



בבא מציעא ס"ד

## OVERVIEW of the Daf

### 1) R' Nachman's three interest rulings (cont.)

R' Acha the son of Rava asks whether R' Nachman's ruling that a borrower is permitted to keep the additional money the lender gave him applies even if the lender is known to be stingy and does not normally give gifts.

R' Ashi answers that even in this case the borrower is permitted to keep the additional funds and cites a Baraisa that supports his reasoning.

Another unsuccessful challenge to R' Nachman's ruling is presented.

### 2) Payment in advance

R' Kahana reports about Rav's ruling regarding a certain case of one who wishes to pay a farmer in advance.

The novelty of Rav's ruling is explained and a Baraisa is cited that supports this explanation.

Two different conclusions are drawn from the last case of the Baraisa.

The second conclusion is unsuccessfully challenged.

Abaye issues a ruling related to making a payment in advance for wine.

R' Sheravya unsuccessfully challenges this ruling.

**3) MISHNAH:** The Mishnah rules that a lender is not permitted to derive benefit from the borrower's property.

### 4) Living on the borrower's property

R' Yosef bar Minyomi in the name of R' Nachman rules that a lender may not live on the borrower's property even though one is normally permitted to live on the property of another without paying rent.

The Gemara clarifies what R' Nachman teaches that

*(Continued on page 2)*

## REVIEW and Remember

1. Does one returning stolen money have to inform the victim that he is returning stolen money  
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2. Why type of prepayment arrangement did Abaye permit?  
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3. What did R' Nachman teach that was not already taught in the Mishnah?  
\_\_\_\_\_
4. What practice of his father did Rava question?  
\_\_\_\_\_

## Distinctive INSIGHT

*Where the lender lives in a dwelling owned by the borrower*

הלוחו ודר בחצירו צריך להעלות לו שכר

**R**av Yosef b. Minyumi in the name of R' Nachman teaches that if Reuven lends money to Shimon, Reuven is not allowed to live in a house owned by Shimon without paying rent, as this would constitute a form of collecting interest for his having advanced a loan. In fact, this is true even if Reuven has access to other lodging and he is not in need of a rented room, and Shimon is not looking to rent out his dwelling. Although Reuven is not receiving any financial gain and Shimon is not providing any financial benefit, this is still prohibited. This seems to be a case of **אבק ריבית**, as when the loan was given no stipulation was set that the lender expected this consideration as a condition to the loan.

**ר"י מיגש** explains that when the Gemara states "the lender *must* pay rent," it does not mean that the court will force him to pay, as the court only acts to reverse collection of formal interest (**ריבית קצוצה**). Rather, this is a case of rabbinic interest, and in order to be in compliance with his heavenly obligations (**לצאת ידי שמים**) the lender should not accept free usage of the dwelling.

Rambam (Hilchos Malveh v'Loveh 6:2) rules according to this opinion, and, as understood by Gr"a (Y.D. 166:#3), the need for the lender to pay is not to be enforced by the court. It is due even after the lender already resided in the house of the borrower, and it is for the lender himself to pay in order to fulfill his obligations to heaven.

Ramban, however, writes that the intent of the Gemara is that it appears as the lender is collecting interest (**נראה כריבית**) as long as he dwells in a house owned by the borrower, unless he pays as he goes. Because this consideration is only due to the situation's appearing improper, if the lender already lived there without paying and has now departed, there is no longer any need for him to pay back for the rental of his previous stay, even **לצאת ידי שמים**. This is in contrast to other cases of **אבק ריבית**, rabbinic interest, where there is a requirement for the lender to return the money in order to be **יוצא ידי שמים**. The difference is that in general, the lender has collected money or benefit at the expense of the borrower, so he must return it. Here, however, the lender has simply dwelled in a house owned by the borrower, and no financial loss was sustained by the borrower.

Ramban concludes that his explanation seems most reasonable, as the Gemara later (65a) clearly states that the reason the lender should not live in the dwelling of the borrower is that "it appears as he is collecting interest." ■

# HALACHAH Highlight

**Is it permissible for a Gemach to only lend money to paying members of the Gemach?**

כיון דמעיקרא לאו אדעתא דהכי אוזפיה לית לן בה

Since he did not have this in mind when he originally gave him the loan (the additional benefit of living on the borrower's property) is not an issue

**P**oskim discuss the permissibility of setting up a Gemach that is structured in a way that in order to get a loan one has to be a member of that Gemach and pay the monthly Gemach membership fee. Rav Moshe Shternbuch<sup>1</sup> ruled that loans granted under such conditions are considered prearranged loans and are prohibited. Shulchan Aruch<sup>2</sup> ruled that it is prohibited for a lender to stipulate that the borrower must give money to Ploni. Although the additional money is not given to the lender it is nevertheless categorized as interest since the borrower is giving away additional money as a result of the loan. A permitted way to make this type of Gemach is for the Gemach to stipulate that membership, which is given to join the mitzvah of making funds available for those in need and not to secure a future loan, does not assure that the Gemach will grant a loan. It will only accept applications from members but some members may be rejected. If it is structured according to these parameters it would

(Overview. Continued from page 1)

wasn't already taught in the Mishnah.

A second slightly different version of R' Nachman's teaching is presented.

The difference between the two versions is explained.

The Gemara presents an incident in which Rava challenges the practice of his father, R' Yosef bar Chama, of taking the slaves of borrowers who owe him money. ■

be, at worst, only Rabbinically prohibited interest which is permitted when performing a mitzvah.

Sefer Bris Yehudah<sup>3</sup> permits a Gemach to be set up so that it will only grant loans to members. The only restriction is that the Gemach may not demand a payment at the time a member applies for a loan. Rav Shmuel Halevi Wosner<sup>4</sup> also addresses the issue and suggests another approach. If a Gemach is going to be formed with members paying a monthly fee the following stipulations must be in place. The bylaws must stipulate that membership is not a guarantee for a loan. Additionally, it must be understood that one who takes a loan is not obligated to continue his membership in the Gemach. Lastly, there has to be an option for the Gemach to grant loans to non-members. ■

1. שו"ת תשובות והנהגות ח"א סי' תפ"ז.
2. שו"ע יו"ד סי' קס"ד סעי' י"ד.
3. ספר ברית יהודה עקרי דינים פ"ז סעי' ל"א.
4. מובא דבריו בקובץ מבית לוי ח"י"ד עמ' ל"א. ■

# STORIES Off the Daf

**A Loan with Interest**

הלוהו ודר בחצרו צריך להעלות לו שכר

**T**oday's daf discusses transactions that are prohibited because they are, or appear to be, interest.

The poverty of yeshivah bochurim of earlier generations was immense. By the time the zeman was over most had not one penny to pay their traveling expenses home. In Mir, the administration had a system to deal with this problem. The bochurim would take a loan from Rav Yerucham Levovitz, zt"l, the Mashgiach, and repay it at the beginning of the new zeman.

At the end of the first zeman, Rav Shimon Schwab, zt"l, found himself

without money to travel home and asked the mashgiach for a loan. Rav Yerucham gave him the money and Rav Schwab naturally thanked him.

To the young man's surprise, this common courtesy upset the normally soft-spoken mashgiach. "Don't you know that it is forbidden to say thank you for a loan?" Rav Yerucham asserted. "Do you think that because of your 'yekkish' mentality you are permitted to violate an explicit halachah in Shulchan Aruch?"

At the end of his second zeman, Rav Schwab once again required a loan to get home. But this time when he received the money he understood not to thank the mashgiach.

To his surprise, the mashgiach, a mechanech par excellence, was once again upset at him. "Aren't you

ashamed? You receive a loan and you fail to show any interest in thanking me? Does this not reveal a lack of the most basic derech erez and manners?"

This time, Rav Schwab was at a loss to understand what the mashgiach meant. "Last time the mashgiach said that expressing gratitude is a blatant violation of the Shulchan Aruch and must be suppressed. And now the mashgiach states that a failure to say thank you betrays a lack of basic menschlichkeit?"

Rav Yerucham explained. "It should be apparent on your face that you would like to say thank you since it is only common decency to thank another for any kindness, but you refrain from doing so only because the Shulchan Aruch forbids it." ■

1. עלינו לשבח, ח"ו, ע"ר צ"ז