the interest is

considered to be a part of the principle, and is therefore permitted (Rema *ibid.*:20). From the consensus of the *poskim*<sup>4</sup> it would appear that the *halacha* follows the Taz, and past interest isn't an issue.

Let's apply some of these principles to the purchase of another Jew's mortgage. Upon purchase, the mortgage essentially becomes a loan between two Jews. At this point, the Jewish buyer can no longer collect future interest. However, if the Jewish borrower is not allowed to pre-pay the mortgage, the Jewish buyer can continue to collect interest. This is based on the words of the Rema (*ibid.*; see also Igros Moshe Yoreh De'ah 1:79), who writes that when the Jew is not allowed to pre-pay, the interest becomes part of the principle itself. Since the interest is immediately owed to the non-Jew for the entire lifetime of the loan, the mortgage doesn't contain any *ribbis* payments from one Jew to another.

The laws of *ribbis*, especially as they apply to business transactions, are extremely complex. This article began with a number of scenarios that involve the purchase of debt, and we have attempted to examine some of the issues that may arise when one wishes to engage in such transactions. One should be sure to consult with an expert *halachic* authority before entering any business agreements with another Jew. Additionally, one should ascertain in advance that the lending institution one is involved with is, in fact, owned by a non-Jew. While this may not be an absolute requirement, it is worthwhile to do so, as finding out later that the lender is Jewish can significantly complicate matters. *Ribbis* is a mitzvah whose impact and severity is much-discussed by the Sages of the Gemara and, with some forethought, consultation and preparation, one can properly fulfill this mitzvah and reap the spiritual rewards for doing so.

<sup>3</sup> One can arrange a *heter iska* to allow such an arrangement.

<sup>4</sup> See The Laws of Ribbis by Rabbi Y. Reisman (Artsroll/Mesorah Publications) pg. 213.