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Halachah

ARE 'EARLY BIRD SPECIALS' AGAINST HALACHAH?

As the summer approaches, one cannot open a magazine without coming across an advert for a summer camp or hotel resort. Many of these offer an 'early bird special', which entails a cheaper price for those participants who pay early. Is this a problem of *ribbis*?

The *gemoro* in Bova Metzia 63b discusses the case of a wax merchant who was prepared to offer more units of wax for those who paid in advance of receiving the wax. For example, if the price when one paid at the time of delivery was £10 for 4 units, then if one paid £10 in advance, they would receive 5 units of wax at the time of delivery. The *gemoro* says this is *Ribbis Derabonon*. Because we view the real price as the price paid at the time of delivery of an item purchased, when one pays in advance, one is in effect lending the vendor money. If as a result of this advance, the purchaser receives a cheaper price, or a free item, then it is *ribbis*. However, if the vendor has the wax in his possession at the time when he receives the money – “*yesh lo*”, then we consider it as if the sale has already taken effect when the money is paid (even though the vendor is not bound to give the purchaser those specific items, and he can replace them with ones he didn't have yet at the time). In a case of *yesh lo*, the early payment is not seen as a loan, and any benefit is permitted.

The Shulchan Oruch explains that the *heter* of *yesh lo* only applies if the higher price is not mentioned at the time. However, if one spells out “4 for £10 if you pay in a month, and 5 for £10 if you pay now”, then it is *ossur*.

Does the same apply to Employment?

The Shulchan Oruch in Yoreh Deah סימן קע"ו פסק"ה *paskens* that a worker is allowed to offer a reduction from his total bill, if it is paid once the worker has begun the work/job. However, he is not allowed to do so, when he is paid in advance of when he is due to start the work. The Rishonim explain that this is because a *poel* – worker - is allowed to withdraw from doing the work, and so it is not considered as if the employer has made a

kinyan in the worker. Therefore, it is seen as an advance, which is a loan, and cannot result in a reduction in charges. Once work has started, fees paid are not considered an advance, even if fees would normally be paid when the job is finished, and a reduction is permitted.

Can one give a reduction for rent paid before a lease is due to start?

The *mishna* in Bova Metzia 61a explains that even though rent is normally due at the end of the rental period, one can offer a reduced rent to someone who pays the rent at the beginning of the rental.

When it comes to receiving a reduction for paying the rent for land or real estate prior to the rental period, there is a *machlokes* Rishonim if it is *ossur*, in the same way as it is when hiring a worker. The Shach in Nekudas HaKessef Y”D Siman 176 *paskens* like the Rishonim who hold it is permitted. They explain that there is a fundamental difference between renting land and employment. As explained, a פועל - worker can withdraw from the job, and therefore one doesn't have a *kinyan* in him before he begins work. This is not the case when a person hires/leases property, in which a *kinyan* can be made, even prior to the rental period.

However, even according to these Rishonim, there is a question whether they would apply their rule, even if at the time the rent was paid, the property was hired out to different tenants. In such a situation, would it still be possible to say that the future tenant can make a *kinyan* in the property to lease it in the future? This is the subject of a *machlokes* Achronim, with the Shach seeming to hold he would not be able to. There are those who learn according to Rabbeinu Yonah, even in this situation, it is possible to make a *kinyan* in the property now, for a future lease.

'Early Bird Special' for a Camp or Hotel

When one pays for a camp or hotel, there are a number of elements one receives. One is provided with a roof over one's head (hopefully), which seems to be an element of renting land. One also hopes to receive service provided by staff and organised by management, which implies an element of employment. Furthermore, one also hopes to receive food, which might make the transaction classified as a purchase. Seeing as the food is not yet cooked at the time of payment, it cannot be considered *yesh lo*. What needs clarification is, is the applicant in fact purchasing any food or renting any property, or just receiving 'the package called Camp'?

In order to qualify for the Early Bird Special, one has to pay a period of time before the camp begins. If one is only required to pay a deposit, this can be seen as receiving a reduction, because the camp/hotel want to ensure they will have a minimum amount of users, which is not a problem of *ribbis*. Even in a scenario where one has to pay the total amount, if the camp/hotel don't use the funds, rather they hold them in escrow until the camp starts, or if they accept the funds according to the terms of a Heter Iska, it is allowed. However, if they require a full payment in advance of the camp/hotel stay, and they use the funds, and don't have a Heter Iska; we can see that numerous *shailos* arise. If the camp/hotel is a limited company, then there is an extra element to permit the early bird special (which is beyond the scope of this article to expand on). However, if not, then a *shaila* should be asked.

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