



# Dayan Yehoshua Posen

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## RIBBIS AT WORK [PART 1]

We have discussed in the past some of the problems which can arise when a person borrows money from a bank or credit facility for a friend, and the friend pays the capital and interest. The general perception is that this should not be a problem of *Ribbis* (the prohibition of charging your fellow Jew interest) as the person borrowing from his bank, is “doing it for his friend” and doesn’t gain personally from the transaction, as all the interest paid, goes to pay the interest charged by the bank. However, *Halocho* does not view it the same way. In fact, the person borrowing the money from the bank, or allowing his credit card to be used, is personally liable to the bank for the loan. When he passes on those funds to his friend, or allows his friend to use the funds/facility, he is in fact lending his friend money, which is a separate transaction. Therefore, his friend cannot pay anything more than the capital sum he borrowed from he received.

There are numerous scenarios where this can occur in a business/partnership situation.

### WHEN A PARTNER USES THE COMPANY’S OVERDRAFT FACILITY FOR HIS OWN PERSONAL USE

If a person owns 100% of his company, he is allowed to borrow personally from the business or from the business’s overdraft facility and pay interest to the company or its bank. This is because halachically speaking him and the company are one and the same, and therefore he is effectively borrowing from himself and paying himself interest, which is permitted.

However, if a company or partnership has more than one Jewish partner/shareholder (and the company is either majority owned by Jews, or Jewish parties have the controlling interest in the company) then one of the Jewish partners cannot borrow from the company’s/partnership’s overdraft, if he intends to pay the bank’s interest charge. This is because, as the *Chavas Daas* explains, when a sum is lent to a partnership, even if both partners are jointly and severally liable; the *Halocho* views it that half the sum was lent to one partner, and the second half to his partner. In addition to half the loan which each partner receives, they also underwrite (guarantee) their partner’s half.

*So, for example, if Reuven and Shimon have a partnership, and they borrow £10,000 from their joint bank account, in reality each has borrowed £5,000, and is liable for his partners £5,000. If the reason for the loan was because Reuven needed the funds personally (e.g. to make a chassnah), when Reuven receives the full £10,000, he is in fact receiving half which was lent to him and half which was lent to Shimon. This being the case, Reuven would not be allowed to pay the interest being claimed for Shimon’s £5,000; he would only be allowed to pay what is being claimed for his £5,000.*

Therefore, if a partner wished to borrow from the partnership’s or company’s overdraft,

## Halachah

he would have to use the appropriate Heter Iska between himself and the other partners/shareholders.

### A PARTNER LENDING TO THE PARTNERSHIP OR COMPANY

As mentioned above, if the person lending the company, owns it 100% it is permitted to charge the company interest.

However, if there are other Jewish partners or shareholders (and the company is either majority owned by Jews, or Jewish parties have the controlling interest in the company) then, if the funds are being lent to the company without the partners/shareholders being personally liable, according to Reb Moishe Feinstein zt”l there is no prohibition, however most Poskim in Europe and Eretz Yisroel do not follow this ruling. According to those Poskim it goes without saying, if the lending partner is lending the company his own funds, he would not be able to charge interest. In fact, even if he wanted to do so with a Heter Iska, he would have to use a very specific type of Heter Iska. If the partners/shareholders would be personally liable for the loan, then even Reb Moishe zt”l agrees that it would be forbidden for the company to pay the interest charged, without the appropriate Heter Iska.

If the partner had a personal overdraft facility which he wished to use for the benefit of the company, (for example if the interest charged was lower than what the banks would charge the company), then it depends on a couple of factors.

If the person lending the funds is a silent partner, who is not actively involved in the day to day running of the company, then the business would not be able to pay the interest charge of the bank without signing the appropriate Heter Iska before receiving the funds. In Part two we will discuss what happens if the person borrowing from his bank for the business, is actively involved in the company.

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2. The second plague was tzefardaia. What animal was this?