PIRCHEI SHOSHANIM SHULCHAN ARUCH LEARNING PROJECT

Ribis – Yoreh Deah
Shiur 1

Rehov Beit Vegan 99, Yerushalayim 02.992.0755
164 Village Path, Lakewood NJ 08701 732.370.3344 fax 1.877.Pirchei (732.367.8168)

Shiur 1

Siman 161, Seif 1

1. One may not borrow any object on condition that he will return more than the amount that he borrowed. Even if the additional amount that is given is valued at less than one pruta1 it is nonetheless prohibited. However, we cannot force the lender to return the additional amount if its value is less than one pruta.

Analysis of the Text

One who cursorily reads the **Shulchan Aruch** may miss one of the three rulings being issued. The key word in the first ruling is "Any object." We will see in the ensuing discussion that the issue of whether land and certain other objects are included in the prohibition is the subject of much controversy amongst the **Rishonim** who comment on the **Gemara**. The **Shach**[2] and the **Gra**[3] already point out that the **Shulchan Aruch** is ruling that we should follow the strict opinion, which includes even land in the **Biblical** prohibition.

The second ruling of the **Shulchan Aruch** is that there is no minimum amount needed in order to violate the prohibition of *ribis*.

The third ruling is that a *bais din* will only force a lender to return *ribis* if the amount received was greater than one *pruta*.

The following discussion will serve to provide us with the background that is necessary in order to:

---

[1] A pruta was the smallest coin, which was in use in the time of the Gemara. Its precise value fluctuates with the price of silver. Its current value is approximately one U.S. cent. We must remember that the cent once had far greater purchasing power than it does today.

[2] Note 1.

[3] Note 1.

1. Understand the significance of the **Shulchan Aruch's** rulings
2. Understand why the **Shulchan Aruch** placed these three halachas together
3. Enable us to study the commentaries on this *seif*.

Background – What is Included in Ribis?

The central goal of *seif* 1 is to identify precisely the items that are included in the prohibition of *ribis*. The **Gemara** seems to include all items in the prohibition. However many **Rishonim** maintain that there are a number of exceptions. The controversy surrounding this issue is discussed in *seif* 1. The controversy has broader implications for our general understanding of the prohibition of *ribis*.

One of the principle sources of the opinion that there are items not included by the **Torah** in the prohibition of *ribis,* is **Tosefos.**[4] We will begin by recording the relevant portion of **Tosefos.**

Tosefos is discussing the *posuk*[5] that says, "You may not give money or food or any other item as interest."

Question: Why did the **Torah** specify money and food when writing the prohibition on giving interest since the Torah continues by including everything in the prohibition? The source that every type of item is included in the prohibition is the words, "…any item which is given as interest."

Answer: The Torah wishes to write a *klal prat uklal*.[6] The Torah begins the *posuk* by writing, "You shall not give interest to your fellow Jew." This general statement is considered to be a

[4] Baba Metzia 61 a, beginning words im aino inyan.

[5] Devarim 23, 20.

[6] This is one of the thirteen rules with which one can derive halachas from the Torah. The meaning of klal is a word or phrase, which encompasses many items, situations, etc. The prat are the specific examples, which are cited by the Torah. Thus, whenever the Torah writes a general expression, which is followed by specific example(s), which is in turn followed, by a general expression we have a klal prat uklal. The rule is that the Torah wishes to include other items, which are similar to the specified items, in the Torah's statement. However, there are items, which are somewhat dissimilar to the specified items, and these are excluded by the Torah.

In the example given by Tosefos the general statement includes all items in the prohibition to give interest. When the Torah specifies food and money it wishes to limit the prohibition to items, which are similar to food and money. Tosefos rules that the items which are not similar and, therefore, not included are immovable objects and amounts with are worth less than one pruta.

klal since it includes all items in the *ribis* prohibition. The **Torah** writes the *prat* by specifying food and money. In writing the general phrase, "Anything that you give as interest," the **Torah** writes a second *klal*.

The significant features of the specified items are that they are movable and have inherent value. Two items that do not possess these features are:

1. Immovable objects.
2. Items that are worth less than one *pruta*.

The reason for the latter is that items worth less than one *pruta* do not possess inherent value since the **Torah** considers them to be negligible.

Proof: The **Gemara**[7] remains with a doubt if one violates the prohibition on libel[8] if he hires witnesses by paying them an amount that is less than a *pruta* or with immovable objects. The reason for this doubt is that there is a direct relationship[9] between the prohibition of *ribis* and the prohibition of libel. If these items are not included in the prohibition of *ribis* we can understand the **Gemara's** doubt concerning libel.

Question: The **Gemara**[10] states that the conditions whereby a seller may repurchase a house located in a walled city[11] within a year of the original sale would have constituted **Biblical** *ribis* had the **Torah** not specifically sanctioned this action. In this case, the interest is the fact that the purchaser lived in the house that he purchased. If the hypotheses that immovable objects are not included in the prohibition of *ribis* are correct then this situation would never have involved *ribis* (since use of a house is analogous with receiving a house on a temporary basis).

---

[7] Kesubos 46 A.

[8] The act of libel, which is discussed by the Torah, is perpetrated when one brings two witnesses who testify that a girl had relations between the time of her betrothal and her marriage with a stranger.

[9] This is stated by the Gemara in Kesubos and is based on the word semo which is written by both.

[10] Erchin 31 A.

[11] The rule is that the seller has the right to repurchase the house at the same price for which it was sold. The interest is that the purchaser originally paid and eventually received back the identical amount of money, which thus constitutes a loan. The interest is the use of the house which the purchaser-lender used until the repurchase-return of the loan.

Answer: In the case of a house in a walled city, the item, which was borrowed and returned, was money. The immovable object was only the additional amount submitted to the lender-purchaser. The case that the **Torah** perhaps excludes from *ribis* is where the item, which was lent and returned, is also immovable.

Commentary

The terminology that Tosefos uses in his conclusion indicates[12] that he is uncertain of his entire thesis. However there are other **Rishonim**[13] who are confident that it is correct.

The fact[14] that **Tosefos** in his concluding answer writes only "that the **Torah** permits (and not that the *ribis* is totally permitted)" seems to indicate that **Tosefos** maintains that the **Rabbonon** certainly forbade *ribis* of immovable objects or negligible amounts. However, there are commentaries[15] that understand that **Tosefos** maintains that the Rabbonon did not forbid this *ribis* either.

The **Ran**[16] discusses this issue as well. He maintains that certainly the **Rabbonon** forbade the borrower from giving immovable objects. His derivation is based on the fact that the **Mishna**[17] rules that a borrower may not even say something nice to his lender. (This prohibition is known as *ribis devarim*.) If one gives an immovable object, it is more helpful to the lender than saying something nice, and therefore the Rabbonon must forbid it at least (We see thus that the Ran maintains that *ribis* devarim is only forbidden by the Rabbonon. There are others who maintain that the **Torah** forbade this type of *ribis*.).

---

[12] This observation is made by the Bais Yosef and Bach in their commentary on the Tur in the beginning of Siman 161 (page373).

[13] The meforshim mentioned in the previous footnote cite the Rosh. The Bach cites the Nimukai Yosef as well.

[14] This is an observation of the Avnai Nezer as recorded in his commentary on Yoreh Deah, siman 162.

[15] The Sha'ar daia in his commentary to our seif.

[16] Commentary to the Rif on Kesubos on page 16 B.

[17] Baba Metzia 75 B.

The Sha'ar Daia

The **Sha'ar Daia** explains how those who disagree with the **Ran**[18]**,** and maintain that even the **Rabbonon** did not forbid the lender from receiving an immovable object as *ribis;* deal with the question of *ribis devarim*. He argues that *ribis devarim* is forbidden if one lends and returns money since we are then in a loan situation. However, if the item, which is loaned and returned, is immovable, we are not in a loan situation at all. One only violates the prohibition of *ribis devarim* when he is in a loan situation.

He further argues that one can use this reasoning to understand the distinction that **Tosefos** makes between a loan of money with interest of immovable objects and a loan of immovable objects. When one loans money and fixes an immovable object as *ribis* the loan is forbidden because it contains *ribis devarim*. However, when one borrows and returns an immovable object there is no prohibition on *ribis devarim*. Therefore even though one returns more of the immovable object, he does not violate any prohibition.

The **Sha'ar Daia** notes that if this view is correct one must maintain that the Torah forbids *ribis devarim*. His derivation is based on the fact that **Tosefos** explains the **Gemara,** which says that the Torah would have forbidden use of the house by on a cash loan. According to this view, the *ribis* is only *ribis devarim.* Therefore *ribis devarim* must be **Biblically** prohibited.

The **Bach** agrees with the **Sha'ar Daia** that the **Rosh**[19] permits totally a loan of an immovable object where the interest is an immovable object as well. However, there are others[20] who maintain that the **Rosh** also agrees that the **Rabbonon** forbade giving extra land in the context of a loan of immovable objects.

Embedded Movable Objects

According to the opinions that maintain that a loan of land is not included in the prohibitions of *ribis,* we must investigate how the *Halacha* views moveable objects, which

[18] These include that Rosh, Tosefos and the Rivosh according to the Sha'ar daia.

[19] According to the Bach, the Tur and Nemukai Yosef are of this opinion as well.

[20] The Mishna Lemech.

are fixed into the ground.[21] We should note that there are *halachas* where these objects are equivalent[22] to the ground itself and others where they are not.[23]

The **Acharonim**[24] observe that **Tosefos** maintained that if we permit a loan where an immovable object is given as interest we should permit the sale of a house in a walled city as well. In the latter situation, the interest consists of the use of the house. A house is not a piece of land. Rather it consists of moveable objects (stones, wood, etc.), which have been embedded in the ground. These **Acharonim** cite **Tosefos** as proof that the *Halacha* equates moveable objects embedded in the ground with the ground itself when we are concerned with the prohibition of *ribis*. The **Ketsos Hachoshen**[25] also takes note of the fact that **Tosefos** considers a house to be an immovable object.

According to the **Shach**[26] however, one cannot use a house to make generalizations on other objects that were once movable and later implanted in the ground. The reason is because the **Shach** maintains that a house is not equivalent to an object that was implanted in the ground. A house was not an object before it was implanted into the ground. Therefore it is treated like the ground itself and one cannot generalize to other objects which were objects before becoming implanted in the ground. Thus, according to the **Shach,** the issue of how to view an object that became implanted in the ground is still an open issue.

A Third Category - Embedded Movable Objects

Many **Acharonim** are perplexed by the fact (if one does not follow the **Shach's** opinion) that in the context of *ribis* an object implanted in the ground is treated like the ground and yet in other situations, we classify these objects along with moveable objects.

---

[21] This is called tolush ulebesof chibro in the literature. The Gemara in Baba Basra 65 B records a general dispute whether this class of objects is classified as ground or as a movable object.

[22] According to many opinions one may slaughter with a knife which was embedded in the ground even though one cannot use ground itself.

[23] Idol worship as we shall see in the next section.

[24] R. Akiva Eiger in his notes on Shulchan Aruch records that the Sha'ar Hamelech brought the proof which follows.

[25] Choshen Mishpat, siman 95, note 3.

[26] Chosen Mishpat, siman 95, note 8.

One example of the latter occurrence is idol worship. If one worships a movable object the **Torah** forbids using the object. However if the object is immovable (The **Torah**[27] writes that if one worships a hill, the hill does not become forbidden.) it retains its previous status. The *Halacha* is that a house does not become forbidden even if it is worshipped;[28] that is to say that we classify a house along with immovable objects.

Many **Acharonim**[29] hypothesize that an object which has been implanted in the ground is treated neither like the ground not like an immovable object. Rather, it is an independent category that is judged on its own merits. According to these **Rishonim,** in the case of *ribis* the **Torah** only forbids an object that is movable in a practical sense (since food and money are physically moveable). An object that has been implanted in the ground is not movable. Therefore, it is excluded from the prohibition of *ribis*.

At the same time, an object that has become implanted in the ground is not actually ground itself. In its discussion of idolatry, the Torah only excludes ground from the rule prohibiting anything that has been worshipped. (We mentioned earlier that the **Torah** only permitted the hill itself.) Since an object that is implanted is not ground, it will become prohibited if it is used as an idol.

What Constitutes a Loan of Land

The **Rosh**[30] follows the approach of **Tosefos** and expands somewhat. He writes, "Even though our section of **Gemara**[31] records a *drasha* which includes all items in the prohibition of *ribis* there are exceptions. If one lends land in return for a larger amount of land he does not violate the prohibition. An example is where one lends ten grape vines laden with grapes in return for eleven grape vines laden with grapes."

---

[27] Devarim 12, 2. The Gemara in Avoda Zara derives the fact that a hill does not become forbidden from the fact that the Torah only forbids the idols which are positioned on the hill which implies that the hill itself is not forbidden.

[28] Gemara in Avoda Zora 47 B.

[29] The Urim Vetumim in Choshen Mishpat, siman 95, note 3 states these hypotheses. The Otzer Meforshei Hatamund brings the Bais Aharon as another source.

[30] Siman 1.

[31] Baba Metzia 61 A.

After continuing bringing the proof and derivation of **Tosefos,** the **Rosh** discusses two other cases that are similar to land. These cases are slaves and loan documents. Recall that **Tosefos** derived the exception on land from a *klal prat uklal*. The objects specified by the **Torah** are movable and have intrinsic value. The derivation of a *klal prat uklal* serves to limit the scope of the prohibition of *ribis* to items similar to the specified items. Therefore we only include moveable items that have intrinsic value in the prohibition of *ribis*..

Slaves and Loan Documents

These are other situations[32] where the **Gemara** limits the scope of a *Halacha* to items which are movable and have intrinsic value. In these cases, we exclude not only land, but even slaves and loan documents. The reason these two items are generally classified along with land is because the **Torah**[33] compared slaves with land, and loan documents can be used as a vehicle to enable the lender to collect land. Thus the **Rosh**[34] is moved to discuss these two items in the context of *ribis* as well. He writes, "One cannot exclude slaves and loan documents from the prohibition since the **Torah** forbade *ribis* only in the context of a loan. The definition of a loan is that the borrower can consume the article that was loaned and return something else in its place. However, when one allows someone to only use his articles and return the very article which was loaned; it falls into the category of rentals, where the **Torah**[35] does not forbid *ribis."*

The Pilpulo Charifto

The **Pilpulo Charifto**[36] explains how the example that the **Rosh** gave to illustrate a loan of land fits into the **Rosh's** rules. The obvious difficulty is that if one allows someone to use his land and return something extra he is once again in a rental situation and not a loan situation, since he is returning the very item that was borrowed. The Pilpulo Charifto explains that it is precisely for this reason that the **Rosh** chose grape vines as his illustration. In this situation, the borrower receives the amount of grapes borne by ten vines as a loan. The grapes are consumed, which therefore creates a loan situation. Since

[32] Examples are the Laws of Shomrim where the derivation is found in Baba Metzia 57 B and Laws of Swearing where the derivation is found in Shavuos 42 B.

[33] Vayikra 25, 46.

[34] Ibid.

[35] We should note the stress on the word "Torah" because the Rabbonon do forbid ribis in the context of rentals.

[36] Note 4 in his commentary on this section of the Rosh.

the borrower must return the amount of grapes borne by eleven vines, he is returning a greater amount than the amount which was borrowed and consumed.

The Bais Yosef Does Not Understand the Rosh

The **Bais Yosef**[37] is troubled by the **Rosh's** exclusion of slaves and loan documents from the rules of **Tosefos.** He agrees that the **Rosh** has given us a reason why one cannot consider the case where one lends a slave and received that very slave plus another slave in return. However,[38] he questions why we cannot use the *klal prat uklal* to exclude one who lends one slave on condition that he will receive two different slaves in return. In this case, one is not dealing with a rental since his original slave is not returned.

Similarly, the **Bais Yosef** asks that it would seem that the *drasha* of **Tosefos** and the **Rosh** could be applied to the case where one lends a loan document requiring the borrower (the borrower mentioned in the loan document, not the borrower of the loan document) to return one hundred coins, on condition that he will receive in return a loan document, which requires the borrower (mentioned in the loan document) to return two hundred coins. The loan document, which requires the borrower to return two hundred coins, is worth more than the loan document, which requires the borrower to return one hundred coins (if all other conditions are precisely equal). Therefore, it would seem that we are in a *ribis* situation since the borrower is required to return more in value than he originally borrowed and one would require the *klal prat uklal* to exclude this case from the prohibition of *ribis* just like we excluded ground.

What the **Bais Yosef** is asking in both of these situations is not that these cases should be forbidden but that the *drasha*, stated by **Tosefos** and the **Rosh**, should serve to exclude them from the prohibition of *ribis*. The **Rosh** seems to say that one cannot use the *drasha* to exclude slaves and loan documents and the **Bais Yosef** is questioning the validity and rationale of this statement.

---

[37] At the beginning of his commentary in the Tur, siman 161 (page 373).

[38] This is the way the Pilpulo Charifto in note 4, ibid, and the Taz in note 1, on siman 161 understand the Bais Yosef. The Bach in his commentary on theTur seems to have understood the Bais Yosef's question differently.

The Chavos Da'as Responds to the Bais Yosef

The **Chavos Da'as**[39] offers a basic principle concerning the entire prohibition of Biblical *ribis* in order to explain the brief answer of the **Taz.**[40] His principle is that one does not violate **Biblical** *ribis* unless he is in a loan situation. The contrast to a loan situation is classified as a sale. For example, if one lends someone an object with the stipulation that the borrower will pay him in cash or even give him a different object after a fixed period of time, there is no **Biblical** violation of *ribis* even if the amount which must be returned turns out to be worth more than the amount which was borrowed. The reason is because one who returns a different object is in a sale situation and not in a loan situation. When one does return the same amount and only the additional amount is a different type, then this is classified as a loan and the *ribis* violation is **Biblical.**

The underlying reason why there is a difference between a sale and a loan is that in a loan situation, it is obvious that the lender is receiving more than he lent. In the case of a sale, even if one can compute that the amount returned is greater, it is not obvious since a computation is required.

Biblical Ribis-Free Objects

The **Chavos Da'as** takes this logic one step further and differentiates between the types of objects loaned. If one lends a bushel of wheat for two bushels the fact that an additional amount is being returned is obvious since there is a fixed price for a bushel of wheat. However, if one lends one slave for two slaves the additional amount is not obvious. Slaves are not uniformly priced since one must appraise slaves on an individual basis in order to calculate the value. Therefore, even though one can say that he lent one slave on the condition that two slaves will be returned, what he really did is that he traded one slave for two.

The same argument applies to land and to loan documents. In these cases, one must first appraise the value of the land and the loan documents. There is no fixed price for land or loan documents. Therefore, even if one lent one slave in order to receive two in return and even if the two slaves are indeed worth more than the one slave, nevertheless, the *ribis* which is involved would not be **Biblical** even in the absence of a *klal prat uklal.*

[39] Note one in the Biyurim on our siman.

[40] Note 1.

This argument explains why the **Rosh** stated that there is no need to include slaves and loan documents in the **Torah's** *drasha*, which excludes land from the prohibition of *ribis* since we never, have a situation that could possibly involve **Biblical** *ribis*.

The **Chavos Da'as** also uses this principle to explain why the **Rosh** and **Tosefos** chose to illustrate the situation where one lends land by choosing the case where one lent ten vines loaded with grapes in return for eleven. The obvious example where one lends one measure of ground for a larger amount would not work since one needs to appraise land, since size does not determine price. However tree-loads do have a fixed price. Therefore a loan involving tree-loads would have been included in the prohibition of *ribis,* were it not for the fact that the **Torah** excluded land from the prohibition.

We should add the comment that the **Chavos Da'as** is only discussing **Biblical** *ribis*. In all cases there is a violation of **Rabbinic** *ribis* since the **Rabbonon** forbade even sales where the customer pays more because he does not pay immediately upon receiving the goods.

R. Elchonon Wasserman Agrees with the Chavos Da'as

We should note that **R. Elchonon Wasserman,**[41] **hy"d** offers almost the same interpretation as the **Chavos Da'as.**

The difference between him and the **Chavos Da'as** concerns only the issue of why it is crucial that one return the same object in order to violate **Biblical** *ribis*. According to the **Chavos Da'as** the reason is because only in that situation it is obvious that one is returning more than he borrowed. According to **R. Elchonon**, the reason is because this is the distinguishing feature of a loan. A loan requires the borrower to return the same type of object as the one he borrowed. A sale or other obligation does not contain such a requirement.

Rishonim Who Disagree with Tosefos

There are many **Rishonim** who disagree with **Tosefos** and the **Rosh**. The **Bais Yosef** records that **R. Yerucham** writes that the Rashba disagrees. However, in our version of the **Rashba**[42] he actually agrees with **Tosefos.**

[41] Kovetz Shiurim, volume 2, Baba Metzia, section 21.

The **Ritva**[43] records that his Rebbe disagreed with **Tosefos**, but he does not offer any direct proof. His argument is merely that if there were objects that are not included in the prohibition of *ribis,* this fact should be recorded in the fifth *perek* of **Baba Metzia** (since this is the section of **Gemara** that deals with *ribis*). **Tosefos** was only able to derive his rule from a deduction of a **Gemara** in **Kesubos,** which does not directly discuss the laws of *ribis*. The **Ritva** continues by conjecturing that the logical basis for the **Gemara's** exclusion of payments for libel, which consist of ground or negligible amounts of money, is merely logic since this is not the way one usually hires someone to perform a task.

The **Mishna Lemelech**[44] maintains that the **Rambam** disagrees with **Tosefos**. and does not learn that there is a *klal prat uklal*. Therefore, even land and amounts less than a *pruta* are included in the *ribis* prohibition of the **Torah.**

The Rama's Opinion

The **Tur**[45] records that the **Rama** (a Spanish **Rishon** not to be confused with the **Ramo**, whose comments are printed in the **Shulchan Aruch**) rules that the **Torah** forbids *ribis* even in cases where the amount designated as interest is worth less than one *pruta*. However the **Rama** adds that if the borrower paid this amount, he cannot sue to have it returned.

The commentaries are in doubt whether the fact that the **Rama** rules that one violates the **Torah's** prohibition of *ribis* even when giving less than one *pruta* as *ribis* indicates that he disagrees with **Tosefos** in case one gives land as *ribis*. The **Mishna Lemelech**[46] records that the **Gedulai Teruma** maintained that indeed the **Rama** disagrees with **Tosefos** even concerning land given as *ribis*. His argument is based on the fact that both "land" and "less than one *pruta*" are derived from the same source. Therefore, if the **Rama** disagrees with **Tosefos** concerning less than one *pruta* he necessarily also disagrees with **Tosefos'** opinion concerning one who gives land as *ribis*.

---

[42] Chiddushim on Baba Metzia 61 a paragraph with beginning word menayin.

[43] Commentary to Baba Metzia 61 a paragraph with beginning words Raveno omar.

[44] Commentary to Rambam (Malve Velove 6, 1).

[45] Ibid

[46] Commentary to the Rambam, Hilchos Malve Velove (6, 1).

The **Mishna Lemelech** disagrees with the **Gedulai Teruma** and conjectures that the **Rama** does not disagree in the case of land. His rationale is that perhaps the **Rama** agrees with **Tosefos,** that one cannot include less than a *pruta* or land in the prohibition of *ribis* based on the *pesukim*. However we have a general rule that even when the **Torah** specifies a fixed minimum amount needed to violate the exact prohibition that is written in the **Torah,** which does not imply that less than the fixed amount is permitted.[47] Therefore the **Rama** basically agrees with **Tosefos** that "land" and "less than a *pruta*" are not specifically included in the Torah's prohibition. The only reason he rules that one may not give less than a *pruta* as *ribis* is because of the general principle.

In fact, he thinks that perhaps **Tosefos** would agree with the **Rama** because **Tosefos** only states that the *pesukim* written in the Torah concerning *ribis* do not include less than one *pruta*. However that does not preclude the possibility that ribis that is less than one pruta can be included in the general prohibition against performing an act forbidden by the **Torah** on an amount that is less than the minimum required amount (i.e. chatsey shiur). He agrees however, that the **Tur** does understand **Tosefos** as disagreeing with the **Rama.**

The Ruling of the Shulchan Aruch Concerning Land

As we noted at the outset, the **Shulchan Aruch** rules that we should follow the strict opinion. Therefore we do not permit loans of land, etc. which provide for an additional amount of land to serve as interest. The expressions that are used by the **Bach** and **Shach**[48] indicate that the **Shulchan Aruch** does not rule decisively against **Tosefos.** He merely maintains that we cannot be certain enough that Tosefos is correct in order to follow their lenient opinion. This is significant in the event that one violated the **Shulchan Aruch's** ruling and gave an extra amount of land as interest on a loan of land (as described earlier). If the prohibition is **Biblical,** the lender must return the additional amount. However, if it is not **Biblical**, one could not force the lender to return it. The **Divrei Sofrim**[49] rules that since the **Shulchan Aruch** is not certain which opinion is authoritative, the borrower cannot force the lender to return the *ribis* in this situation.

---

[47] This is based on the famous principle, "Chatsey shiur osur min hatorah." The Gemara in Yuma 73 B discusses this at length.

[48] Note 1.

[49] Note 1. See also the Aimek Davar notes 10 and 11.

The **Gra**[50] in his brief comment brings forth two significant points.[51].

1. He seems to maintain that the opinion of **Tosefos** and the **Rosh** is authoritative.

2. He maintains that even **Tosefos** and the **Rosh** agree that these loans were prohibited by the **Rabbonon** since they cannot be less prohibited that *ribis devarim.*[52] (Recall that this is the opinion of the Ran as we discovered earlier in this lesson.)

The Ruling of the Shulchan Aruch Concerning Less than One Pruta

The **Shulchan Aruch** follows the opinion of the **Rama** and forbids a loan where the borrower is required to give even an amount that is less than a *pruta* as *ribis*. As we saw earlier, the **Mishna Lemelech** and **Gra** both understand that the **Rama** agrees that the **Torah** did not specify that such a minute amount is included in the *ribis* prohibition. It is only forbidden due to the general principle that even amounts less than the minimum amount of a prohibition is forbidden.

The **Shulchan Aruch** continues that even according to this opinion, *bais din* does not force a lender to return the *ribis* if it was such a small amount. This contrasts with the general situation where *bais din* does force the lender to return **Biblical** *ribis*.

The **Shach**[53] and **Gra**[54] both rule that *bais din* does not have the authority in this situation to force the lender to return the *ribis*. This is in opposition to the **Levush**[55] who rules that *bais din* does have the authority to force return of even such a minute amount. According to the **Levush,** the only reason the **Shulchan Aruch** states that *bais din* does not exercise

---

[50] Note 1.

[51] The Divrei Sofrim in the Birur Halacha understands the Gra in this manner as well.

[52] A borrower may not even say something nice to his lender if it is due to the loan.

[53] Note 3.

[54] Note 3.

[55] His opinion is recorded by the Shach.

this authority is that *bais din* is not required to trouble itself with such minor amounts. Obviously, according to the **Levush**, the lender personally could retain even such a small amount.