

PIRCHEI SHOSHANIM SHULCHAN ARUCH LEARNING PROJECT©

Ribis – Yoreh Deah

Shiur 21

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Siman 173, Seif 1-3

Introduction

We saw in the previous lesson that the **Mishna**¹ rules that if a seller quotes two prices (one for cash and one for credit) the customer may not purchase on credit at the higher price. We saw that this is an issue of the **Rabbonon** since the *ribis* only entered into a sale and was not engendered by a loan. There are many situations which must be considered in light of this prohibition.

We should stress that whenever a customer is offered two prices there is no problem of *ribis* if he chooses to pay immediately at the lower price. The reason is that one becomes obligated to pay for his purchases as soon as he acquires them. Therefore, we consider this to be the true price of the object. The object always is to see if the customer may pay the higher price which the seller wishes to receive due to the delay in payment.

Enabling One to Charge the Higher Price after Quoting the Cash Price

The **Chavos Da'as**² rules that the only time there is a problem is when both prices are effective at the time of purchase. However, suppose the seller, thinking that his customer was going to pay immediately, quoted a price. When he realized that the

¹ Baba Metzia, 65 A.

² Biyurim, note 2. The Bris Yehuda in Chapter 22, footnote 21 cites the Imrai Yosher as writing that even one who is very scrupulous may rely on this leniency.

customer wished to buy on credit he wanted to charge more. However, it would seem that he cannot do so since this would violate our *seif*.

The **Chavos Da'as** offers a solution to the seller's problem. He says that the seller can verbally rescind his offer to sell at the lower price. He may inform the customer that he is changing his mind and is charging a different price even if the customer wishes to pay immediately. The customer may then pay the higher price on credit as if the lower price was never quoted. The **Bris Yehuda**³ extends this ruling to a case where the seller initially quoted two prices. He may cancel his offer and say that he is prepared to accept only the higher price as long as he does so before the customer makes a *keinyan*.

The **Divrei Sofrim**⁴ offers another solution for a seller who was taken by surprise by his customer's desire to buy on credit after stating a price for one who pays cash at the time of purchase. The seller can quote a price and state that he is selling with a *heter iska*. Just like one can avoid *ribis* in a pure loan by utilizing a *heter iska* so too one can avoid *ribis* in a sale by using a *heter iska*.

Other Ways to State Two Prices

One need not verbalize two prices in order to create a problem of *ribis* for one who purchases on credit. If both prices are quoted in an advertisement or otherwise written out (on a tag for example)⁵ it is also considered as if the seller mentioned two prices. Similarly, if the item is tagged at one price or advertised at one price and the seller informs the customer of the other price it likewise poses a problem of *ribis*. (It does not matter either whether it is the higher or lower price that is mentioned verbally.)

Other Questionable Combinations

The **Acharonim** have various unanswered questions concerning this *halacha*. The **Bris Yehuda**⁶ and **Nesivos Sholom**⁷ both question what is the *halacha* in case a customer

³ Chapter 22, footnote 21.

⁴ Note 13.

⁵ Bris Yehuda, chapter 22, footnote 11.

⁶ Ibid, footnote 12.

⁷ Note 16 in his commentary to this *seif*.

approaches the seller and asks for the price and is told only the price for one who pays cash immediately. On another occasion, the customer asks for the price and is informed only the price for one who postpones payment. These **Meforshim** question whether we combine the two answers into one. If we do combine the statements, the customer can no longer purchase on credit without violating our *seif*.

Another questionable combination occurs if two people question the seller about the price and one is informed of the price for immediate payment and one for payment on credit. The **Nesivos Sholom** feels that at least if the customer becomes aware of one of the prices only by asking a fellow customer how much he paid, he would not violate this *halacha* even if he purchased on credit. The key factor is that the seller did not inform the customer directly of the two prices. We should note that in case the customer was present when the seller informed the other customer of the price both the **Nesivos Sholom** and **Bris Yehuda** remain with a doubt how one should rule.

Another questionable practice is when a customer asks for the price and the seller retorts by asking whether the customer intends to pay by cash or credit. After the customer replies that he wishes to buy on credit the seller informs him of the price. The **Bris Yehuda** raises the issue and is inclined to be lenient. The **Nesivos Sholom**, however, believes that one should be strict.

One more case that the **Bris Yehuda** forbids is when the customer asks for the price on credit and the seller computes the interest, in the customer's presence.

The key principle⁸ that guides the *poskim* in their approach to all these questions is that the **Rabbonon** forbade this type of *ribis* only in case it is noticeable that the customer is being charged a higher price because he is paying on credit. In formulating their rulings on these issues, the *poskim* consider whether the effect of postponing payment is noticeable. The reason why the *ribis* must be noticeable is that this type of *ribis* was forbidden only by the **Rabbonon** and they limited their prohibition to situations where the delay has a noticeable effect.

⁸ This principle is stated by the Rishonim. The Rav Shulchan Aruch in *seif* 21 puts it this way. "Since *ribis* which occurs as part of a sale was only forbidden by the Rabbonon, they did not prohibit anything in case the interest is not noticeable."

Offering a Discount

Another controversy among the earlier **Acharonim** concerns situations where there is an established price for a certain item. The price takes into account the fact that people may not pay immediately. One seller, who was hard-pressed to raise capital, offers customers a discount in case they pay immediately. The question is whether a customer may still purchase from this seller at the regular price on the usual conditions. The **Chachmas Adam**⁹ and the **Machane Ephraim**¹⁰ rule that it is permitted since the customer is being charged the regular price and not an usually high price.

Other **Acharonim** such as the **Mishna Lemelech**¹¹ and the **Rav Shulchan Aruch**¹² maintain that the customer may not pay the higher price since the seller did mention two prices. We should note that the later **Acharonim** like the **Bris Yehuda**¹³ and **Divrei Sofrim**¹⁴ rule that we should follow the stringent opinion.

We should note that even the lenient opinions¹⁵ agree that in case all stores offer two prices, one for credit and for immediate payment, one may not purchase on credit.

The Halacha is Different in a Place Where Paying on Credit is Customary

Some **Acharonim**¹⁶ maintain that the rules of our *seif* do not apply to a place where paying on credit is customary. In this place even if the seller offers a discount for those

⁹ Klal 139, seif 5.

¹⁰ Siman 31 in Denai Ribis.

¹¹ Hilchos Malve Velove 8, l, paragraph with beginning words umah shekosav rabbainu. R. Akiva Eiger in his glosses writes that the Ramban agrees with the Mishna Lemelech. We should note that the Mishna Lemelech and Machane Ephraim are having a direct dispute concerning how one should interpret a statement of the Ramban.

¹² Denai Ribis, seif 18.

¹³ Perek 22, seif 7.

¹⁴ Divrei Sofrim 2 and Biyur Halacha with beginning words harai ze mutar.

¹⁵ Bris Yehuda perek 22, seif 8 mentions this point.

who pay immediately, the customer can spurn the seller's offer and pay on credit at the higher price. We should note that this is different from the previous case because here there is an established custom to pay on credit. This contrasts with the previous dispute which concerned a situation where there was no established custom to formally delay payment. Rather, it was a haphazard occurrence that people did not necessarily pay immediately.

This ruling is based on the **Mishna**¹⁷ which states that there is a difference concerning the *balachas* that we are studying between sales and property rental. Whereas we have been studying the *balacha* that one may not charge the price for a credit purchase if the seller mentioned two prices when offering an object for sale, whereas a rental is different. Specifically, one may charge a renter the price for one who pays at the end of the rental period even if the renter was informed of the existence of two prices. Then one may charge a price for those who pay at the beginning of the rental period and one for those who only pay at the end.

The **Gemara**¹⁸ explains that the reason the **Rabbonon** differentiated between a sale and a rental, as far as this *ribis* is concerned, is based on a difference that the **Torah** established for the requirement to pay for a sale and a rental.

The **Torah** requires one to pay immediately when acquiring an object. By contrast, the **Torah** requires a renter to pay only at the end of the rental period. Therefore, a renter may pay at the end of the rental period even if he was offered a cheaper price if he pays at the beginning of the rental period. The reason is because we do not view one who pays at the end of the rental period as paying extra because he delayed payment. Rather, we view the one who postpones payment until the end of the rental period as paying the fair price and one who pays at the beginning as receiving a discount.

These **Acharonim**, who rule that the *balachas* of our *seif* change in case there is a prevailing custom to pay on credit, argue based on the general principle in **Choshen Mishpat** that the *balachas* of business deals are determined by *minhag*.¹⁹ Therefore, in spite of the fact that the **Torah** rules that one becomes obligated to pay for his

¹⁶ The source of this ruling is the responsa of the Imrai Yosher (1, 150). He is cited by the Bris Yehuda in perek 22, footnote 19.

¹⁷ Baba Metzia 65 A.

¹⁸ Immediately following the Mishna, *ibid*.

¹⁹ The Yerushalmi states that *minhag* overrides Halacha. This of course is not true in the case of *issurim* but only in cases involving Choshen Mishpat and in the way we are applying it.

purchases immediately upon acquiring an object, the *minhag* determines that one must pay only at a later date. The reason that minhag supercedes the **Torah's** rule is that *minhag* is treated as a condition which has been inserted in a contract even if it was totally unstated. Therefore, the **Torah** itself rules that one should follow the **minhag** and the **Torah's** rules apply only in the absence of a contrasting *minhag*.

Thus, in a place where the *minhag* is to pay on credit, a sale is *halachically* equivalent with a rental. Just like the **Gemara** ruled that a renter may pay the higher price even though two prices were stated, so too the purchaser may pay the higher credit price even though the seller offered a lower price for those who pay immediately.

The Rama's Ruling

The **Rama** allows one to sell certain items at twelve on credit even if there exists an established price of ten for those who pay immediately. The condition which is necessary is that the price for immediate payment automatically rises to twelve on the occasion of royal visits and royal visits occur frequently. The source for this ruling is a **Mordechai**²⁰ who was defending a longstanding practice where customers would buy coats and pay later at a price that was higher than the current fixed price. We learned in the previous lesson that normally this type of practice is prohibited because one may not charge a price that is higher than the market price on the basis of the fact that the customer is delaying payment. The **Rama** is thus informing us of an exception to the rule in this particular case.

The **Makor Mayim Chaim**²¹ explains that the rationale of the **Rama** is that a price which changes on the occasion of frequent royal visits cannot be considered a fixed price. Therefore, in case the entire reason we would have prohibited one from charging extra is the fact that the *ribis* is noticeable due to the existence of a fixed price, the sale is now permitted.

Based on this explanation, one must not stipulate the existence of two different prices even if the price rises on the occasion of royal visits. The reason is that if one stipulates the existence of two prices the *ribis* is noticeable even without a fixed market price.

²⁰ At the end of section 433.

²¹ Notes in the margin of the Shulchan Aruch on our seif.

The **Sema**²² sheds further light on the **Rama's** ruling. He writes that we do not consider the object as if it does not have a fixed market price at all. We are merely ruling that the market price is fixed at between ten and twelve and not just at ten. A result of this **Sema** is that the seller may not charge more than twelve.

The Gra Disagrees

The **Gra**²³ disagrees with the **Rama's** interpretation of the **Mordechai**. He understands that even the **Mordechai** agrees that if the price is twelve on the occasion of royal visits one may not charge twelve if payment is delayed. According to the **Gra**, the **Mordechai** does not rule that there is no fixed price. The **Mordechai** just allows one to purchase at a higher price because he is willing to pay more on the chance that a royal visit may occur soon and he will make a profit by purchasing at eleven since he will sell it to the nobility for twelve.

The **Gra** explains that this sale is permitted because it is normal for a person to pay a higher price in anticipation that the price will rise further. The only reason we require royal visits to occur frequently is that otherwise it would appear to be *ribis* since the customer is postponing payment and paying more than the current price. Therefore, lacking frequent royal visits it would appear that the reason the customer is paying a premium is because he is delaying payment and not because he expects to earn a profit from a sale to nobility.

Seif 2

Seif two is a quote of the **Rambam**.

One may sell (for twelve with payment delayed) an object, which is priced at ten if sold at the market for immediate payment and at twelve if sold due to a private offer of a customer who offers to pay immediately.

Commentary

The **Shulchan Aruch** is thus informing us of an exception to the ruling of *seif* 1 that one may not charge more than the market price in case payment is delayed. In the case

²² Kuntress Haribis, seif 9 of the Sefer Hakotsair.

²³ Note 5.

of *seif* 2, the item is being sold on credit at twelve in the market where the price for those who pay immediately is only ten. We must first examine the rationale for this exception and determine what role is played by the fact that the price is twelve in case the customer makes the initial approach.

The rationale of the **Shulchan Aruch** is that the fact that the price is twelve when the customer makes the initial approach indicates that ten is an excessively cheap price. The only reason people usually charge ten when they sell at the market is that they are pressed for cash.

The **Rashba**²⁴ explains that even though these circumstances engender an exception to one of the rules of *seif* 1, they do not create an exception to all the rules of *seif* 1. We permit selling the object for twelve when payment is postponed in spite of the fact that the price at the market is ten for immediate payment i.e. we relax the condition that one may not charge more than the market price. However, we do not permit the sale for twelve in case the seller quoted two prices even under these circumstances. The reason is because verbalizing the fact that there are two prices make it obvious that the customer is being charged extra because payment is delayed. The **Levush**²⁵ however disagrees with the **Rashba** and extends the leniency of our *seif* even to the case where the seller informed his customer that there are two prices.

Lending on Condition that the Borrower Will Purchase at a Premium

The **Shach**²⁶ mentions a dispute between the **Mabit**²⁷ and **Maharey Ibn Laiv** concerning one who lends money on the condition that the borrower will purchase an item from the lender at an inflated price. This practice is certainly prohibited. Their dispute concerns whether this action violates an *issur* of the **Torah** or not.

The **Maharey Ibn Laiv** maintains that this is *ribis ketsutso* since by virtue of a condition of the loan the lender will gain monetary value at the expense of the borrower. The

²⁴ Responsa, volume 3, responsa 245.

²⁵ In his recording of this *seif*.

²⁶ Note 6.

²⁷ Their dispute is printed in the Responsa of the Mabit in volume 1, responsa 116 (The Shach had the order reversed and therefore, he calls it volume 2).

Mabit, however, argues that this is still *ribis* involving a sale and is only forbidden by the **Rabbonon**. His argument is that the reason the **Torah** did not forbid *ribis* in a sale is because the *ribis* is not readily noticeable because perhaps the price that is being charged is the true price. Similarly, in this case it is not readily noticeable that the price is inflated. (Readily noticeable is a relative term and in this case it refers to the fact that an incorrect price is never as noticeable as when one lends a given amount and the borrower is obligated to return extra.)

The **Acharonim**²⁸ find the position of the **Mabit** very difficult. They bring proof from various **Rishonim** that this case constitutes *ribis ketsetso*. For example, they cite a responsa of the **Rashba** that one who lends someone on condition that he will rent him property at a cheaper than usual price violates the prohibition of *ribis* from the **Torah**. Since there is no essential difference between a sale and a rental this would only constitute *avak ribis* according to the **Mabit**. Therefore, we see that the **Rashba** does not agree with the **Mabit**.

Seif 3

Seif 3 is based on a **Tosefta**.²⁹ It reads:

Seif 3

Suppose a person initially purchased merchandise at the price of twelve with payment set for some future date. At that point, the seller may offer the customer the opportunity to pay ten immediately.

Rama

This halacha is only true if the initial sale for twelve was already completed. If it was not, and the customer spurns the seller's offer to pay just ten, the seller will no longer be able to request twelve even for eventual payment.

Commentary

This *seif* is teaching us two *halachas*. The first *halacha*, which is taught by the **Mechaber**, is essentially that the seller may sell his loan to his customer. What transpired initially is

²⁸ The Sha'ar Daya in note 4 on our siman, the Nesivos Sholom in section 62 of his overview of ribis.

²⁹ Baba Metzia (6, 4).

that there was a sale with the customer receiving an object and the seller receiving an I.O.U. (promissory) note from his customer for twelve. In the second stage, the seller offers to sell to his customer (the borrower, now) his own loan for ten. The ruling of the **Mechabair** is that just like one may sell a loan to someone else, so too he may sell it to the borrower.

The second ruling applies in case the customer refuses the seller's offer. The **Rama**³⁰ agrees with the **Mechaber** that when the sale is completed, the seller is extending a loan of twelve to the customer. Therefore, even if the customer spurns the seller's offer the sale remains in a completed state with the customer owing twelve. The **Rama's** ruling complements the **Mechaber's** ruling and teaches us that if the sale is not yet complete, the seller is really offering the customer a second price, namely immediate payment at ten. This is problematic because according to what we learned in *seif* 1, the seller may no longer sell at twelve since *seif* 1 rules that the seller may not sell on credit for the higher price if he offered the customer two prices.

We should note that the way to complete the sale and conclude the initial stage is by performance of a *kinyan* on the object. The normal way to make a *kinyan* and acquire an object is by performing *meshesha* or *hagbaha* (moving or lifting the object that is being acquired). The **Bris Yehuda**³¹ conjectures that even partial payment constitutes a *kinyan* in this case.

We should also note that the **Rama's** ruling that the customer may not pay twelve in case the seller offered to sell for ten before the sale was complete applies even if twelve is the going rate.

Conclusions

- 1) The prohibition on purchasing an object, which was offered for sale at two different prices, one for cash and one for credit, applies only if the customer opts for the choice to buy on credit.
- 2) The **Chavos Da'as** rules that the prohibition applies only if both prices are effective at the same time. However, if the seller cancelled one of the prices before offering the second price, there is no prohibition. This is true even if he

³⁰ This is the essence of Shach 7.

³¹ Perek 22, footnote 23. We do not really understand what basis he has for this Halacha.

only cancelled the first price offered because he realized that the customer was interested in a different payment plan.

- 3) The **Bris Yehuda** extends 2 to include the case where the seller initially offered two payment plans.
- 4) The **Divrei Sofrim** offers another solution for one who unexpectedly must sell on credit. He may sell with a *heter iska* since a sale certainly is not worse than a loan.
- 5) Even when one does not verbalize two payment plans at the same time the customer may not pay on credit. Examples are if the seller advertised two prices or advertised one price and stated the other, etc.
- 6) The *poskim* have a doubt how to rule in case the seller informs the customer of his two prices on two separate occasions. Another open question is when the seller informed two different customers of the two different prices. If the customer was not present when the second offer was made to a different customer, the **Nesivos Sholom** is lenient.
- 7) There is a dispute between the **Nesivos Sholom** and the **Bris Yehuda** in case the seller asked the customer how one wishes to pay before offering a price for credit.
- 8) Another case that is prohibited by the **Bris Yehuda** is if the customer indicates that he wishes to purchase on credit and the seller then computes the price by computing the interest in the customer's presence.
- 9) There is a dispute in case a seller offers a discounted price for those who pay cash. The question is whether people may purchase at the regular price which does not require the customer to pay in cash. The current *poskim* rule that one should be strict on this question.
- 10) Many **Acharonim** rule that if there is an established custom, a *minhag*, to purchase on credit one may do so even if the seller offers a discount to those who do not avail themselves of the *minhag*. The reason is because the *minhag* establishes a new norm for payment. Specifically, in place where this *minhag* prevails the *halacha* does not require a person to pay immediately upon taking possession of an object. Therefore, one who pays on credit is paying the actual price and one who pays earlier is receiving a discount for paying before the due date.

- 11) The **Rama** rules that in case royal visits are frequent and the price of an object rises automatically on these occasions one may charge one who pays on credit the price that it is in effect on the occasion of royal visits.
- 12) The **Sema** rules that according to the **Rama** one may not charge more than the price on the occasion of royal visits. The reason is because this amount is the maximum fixed price for the item.
- 13) According to the **Makor Mayim Chayim**, one may not stipulate two prices even under the circumstances described in 11.
- 14) The **Gra** maintains that the **Rama's** interpretation of the **Mordechai** is incorrect. The **Gra** understands that the **Mordechai** merely permits one to pay an amount which lies somewhere between the going rate and the price that is in effect on the occasion of royal visits. The reason is because the customer is willing to pay more on the chance that he will be able to make a profit by selling at the time of a royal visit. The **Gra** remains with a doubt if the **Rama's halacha** is correct or not.
- 15) *Seif 2* permits one to sell an object on credit at the market for delayed payment at a premium against the usual market price in case his price is not more than the price that is paid by customers who approach the seller in an off-market sale.
- 16) There is a dispute if one may even mention two prices in the situation described in 15. The **Rashba forbids** this because that would indicate clearly the fact that the price is higher due to the postponed payment. The **Levush**, however, is lenient.
- 17) There is a dispute between the **Mabit** and the **Maharey Ibn Laiv** if one can lend money on condition that the borrower will purchase from the lender an object at an exorbitant price. Everyone agrees that this arrangement is forbidden. Most poskim agree with the **Maharey Ibn Laiv** that the prohibition is from the **Torah**. The **Mabit** maintains that it is only **Rabbinic** but the **Meforshim** raise many questions on this opinion.
- 18) A lender may sell a loan to his borrower just like he may sell it to someone else. This applies also to a loan that results from a sale where the purchaser did not pay the seller immediately.

- 19) As a result of 18, a seller can offer the customer a reduced price in case he will pay immediately if the sale was first completed at the higher price for delayed payment.
- 20) If the sale was not completed the seller may not charge the higher price for delayed payment. The way to complete a sale is by performing a *kinyan*.