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OVERVIEW of the Daf

1) Recovering interest (cont.)

R' Nachman bar Yitzchok suggests a source for R' Elazar's position that prearranged interest can be recovered through judges.

The Gemara suggests an alternative explanation on R' Yochanan's behalf of the verse cited in support of R' Elazar.

An unsuccessful challenge is presented to R' Yochanan's position that prearranged interest is not recoverable.

Tangentially, the Gemara addresses the issue mentioned in the Baraisa related to children returning interest collected by their deceased father.

Another challenge to R' Yochanan's position is presented.

The Gemara responds that the question of recovering prearranged interest is subject to a debate amongst Tannaim in a Baraisa.

This suggestion is rejected in favor of an alternative explanation of the Baraisa, and proof to this interpretation is also cited.

R' Safra suggests that the question of whether interest is recoverable depends upon whether the original agreement is enforceable in secular court.

Two unsuccessful challenges to these parameters are presented.

The practical application of these parameters is explained.

2) The Mishnah's example of תרבית

The Gemara questions why in the Mishnah's example of

(Continued on page 2)

REVIEW and Remember

1. What is the issue debated by Ben Petura and R' Akiva?

2. What are the parameters of recovering interest as presented by R' Safra?

3. Under what conditions is it permitted for a seller to take money for merchandise that he does not yet possess to be delivered at a later date?

4. What is הערמת ריבית?

Today's Daf Digest is dedicated by Rabbi and Mrs. Sam Biber
In memory of their mother
מרת רבקה זלדה בת ר' יחזקאל, ע"ה

Distinctive INSIGHT

At what moment does the violation of charging interest begin?

הכי נמי מסתברא וכו' אלא עדים מאי עבוד

R' Elazar had stated (61b) that interest that was collected by a lender can be recovered in court and paid back to the borrower. Rav Yochanan argues and holds that interest cannot be retrieved by the court to be repaid. The Gemara first brought two questions against the opinion of R' Yochanan from two Baraisos, and then the Gemara tried to show that the question whether interest which was paid can be retrieved by the court is actually disputed among Tannaim. Tanna Kamma holds that the money is not returned, and the lender is liable for lashes (מלקות) for being in violation of taking interest. R' Nechemia and R' Eliezer b. Yaakov say that the money can be returned and thereby correct for the sin, and the lender does not receive מלקות.

The Gemara then contends that all opinions in the Baraisa may agree that once it is collected, interest may not be recaptured in court, and that a document awaiting collection is not yet considered as collected, but the issue in this Baraisa is whether the Torah's law against taking interest is already a significant act as soon as the debt is arranged. Tanna Kamma holds that the lender is liable for lashes already at the moment the document is written, while R' Nechemia and R' Eliezer hold that the transgression is only violated when the interest is later collected.

To demonstrate that this approach is correct, the Gemara cites the halacha in the Mishnah (75b) that all participants in a intersest-bearing loan are liable for מלקות, including the witnesses. Now, the lender and borrower are certainly parties in this sin, but what did the witnesses do in terms of collecting the interest? The Gemara says that it seems (מסתברא), then, that they participated in writing the document, which is already the moment the sin is perpetrated (שומא מילתא).

Ritva notes that the Gemara introduces its proof from the Baraisa with the word "מסתברא," which suggests that the Gemara is somewhat tentative about whether there is a conclusive indication from here that the violation of interest is in effect from the moment of the writing of the loan document. What is the element of reluctance of the Gemara in this regard? Ritva answers that once the witnesses sign their names, they have done all that they can do. Perhaps it is only in regard to the witnesses that we say that שימה מילתא, that the writing of the document is the moment their violation occurs. However, it might be that the lender and buyer are not yet liable until the interest is paid. Nevertheless, the Gemara says that it is reasonable to say שימה מילתא for everyone. ■

HALACHAH Highlight

The legal status of interest collected by the lender

הניח להם אביהם מעות של רבית וכו' אינן חייבין להחזירן

If their father left them money collected for interest…they are not obligated to return it

There Gemara presents what, at first glance, appears to be contradictory rulings. Citing the verse of וחי אחיך עמך the Gemara derives that the lender has an obligation to return interest that he collected. This seemingly indicates that when a lender collects interest it is not his money, and he is thus obligated to return the money that he illegally collected. In contrast, the Gemara cites a Baraisa that children who inherit interest payments are not obligated to return those monies to the borrowers although they know their father collected the money from borrowers. This ruling seems to indicate that the money belonged to their father and thus he was able to bequeath it to them. Ritva[1] explains that although collecting interest violates a Biblical prohibition, nevertheless, once the money is paid it becomes property that is legally owned by the lender. For this reason the lender can bequeath this money to his children. This is in contrast with stolen money. Since stolen money did not become the property of the thief, his children are obligated to return it to the legal owner of that property. Interest payments, although illegal, become the property of the lender and thus they can be passed on to the next generation. The requirement to refund the interest to the borrower is a separate obligation that has nothing to do with legal ownership of the money.

(Overview. Continued from page 1)

תרבית is it necessary to state that the seller has no wine, when all that is necessary for the case to be permitted is that there be a prevailing market price.

Rabbah suggests that the Mishnah refers to a case in which the seller takes upon himself the present value of wheat as a debt.

A Baraisa is cited that supports the halachic underpinnings of Rabbah's explanation.

Abaye successfully challenges this interpretation and offers an alternative explanation of the Mishnah.

Rava presents numerous challenges to Abaye's explanation, eventually leading to a rejection of Abaye's explanation. ■

Furthermore, a lender who refunds the interest does not undo the prohibition that was violated when he collected the interest payment, as opposed to a thief who undoes the prohibition of theft when he returns the stolen property to his victim.

Pischei Teshuva[2] cites a dispute that seemingly relates to this concept. A lender could ask to be given a specific object as interest. Mishnah Lamelech rules that if the lender still has the object given as interest he is obligated to return the object to the borrower and may not give the borrower the cash value of that object. Sha'ar Hamelech disagrees with this ruling, arguing that the object becomes the legal property of the lender. The obligation to reimburse the borrower is a separate obligation and thus it is unnecessary for the lender to return the specific object taken as interest. ■

1. ריטב"א לקידושין ו: ד"ה רבית מעלייתא הוא.
2. ע' פת"ש ליו"ד סי' קס"א סק"ט. ■

STORIES Off the Daf

"Your life takes precedence"

"חייך קודמין לחיי חברך ..."

The Rav of Bobov, zt"l, would give a vast amount of charity; certainly more than half of what he owned. His uncle, Rav Yechezkel of Shinovah, zt"l, wondered about this strange custom and decided to ask his nephew what was behind it. "Why do you ignore chazal's admonition not to give more than twenty percent to tzedakah?"

The Rav of Bobov jokingly replied that he did not understand the question. "The Gemara there says that one should refrain from giving more charity since he may come to be a financial burden on others. But I am already supported by others, so this clearly does not apply to me!"

Rav Chaim Tzanzer, zt"l, the Shinover Rav's father, overheard their exchange. Since Rav Chaim Tzanzer also gave an inordinate amount of tzedakah, he responded in defense of his grandson's custom. "People make a big mistake regarding chazal's guideline in this area. Chazal were discussing someone who seeks to find a good cause to which to give money. This person must be careful not to give more than twenty percent.

"But regarding a pauper who approaches a person who has already given twenty percent and begs for money since he is hungry or lacks essential articles of clothing, it would surely never cross anyone's mind that it is forbidden to help this unfortunate. Quite the contrary! One who has the means is obligated to give him food or a garment to protect him from the cold. There is a clear proof to this from Bava Metzia, 62. There we find that if two people were traveling through the wilderness and only one of them has water for his needs, there is a dispute whether they should both drink and die when it runs out, or whether only the man with the water should drink and live."

He concluded, "Although one's own life takes precedence, that is only if there is not enough for both. In a case where there is enough for both of them, the second man is obligated to share even if the water represents more than twenty percent of his capital!"[1] ■

1. גן הדסים, דף ו' ע"א

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