Denver KOLLEL
Because Torah is for every Jew

HALACHA WEEKLY

Parshas Mishpatim February 1, 2019 Vol. I, Issue 9

THE CREDIT UNION CONTROVERSY

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In a recently published letter, leading halachic authorities ruled that it is best to avoid participating in certain credit unions, whether as a lender and as a borrower.[1] The rationale behind this ruling: Considering that there are (most likely) Jews who have contributed to, and borrow from, the general fund, borrowing/lending on interest would, in essence, be borrowing from, or lending to, a fellow Jew and would transgress the prohibition of *ribbis* (borrowing or lending on interest). (There may be specific credit unions with a very small likelihood of Jewish participation, and would not be subject to our conversation). The letter mentions that there are authorities who ruled leniently and one should consult with one's halachic authority for personal guidance.

When I first heard of this *psak* (ruling), I was confused; what is the difference between a credit union and a traditional bank? Despite having Jewish funds deposited in a bank, we don't seem to have any qualms about borrowing and depositing in that very same bank. In truth, this issue extends far beyond banks; investing in a company that lends some of its assets on interest should be prohibited, as well. What, if any, might the halachic distinctions be between the aforementioned cases?

Let's first analyze the typical bank deposit. The Shulchan Aruch (Yoreh De'ah 168:21) discusses the case of a Jew who deposits money with a non-Jew; need one be concerned that the non-Jew will, in turn, lend to a Jew with interest? The answer depends on the nature of the non-Jew's liability. If the Jew retains liability and stands to lose if the eventual borrower defaults on the loan, it is prohibited. In this case, the moneys are regarded as belonging to the Jewish depositor and, in the event that a Jew borrows the money, he is, in fact, borrowing from a fellow Jew. If, however, the non-Jew attains liability, he is, in fact, borrowing the money from the depositor. In such a case, any subsequent borrower is borrowing from the non-Jew, not the Jewish depositor.

It would seem that in a traditional bank deposit, where the bank assumes liability for funds deposited, the bank is borrowing the money from the depositor, and the subsequent borrower is borrowing from the bank. So long as the bank is owned and operated by non-Jews, there shouldn't be any *ribbis* issue. What happens if a Jew does, in fact, own shares in the lending institution? In the event that a Jew takes a loan, do we consider it to be a loan between two Jews?

This requires examination of another issue: How does halacha view a shareholder of a large corporation? Is a shareholder considered a true partner in the business? Rabbi Moshe Feinstein (Igros Moshe Even Ha'ezer 1:7) provides the halachic status of shareholders. He is discussing whether or not a shareholder need be concerned with the business operating on Shabbos. Rabbi Feinstein rules that a minority shareholder isn't a true partner. His primary criterion for "ownership" is that the investor has a true say in the affairs of the company. This requires a level of actual control, not simply the theoretical ability to vote. However, shareholders who own a significant portion of the company and thus have some degree of true decision-making power are considered owners and, if Jewish, would create an issue both with work being done on Shabbos as well as *ribbis.* Rabbi Yaakov Blau (Bris Yehuda 30:16), however, argued that the level of control is irrelevant, as a true partnership may exist with one partner being a silent partner, i.e., a serious investor but not a managing partner. This would indicate that ownership isn't defined by control. He goes on to state that the true definition of ownership is defined by the majority. If the majority of the shareholders are Jewish, it is defined as a Jewish company.

Thus far, we've discussed a typical bank deposit and the ownership of company shares. What remains to be explored is the halachic status of the credit union. The nature of a credit union is such that each and every

[1] The prohibition of interest applies both to the lender and the borrower; a Jew may not borrow from, or lend to, another Jew.

member has an equal vote. It would follow that, according to Rabbi Feinstein's criterion, every member can be considered a partner in the union. As such, the moneys subsequently lent out may, in fact, contain a portion of Jewish money. This is very different from the typical bank deposit. In the case of the bank, the depositor no longer **owns** the funds deposited, and he is certainly not regarded as an owner of the bank.[2] With the credit union, however, it can be argued that there isn't any distinct entity that now owns the funds; as a co-op, the depositing member owns his funds as much as anyone else. This creates an issue both for the contributor to the fund, as he in effect becomes a lender to the subsequent borrower, as well as the borrower. This may indeed qualify as a loan from one Jew to another.

A great halachic debate surrounding this issue began in the mid-nineteenth century. Rabbi Shlomo Ganzfried, author of the Kitzur Shulchan Aruch, ruled stringently, whereas some of the halachic greats of his time ruled leniently. Those who permitted the practice did so for a variety of reasons. Some suggested that since the moneys aren't **exclusively** Jewish, as there are many non-Jews invested as well, the *ribbis* prohibition doesn't apply. Others were only lenient where the Jewish moneys were a **minority** of the general funds available for borrowing. (This approach is followed by the aforementioned position of Rabbi Blau in Bris Yehuda). However, the minority argument is a difficult one to apply to our case. In general, there is a halachic principle known as *bitul birov,* nullification by majority. For example, if one had one piece of non-kosher meat mixed with two pieces of kosher meat, the non-kosher piece is nullified by the *rov*, the majority. (The details of *rov* and its practical application are complex and beyond the scope of this discussion.). With regard to ownership, however, we don't apply this principle. Otherwise, every minority partner would lose his share in the business by virtue of the principle of nullification!

One approach to addressing this problem is the concept of *kol diparish meruba parish* (lit., whatever separates from the majority), which posits that we can assume that when something separates from a group of items with varied halachic statuses, we assume the status of the item that separated is that of the majority. For instance, if a piece of meat whose kosher status is unknown is found and it came from a mixture of kosher and non-kosher meat, with a majority of the pieces being kosher, we would assign it the status of kosher. To apply this to our situation, when a sum of money leaves the general fund, we can assume it is coming from the majority, which is non-Jewish money. This isn't based on the concept of **nullification** in majority; rather, it is a matter of **attribution** to the majority.

Another suggestion centers on the halachic principle of *brera. Brera* is another complex halachic principle beyond the scope of this article, but *brera*, as it applies to this situation, allows us to attribute the moneys lent to a Jew as having originated from the non-Jewish funds. When there is a large enough amount (it need not be a majority) of non-Jewish funds to cover all loans to Jews, we can assign the non-Jews as the lenders. Typically, we only apply the principle of *brera* to *diRabanan* (Rabbinic) prohibitions. Analysis is therefore necessary to determine whether a credit union could potentially create a *diOrayso* (Scriptural) form of *ribbis.* The Maharam Schick (Yoreh De'ah 158) posits that an arrangement of the likes of a credit union should create only a Rabbinic issue of *ribbis*. His reasoning is that *ribbis* on a *diOrayso* level is defined as a payment from the borrower to the lender for the purpose of "renting" the lender's moneys. With a credit union, however, where there are costs involved in running the operation, we may define the interest paid by the lender as cost-related, rather than solely "rent" for the loan. In addition, the fact that the credit union employees act as intermediaries between the depositor and the lender may downgrade the prohibition from *diOrayso* to *deRabanan*.

In conclusion, great halachic authorities have concluded that Rabbi Moshe Feinstein's position on shares would define credit unions as problematic from a *ribbis* standpoint. Some authorities have suggested various reasons for leniency, and one should consult with his halachic authority for personal guidance.

[2] A Jewish shareholder of the bank would not present an issue either, so long as he does not own a controlling share, as discussed earlier.

Halacha Weekly is a publication of the Denver Community Kollel
Articles are under the Halachic review of Rabbi Shachne Sommers, Rosh Kollel of the Denver Community Kollel
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