PIRCHEI SHOSHANIM SHULCHAN ARUCH LEARNING PROJECT©

Ribis – Yoreh Deah
Shiur 3

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Shiur

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Siman 161, Seif 5-6

Introduction

Whereas Lesson 2 dealt with **rabbinic** *ribis*, this lesson will deal with **Biblical** *ribis*. It discusses many of the same issues which were discussed in lesson 2. The first *seif, seif* 5 already shows part of the contrast between **Biblical** and **rabbinic** *ribis*. We saw that *bais din* does not force a lender to return **rabbinic** *ribis*. *Seif* 5 teaches us that *bais din* does force the lender to return **Biblical** *ribis*. Let us begin with the text.

Bais din will force a lender to return ribis that was received in violation of the Torah's prohibition. This occurs when the ribis was given in fulfillment of a condition in a loan requiring the borrower to pay the lender a fixed amount as interest. Bais din may utilize flogging to compel the lender to return the money. However, bais din may not forcibly extricate money from the lender. These rules apply as well in case the lender utilized the terms of the loan agreement to live in the borrower's quarters for free or at a discount.

Implication

We notice that money which is received as *ribis* is not equivalent with stolen money. When one steals money, bais din itself forcibly returns the money, if necessary. The reason is because it is incumbent upon *bais din* to ensure that all money is possessed by its rightful owners. By contrast, when one receives *ribis, bais din* itself cannot return the money. It has the power to pressure the lender to return the *ribis*. However, it itself is not capable of removing the money from the lender and returning it to the borrower.

Background

This distinction as well as the entire ruling of the **Shulchan Aruch** is derived from the following section of **Gemara:**[1]

R. Elazar: Dayanim force the return of Biblical ribis.

R Yochanon: Bais din does not even force the return of Biblical ribis.

The **Gemara** continues with the derivation of **R. Elazar.**

R Nachman b. Yitzchak: The source of R. Elazar's ruling is the posuk,[2]

Vechai ochecho emoch (you should enable your fellow Jew to live) which is written following[3] the statement of the prohibition against taking interest. R. Elazar interprets the posuk as requiring the lender to return the ribis in order to enable the borrower to live.

Commentary

The **Rashba**[4] comments that the words *vechai ochecho emoch* constitute a positive *mitzva* that requires the lender to return the interest, which he received. Therefore, *bais din* acts on this positive commandment in the same manner as any other positive injunction. The **Gemara**[5] states the general rule that *bais din* is empowered to lash (to the extent that one is physically capable of surviving) in order to force people to fulfill any positive injunction of the **Torah.** For example,[6] *bais din* will flog one who does not wish to sit in a *succa,* eat *matza*, etc.

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1 Bava Metzia 61 B-62 A.

2 Vayikra 25, 36.

3 See Rashi, ibid. with beginning words vechai ochecho emoch.

4 Commentary to Bava Metzia 61 B paragraph beginning with words verabey Elazar.

5 Kesubos 86 A.

6 This example is explicitly stated by the Gemara in Kesubos, ibid.

Can Bais Din Directly Return Money to the Borrower?

The question which then troubles the **Rashba** is whether *bais din* has any power apart from the general power which it has to force one to fulfill any positive commandment. If the money does not belong totally to the lender, *bais din* would have the additional power to physically remove the money from the lender's possession just like it can do if one owes someone money.

The **Rashba** proves that the requirement to return interest is not equivalent with the requirement to pay off one's debt. He bases his proof on the fact that progeny are not required to return interest even if they inherited land from their father.[7] If a father has a debt and he bequeaths land to his progeny they must pay up his debt.[8] Since they do not have to return interest under these circumstances, we realize that the requirement to return *ribis* does not constitute a debt which is owed by the lender to his borrower. Rather, the interest that the lender received belongs totally to him. The **Torah** merely placed a personal obligation on the lender to reimburse his borrower. Personal obligations do not pass on to one's inheritors.[9]

Since the requirement to return *ribis* is merely a personal obligation, the **Rashba** rules that *bais din* cannot forcibly remove money from the borrower's possession. They can merely bring pressure on the lender to force him to voluntarily comply with the **Torah's** commandments. Therefore, they can flog the lender to force him to comply with his obligations. However, since the money is his, they cannot remove it from his possession unless he acquiesces. We should note that the **Rashba's** proof and ruling are followed by other **Rishonim**[10] as well, and it constitutes the basis of the **Shulchan Aruch's** ruling.

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[7] This is stated by the Gemara in Bava Kama 94B and Bava Metzia 62 A.

[8] This is stated by the Gemara in many places. See Pesachim 31 A for example.

[9] An example of this phenomenon is a fine. When a person is fined his children do not assume his fines upon his death. See Gitten 43 B and other places.

[10] The Ran in his chiddushin and the Nimukai Yosef agree. A notable Rishon who disagrees is the Sefer HaChinuch.

An Apparent Contradiction

The **Acharonim** are troubled with the **Rashba's** ruling that *bais din* cannot forcibly expropriate possessions of the lender and award them to the borrower in spite of the fact that the lender does have a *mitzva* to return the interest. The basis for their question is that we find other *mitzvas* where *bais din* forces one to fulfill his *mitzva* by forcibly removing his property. The question is why should the *mitzva* to return ribis be different from other *mitzvas*.

One example of the latter phenomena is *tzedaka*. A person has a *mitzva* obligation to give *tzedaka*. The fact that a man is enjoined to give *tzedaka* in no way impinges on his total ownership of all of his possessions. Nonetheless, the ruling of the **Rambam**[11] and the **Shulchan Aruch**[12] is that *bais din* does forcibly remove possessions of the one who has a *mitzva* to give *tzedaka*. The **Shulchan Aruch** thus writes:

Bais din can use force to coax a person to give the proper amount of tzedaka. Bais din can forcibly expropriate from a person, in his presence, the amount which he should have given voluntarily as tzedaka.

The **Ran**[13] agrees with this ruling and specifically notes the fact that *bais din* can only expropriates a person's possessions in his presence.

The Significance of a Person's Presence

The **Ketsos Hachoshen**[14] is troubled by the stipulation that bais din can only remove one's possessions in his presence. If a person has an obligation we should remove his possessions even when he is not present and if he is not obligated we should never remove his possessions.

The **Ketsos** answers that since the obligation to give *tzedaka* is only a *mitzva* and one's possessions are totally his in spite of the *mitzva, bais din* cannot remove his possessions when the person is not present. However, *bais din* can force a person to fulfill his *mitzvas* even if *bais din* must resort to flogging in order to accomplish this task. The

[11] Hilchos Matnas Aneyem 7, 10.

[12] Yoreh Deah 248, 1.

[13] Commentary to the Rif, Kesubos 18 A.

[14] Siman 39 note 1 near the end.

Ketsos deduces from the **Rishonim** equivalence between flogging and forcible removal of one's possessions. Both of these are weapons that are available to *bais din* in order to force compliance with the **Torah's** *mitzvas*. Just like *bais din* can coax via flogging so too it can coax by forcible removal of one's possessions.

It is only when one is present that *bais din* is actually forcing the individual to comply with the **Torah.** However, if the person is not present it is bais din which is acting and it is not gaining the individual's compliance. Therefore, they can only remove his possessions and turn them over to *tzedaka* if he is present.

Another Case Where Bais Din Removes Possessions in a Person's Presence

One finds a similar phenomenon when one borrowed money or damaged someone. There are two opinions in the **Gemara**[15] concerning the issue of whether a person's possessions become obligated to the lender.[16] According to the opinion that one's possessions do not become obligated, the reason a person must pay his debts or his damages is because of the *mitzva* to repay debts[17] and damages.[18] The **Ramban**[19] records the fact that the **Gemara**[20] rules that *bais din* can flog in order to coerce the borrower to pay his debts. He continues that by the same power that *bais din* can flog the borrower so too it can take his money and award it to the borrower. That is the reason why *bais din* can remove one's possessions in order to pay back a debt or pay for damages in spite of the fact that a person's possessions are not obligated in and of themselves for this purpose.

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15 Bava Basra 175 B.

16 This is the famous dispute whether sheebud is de'orayso of not. The main Gemara that discusses this issue is in Bava Basra 175 B and the Shulchan Aruch in Choshen Mishpat 39 rules on this matter.

17 There is a controversy among the Rishonim which posuk is the actual source of this mitzva. The following Ramban discusses two opinions on this issue.

18 This is specifically written in the Torah when it discusses the various means of damaging someone (i.e. fire, a pit, with an animal).

19 Commentary to Bava Basra 175 B beginning words ho de'omar.

20 Kesubos 86 A.

Based on these two cases where *bais din* can take one's possessions in order to force one to fulfill his *mitzvas*, the **Acharonim** ask why *bais din* cannot take the lender's money, at least in his presence, and return it to the borrower in order to coerce the lender to fulfill his *mitzva* to return **Biblical** *ribis*.

The Acharonim Deal with the Problem

The **Acharonim** follow various approaches in dealing with this question. The **Ketsos Hachoshen** leaves it as an open question. The **Chavos Da'as**[21] only asks the question based on the *din* of *tzedaka*. He answers that *tzedaka* is special because there is not only a positive commandment but also a negative commandment.[22] However, this answer fails to deal with the case of the **Ramban.**

The **Machane Ephraim**[23] takes the opposite approach. Basing himself upon the **Ramban** which we mentioned, as well as other **Rishonim,** he claims that the question of whether *bais din* forces a lender to return *ribis ketsutso* is the subject of dispute amongst the **Rishonim.** (One could actually have argued that the **Rashba**, et. al. would agree that *bais din* can remove a person's possessions in his presence and the **Rashba** was only discussing what could be done in the lender's absence. However, the **Machane Ephraim** does not raise such a possibility.) There are other approaches,[24] which are offered in order to explain the difference between *ribis* on one hand and *tzedaka* and *debts* on the other. According to these approaches, *bais din* cannot remove the lender's possessions even in his presence in order to return *ribis*.

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[21] Note 6 on our siman.

[22] The Torah says in Devarim that, "You must not harden your heart or close your fist from assisting your poor fellow Jew." We should note that in the case of ribis one also violates negative commandments. However, in the case of ribis one already violated the negative commandant before he receives the interest. Once he received ribis he is not enjoined by any negative precept to return the ribis. However, one is guilty of violating a negative precept until he actually gives the tzedaka.

[23] Hilchos Malve Velove; Dinai Ribis, siman 1.

[24] See for example Shaarei Yosher 5, 2. Chiddushai R. Shmuel to Bava Metzia, Siman 27, Nachal Yitzchak on Choshen Mishpat, siman 39.

Voluntarily Return of Ribis—Requirement or Foolishness?

The **Taz**[25] discusses the situation of someone who borrowed money from lender B but did not have any means to repay his debt. The borrower, however, earlier paid *ribis ketsutso* to lender A. As we learned in this *seif,* lender A owes the *ribis* to his borrower. We have a general principle[26] that if X owes money to Y and Y owes money to Z, Z can collect from X. In the situation of the **Taz** it would seem that lender B should be able to collect from lender A since lender A owes money to the borrower who in turn owes money to lender B.

The **Taz** rules that for two reasons lender B cannot collect from lender A and both of his reasons shed insight into the precise nature of the obligation which is incumbent upon the lender to return *ribis ketsutso.*

The first argument of the **Taz** is that a lender is never obligated to return *ribis ketsutso* unless his borrower asks him to do so. He bases this hypothesis on a statement of **Rashi,**[27] "*Bais din* forces the lender to return *ribis ketsutso* if the borrower demands its return in the life of the lender."[28] The **Taz** notes the fact that **Rashi** adds the words, "If the borrower demands its return." He deduces from these words that the lender need not return any money unless the borrower demands its return.

In the case of the **Taz**, the borrower himself did not demand the return of his money. It is only lender B who demanded its return. Therefore, the **Taz** maintains that lender A is not obligated to give money to lender B. We should note that the **Taz's** position is in direct disagreement with the **Sema**[29] who states explicitly that the lender must return *ribis ketsutso* even if the borrower does not demand its return.

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25 Note 3 in his commentary to our siman and note 1 in his commentary to Choshen Mishpat siman 9.

26 It is known as shebudo derabbe Noson. It is discussed in many places in the Gemara and also in Choshen Mishpat siman 86.

27 Commentary to Bava Metzia 61 B beginning words ad ka'an ribis ketsutso.

28 This is explained by the Chavos Da'as in note 4. If the lender dies before returning the ribis his heirs are not obligated to return the ribis which he received as we will study in seif 6.

29 Note 3 on Choshen Mishpat, siman 9.

The **Ketsos Hachoshen**[30] also offers proof that the lender is obligated to return the *ribis* even if the borrower fails to demand its return. The **Nesivos**[31] attempts to negate the **Ketsos'** proof.

Why the Borrower Must Demand the Money

The **Bais Meir**[32] agrees with the **Taz** and claims that one could have arrived at this conclusion even without seeing **Rashi's** comment. His argument is based on the fact that one can be *mochail* the right to receive his *ribis ketsutsa* from the lender.[33] Failing to demand the return of *ribis ketsutsa* constitutes *mechela* according to the **Bais Meir.** This is the way the **Nesivos**[34] understands the **Taz** as well.

The **Ketsos,**[35] however, understands that according to the **Taz** there is absolutely no obligation to return the ribis before it is demanded by the borrower. He says that in fact if the lender did return the *ribis* before it is demanded by the borrower it constitutes a present. (Perhaps, if the borrower later demands its return he would be entitled to a second payment.)

It should seem that a practical difference between the interpretations of the **Ketsos** and **Nesivos** occurs when a borrower fails to demand the return of the *ribis* for a significant amount of time. According to the **Nesivos** and **Bais Meir**, the borrower could no longer demand its return unless he can offer a suitable excuse for his earlier failure to demand its return since he was *mochail* the debt. This is the position of the **She'ailas Ya'avetz**[36] as well. It writes that if the actions of the borrower in any way intimated the fact that he was mochail his right to receive the *ribis* in return, he can no

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30 Note 1 in Choshen Mishpat siman 9.

31 Note 2, ibid.

32 Commentary to our seif.

33 This is the ruling of the Shulchan Aruch in siman 160, seif 5.

34 Note 2 in his commentary to Choshen Mishpat, siman 9.

35 Ibid. in the Meshovaiv Nesivos.

36 Responsa; volume 1, Responsum 147. A synopsis of his opinion appears in the Pischai Teshuva \, note 5.

longer asks for its return. According to the **Ketsos,** however, he could still demand its return since he was never *mochail* anything.

We should note that there is a major dispute among the **Acharonim** if the **Taz** is correct. The **Bais Meir, Chavos Da'as, Bach** and Tumim all agree with the **Taz.** The **Sema, Ketsos** and **Knesses Hagedola** are among those who disagree.

The Return of Ribis Must Assist the Borrower

The second argument of the **Taz** is also interesting. He argues that the entire obligation to return *ribis* is based on the posuk, "Your fellow Jew should live with you". The **Gemara** explains that the reason to return the money is in order to assist the borrower in his efforts to earn a living.

The **Taz** argues that in his situation the money was not going to help the borrower to live but rather it would help lender B. Therefore, lender A has no obligation to return the money since it will not directly benefit the borrower.

This argument seems difficult since the borrower still has an obligation to pay lender B as soon as he would have money since obligations are not removed by lack of resources. Therefore, it would seem that the borrower is a direct beneficiary even if his money is used presently to benefit another lender.

The argument of the **Taz** is used by the **Dagul Mervavah**[37] to teach us a different *Halacha*. He rules that if the borrower died before the interest was returned, the lender does not need to return the *ribis* to his heirs. The basis for his argument again is the fact that return of the *ribis* will not assist the borrower himself to live. (This argument is not subject to the difficulty we had with the **Taz.)** We should note that the **Chavos Da'as**[38] disagrees with the **Dagul Mervavah** and rules that it is obvious that the lender needs to return the money even to the heirs.

Receiving a Discount

The **Shulchan Aruch** gives two examples of situations where we obligate the lender to return the *ribis*. We have been discussing the first example which is where the lender received money as interest on a loan. The second example which is mentioned by the

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[37] Commentary to our seif.

[38] Note 4 on our siman.

Shulchan Aruch is where the loan conditions grant the lender the right to live in the borrower's property either for free or at a discount.

The principle behind the second example is the same as the first example. When one grants the lender this right as a condition of the loan the lender is receiving *ribis ketsutsa.* The reason[39] the **Shulchan Aruch** finds it necessary to give this example is that the lender did not receive money but goods which are worth money. The **Shulchan Aruch** is teaching us that the *din* is the same in both situations.

Seif 6

Seif 6 continues our discussion of the responsibility of the lender to return *ribis ketsutsa.* This *Seif* focuses on the question of how we deal with this responsibility once the lender himself passed away. Are his heirs also obligated to return the *ribis* or not?

The Issue

We should first appreciate the significance of this issue. If one who borrowed money from someone or damaged someone bequeaths land,[40] his heirs are obligated to return the money and pay the damages. On the other hand, if a person pronounces a vow his children are not required to fulfill his vow.[41] The reason for this divergence is that the latter obligation is only a personal obligation which, therefore, does not obligate his heirs. Thus, the issue we are dealing with is how we view the obligation to return *ribis.* Our two choices are that we can we view it as a personal obligation or as a formal debt.

The Gemara's Ruling

This *seif* is based on a **Tosefta**[42] which states:

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[39] Divrei Sofrim in note 129 of the Aimek Davar.

[40] According to the Gemara the heirs are obligated to pay only if they inherited land or something which is connected to the ground. The Geonim promulgated an edict that even if the heirs only inherited moveable possessions they are still obligated to pay (see Choshen Mishpat 108, 1 for further details.)

[41] See for example Choshen Mishpat 212, 7 in the Ramo.

[42] At the end of Perek 5 of Bava Metzia.

One who lent money for interest and wishes to do teshuva must return the interest. If he dies before returning the money his children are not obligated to return the money. This is in fulfillment of the posuk 'The wicked prepare and the righteous ultimately benefit.'

If the children inherit a specific object which the father once received as ribis e.g. a cow, field, garment, or any other specific object, they are obligated to return it in order to honor their parents.

The **Gemara**[43] discusses this **Tosefta.**

Question:
It seems strange that the children are obligated to honor their father since he acted improperly. The obligation to honor one's parents only extends to parents who acted in accordance with the Torah's precepts

Answer:
The underlying principle of the question is correct. The Tosefta is discussing the situation where the deceased did teshuva before his death.

Question:
If he did teshuva why didn't he return the ribis?

Answer:
Death overtook him before he succeeded in returning the object which was collected as ribis.

From this Gemara we can derive three rules.

1) If the father did not leave over a specific object which he received as *ribis* the children have no obligation to reimburse the borrower.

2) If the father did leave over a specific object which was received as *ribis* and did not do *teshuva,* the children again have no obligation to return anything to the borrower.

3) If the father did leave over a specific object which was received as *ribis* and did do *teshuva* the children are obligated to return the object to the borrower. The reason is in order to honor their deceased father.

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[43] Bava Metzia 62 A, Bava Kama 94 B.

We realize that in any case the responsibility to return *ribis* is a personal obligation. The only reason there is a case where the children are required to return *ribis* is in order to honor their father. If the children do not return the object and people notice them using the object they will heap scorn on the deceased.[44]

We will continue our study of *seif* 6 in the next lesson.

Conclusions

If one violated the **Torah's** prohibition and received *ribis*.

1) He must return the *ribis*. This is derived from a *posuk* (i.e. it is a Biblical requirement.)

2) If he fails to comply with (1) *bais din* can place pressure on him to fulfill his obligation.

3) Many **Rishonim** prove that bais din itself cannot forcibly extricate money from the lender. The reason is because the *ribis* rightfully belongs to the lender and does not constitute theft on his part.

4) The **Acharonim** question why *bais din* can forcibly take one's possessions in his presence in order to force him to comply with the *mitzva* to give *tzedaka* and not in order to comply with the *mitzva* to return *ribis*.

5) The **Ketsos** has no answer for (4). The **Nesivos** and others find differences. The **Machane Ephraim** maintains that there is no difference between the cases, and there is a dispute among the **Rishonim** on this issue. According to the **Machane Ephraim** many of the most authoritative **Rishonim** maintain that *bais din* can forcibly return money from the lender in his presence.

6) The **Taz** deduces from **Rashi** that a lender need not return *ribis ketsutsa* unless he is asked to do so by the borrower. There are **Acharonim** who agree with the **Taz** and others who disagree.

7) There is a dispute between the **Ketsos** and others on the reasoning of the **Taz** why one must first ask for return of his *ribis*. Many **Acharonim** say that if the borrower does not ask for the return of his money he is *mochail* the obligation of the lender to return the money. This means that the obligation exists even

[44] The comment of Rashi in Bava Metsiya 62 a beginning words hamesuyom.

before the borrower asks for its return. It is just that by failing to ask for the money, we construe that the borrower waives his rights. The **Ketsos** understands that there is no obligation before a demand is made. We saw various applications which ensue from these positions.

8) The **Taz** also claims that the lender is never obligated to return *ribis* if the money will not go to the borrower himself. Therefore, if it will be collected totally by a third party, the lender is not obligated to return the *ribis*.

9) The **Dagul Mervavah** uses an argument which is similar to the **Taz's** argument as stated in (8), to rule that one need not return *ribis ketsutso* to the heirs of the borrower. The **Chavos Da'as** disagrees with this ruling.

10) The requirement to return *ribis ketsutsa* extends even to the situation where the lender received a benefit that constitutes *ribis ketsutsa*. The benefit mentioned by the **Shulchan Aruch** is receiving a discount when living in the borrower's property.

11) The requirement to return *ribis ketsutsa* is not passed on to one's heirs. The only time one's children must return *ribis ketsutsa* is if their father received a specific object (i.e. not money and not a benefit) as interest, and he repented for having committed this *avaira*. In this case, the children must return the specific object in order to avoid disparagement of their father's reputation.