

OVERVIEW of the Daf

1) Se'ah for a se'ah

A Baraisa discusses the issue of loaning a se'ah for a se'ah.

The Baraisa's ruling is unsuccessfully challenged.

2) **MISHNAH:** The Mishnah discusses the issue of loaning a se'ah of produce for another se'ah of that produce.

3) Se'ah for a se'ah

R' Huna and R' Yitzchok argue whether a borrower who has a quantity of produce can borrow a larger quantity of that produce. A Baraisa is cited that supports R' Yitzchok's position that it is permitted.

4) Hillel's position

R' Nachman in the name of Shmuel rules in accordance with Hillel but the Gemara rejects it.

R' Yehudah in the name of Shmuel asserts that Chachamim, in contrast with Hillel, allow loan and pay back loaves without specifying their value.

R' Yehudah in the name of Shmuel mentions the different prohibitions that could be violated when people are particular with each other.

R' Yehudah in the name of Shmuel asserts that Torah scholars may lend to one another with interest since it is assumed that the additional amount is a gift.

A related incident is recorded.

R' Yehudah in the name of Rav asserts that one should lend to children with interest to give them a taste of paying interest but the Gemara rejects this ruling.

5) **MISHNAH:** The Mishnah begins with a discussion of the permissibility of two people exchanging services with one another. The Mishnah also mentions the prohibitions of paying interest before the loan, after the loan and verbal interest. The Mishnah concludes by enumerating the people who violate prohibitions when a loan with interest is made.

6) Verbal interest

A Baraisa elaborates on the prohibition against verbal interest.

7) Violators of a loan made with interest

(Continued on page 2)

REVIEW and Remember

1. Why is sea'ah for a se'ah prohibited?

2. Why is it prohibited for two people to exchange different services?

3. Why are those who lend money with interest considered foolish?

4. Why is it important to have witnesses to a loan?

Distinctive INSIGHT

Late" interest

ויש ריבית מאוחרת. כיצד וכו' לזה הימנו והחזיר לו את מעותיו והוא משלח לו ואומר לו בשביל מעותיך שהיו בטילות אצלי, זו היא רבית מאוחרת

The wording of the Mishnah suggests that "late" or "delayed" interest is prohibited when the borrower explicitly says, "I am giving this to you because you lent me money earlier and which I paid back." But, the borrower is permitted to send a gift to his lender, as long as he does not explain that it is being given due to the loan which was extended. This is the ruling of the Tur (Y.D. 160). This is also how Rashi and Tosafos both understand the case of Ravina (73b) who used to lend money, and after the loan was paid, the borrowers used to bring him gifts of wine. Rav Ashi permitted it, because no condition was ever set ahead of time that wine had to be given, and no mention of the earlier loan was made when the wine was presented.

Some Rishonim there note that although "late" interest is not a problem (when no mention of the earlier loan is made), the case of Ravina and the wine should still be a problem because if the gift is offered at the time of payment, it should be rabbinically prohibited, as the borrower is paying back more than he received. The Rishonim explain, however, that the case of Ravina must be where the wine was not presented at the moment of repayment of the loan, but at some time later.

The conclusion, therefore, is that "late" interest is allowed when the gift is not stated as being given in appreciation of the earlier loan, and only if it is not given at the time of repayment.

Ritva (73b) holds that "late" interest is prohibited even if the borrower does not say that the gift is a consideration of the earlier loan. He holds that when the Mishnah says that *the borrower said* that the gift was due to the loan, these words are not necessarily spoken by the borrower, but even if he is thinking it in his heart. If the only reason he is giving the gift is that he received the loan, his gift giving is prohibited. This is the opinion of Rambam (Hilchos Malveh 5:11), as understood by Tur (ibid.). Rambam writes that "late" interest is prohibited when the gift is given "because of the loan," whether or not this intent was verbalized or even if it just remained in the mind of the borrower.

Mishna L'Melech adds that regarding "late" interest, there is a difference between how the lender and the borrower conduct themselves. The lender may accept "late" interest, as long as the borrower does not say that it is because of the earlier loan. The lender does not have to suspect that the borrower is doing it improperly by thinking about the loan. The borrower, however, can only give the gift if he is actually not associating it with the loan. ■

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HALACHAH Highlight

Lending without the presence of witnesses

כל מי שיש לו מעות ומלוה אותם שלא בעדים

Anyone who has money and lends it without the presence of witnesses

The Gemara's ruling that one may not lend money without the presence of witnesses is recorded in Shulchan Aruch¹. Despite being an explicit undisputed ruling the custom developed that people are not particular to loan money in the presence of witnesses and later authorities offer a number of explanations to explain this practice. Many of the commentators cite the comments of Ritva² where he writes, regarding a different matter, that the Gemara does not mean there is an actual prohibition, neither Biblical nor Rabbinic; rather the Gemara is expressing a pious practice similar to the Gemara (our daf) that states that one is prohibited to lend money without the presence of witnesses. It is evident from Ritva's comment that he maintains that there is no actual prohibition but the difficulty with this approach is that the Gemara says that the lender violates the prohibition of לפני עור.

Erech Shai³ offers an explanation that is based on what appears to be unnecessary words in the Gemara. The statement of R' Yehudah in the name of Rav begins with the phrase, "Anyone who has money and lends it without witnesses etc." Obviously, the discussion relates to a person who has money because those who don't have money can not give loans to others. Why then does R' Yehudah in the name of Rav begin his statement with such an obvious premise? He explains that the restriction against lending money without the presence of witnesses is limited to those who have money set aside to lend to others. Regarding a person who regularly lends money to others there is a concern that the borrower may deny having received the loan, hoping the lender would not recall but that concern does not apply to those people who loan money only occasionally.

STORIES Off the Daf

Without proof

"ומלוה אותן שלא בעדים עובר משום לפני עור לא תתן מכשול..."

Rav Dovid Heller once mentioned an interesting leniency to the Brisker Rav, zt"l. "It is clear in Bava Metzia 75 that one who lends money to his friend must do so in front of witnesses or write up a loan document. One who fails to do so violates the prohibition of לפני עור.

"But I saw in the Choshen Aharon a brilliant way around this prohibition. He explains that those who lend money with-

out a witness or document rely on the proclamation of Rav Nachman that one who denies a loan must swear. They hold that only before this decree was it actually prohibited to lend money without proof since the borrower may deny he borrowed the money. But now that he must swear in any event, and we do not generally swear, no one would ever deny borrowing in court."

But the Brisker Rav disagreed. "The Rambam rules like the decree of Rav Nachman. Nevertheless, he says explicitly that one who lends without witnesses or a document violates the prohibition of לפני עור. Clearly, the Rambam did not hold that the entire proclamation was only before

Rav Nachman's decree."¹

Once, Rav Yosef Chaim Sonnenfeld, zt"l, was asked if a person with money but no paper to write a document and no witnesses was discharged of any obligation to lend money. "Obviously," replied the Rav. "How can you force him to violate לפני עור?"²

But the Chazon Ish, zt"l, would lend money without any witnesses or a loan document. When someone asked him how he could go against a clear Gemara he replied, "The Beis Yitzchak is lenient regarding this matter..."³

1. עובדות והנהגות לבית בריסק, ח"ד, ע' נ"ב
2. חכמת חיים, ע' קנ"א
3. מעשה איש, ח"יב, ע' קנכ"ח

(Overview...continued from page 1)

Abaye enumerates the different prohibitions violated by the people involved in setting up a loan with interest.

A Baraisa notes the foolishness of those who lend money with interest.

8) Pressing a borrower for money he does not have

Two statements are presented related to the prohibition against pressing a borrower for money he does not have.

9) Loaning without witnesses

R' Yehudah in the name of Rav and Reish Lakish emphasize the necessity of having people witness a loan.

A related incident is presented.

Another Baraisa mentions the importance of loaning money in the presence of witnesses.

The Gemara gives three examples of "one who acquires a master over himself" mentioned in the Baraisa.

הדרן עלך איזהו נשך

10) MISHNAH: The Mishnah discusses the halachos of employers and employees who deceive one another and employees who quit in the middle of their employment. ■

Teshuvos Divrei Malkiel⁴ writes that people rely on the opinion expressed by Ritva that it is only a pious practice to refrain from lending money without witnesses and he proves this assertion from the Gemara. The Gemara reports that R' Ashi tested to see whether Ravina would be careful concerning this halacha. If it was an outright prohibition why would R' Ashi have thought that Ravina would not be careful to avoid violating a prohibition? It must be, concludes Divrei Malkiel, that it is only a pious practice and R' Ashi was testing to see if Ravina is particular even regarding pious practices. ■

1. שו"ע חו"מ סי' ע" סעי' א'
2. ריטב"א מגילה כ"ח: ד"ה תיתי.
3. כך ש"י חו"מ סי' ע" סעי' א'.
4. שו"ת דברי מלכאל ח"ד סי' קל"ו והנה בזה"ו. ■