A Question of Great Interest: May a Synagogue Issue Interest-Bearing Bonds?

RABBI BEN ZION BERGMAN

This paper was adopted by the CJLS on March 9, 1988 with eleven votes in favor and one vote opposed. Members voting in favor: Rabbis Isidoro Aizenberg, Ben Zion Bergman, Elliot Dorff, Jerome Epstein, David Feldman, Arnold Goodman, Howard Handler, Lionel Moses, George Pollak, Mayer Rabinowitz and Joel Roth. Member voting against: Rabbi Avram Reisner.

שאלה

May a synagogue issue interest-bearing bonds and sell them to its members as a means of raising capital funds?

תשובה

At the outset, I wish to record my gratitude and appreciation to Rabbi Howard Handler who, in an initial response to this question, did essential research of which I am the beneficiary, thus saving me countless hours and effort.

The essential question is the biblical prohibition against ריבית (interest).[1] It should be pointed out that in the rabbinic expansion of the prohibition borrower and lender are *in pari delicto* – both are culpable; even the witnesses are considered to bear guilt, since one may assume that without their evidentiary authentication of the loan, the lender would not be induced to grant the loan.[2]

Rabbi Handler correctly indicated three possible alternate responses to this question which could result in a positive outcome. A fourth possibility would be an outright negative one. The three approaches can be summarized as follows:

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

1) The use of a התר עיסקא, (permit to do business) has long been a device common among Ashkenazic Jews. It essentially creates a fictitious partnership between the borrower and the lender and, on the assumption that the funds provided by the lender will be used by the borrower in a commercial enterprise, the interest thus is construed as profit rather than interest. The technicalities involved are many and there are a number of forms of the instrument, containing various stipulations to avoid the problem of אבק ריבית (the appearance of interest).[3] It should also be pointed out, however, that the use התר עיסקא, (permit to do business) was not universally accepted. Rabbi Joseph Rephael ben Ḥayyim Ḥazan, *Rishon L'tziyon* in the early 19th Century, argues against its use.[4] However, its use has become standard procedure for banks and other financial institutions in Israel.

2) A second approach is that of comparing the relationship between congregant and synagogue to that between the Jewish purchaser of Israel Government bonds and the State of Israel. In 1950, in a letter to Rabbi Jacob Katzin in New York, Rabbi Ben Zion Uziel, then *Rishon L'tziyon*, wrote that there is no problem of ריבית (interest) in connection with the purchase of Israel bonds, since every Jew may automatically be considered a partner of the Jewish State. Therefore, since proceeds from the sale of bonds would be used by the State for the purpose of ישוב א"י (the settlement of the land of Israel) and its development, the State of Israel and the bond purchaser are not in the position of borrower and lender, and the use of those terms in connection with the bonds is merely שיגרא דלישנא (common parlance). It is the automatic partnership relationship that legitimizes the interest-bearing bond. Thus, if one can compare the relationship between congregant and his/her synagogue as being a similar partnership, on that basis one could permit the sale of interest bearing bonds by the synagogue.

3) A more radical approach would consider the entire question moot since the nature of money has changed, no longer of specific metallic content.[5] Since modern commercial transactions are conducted by notes (even paper currency is essentially a note) and notes are not subject to ריבית (interest),[6] there is no problem of ריבית in any financial transaction today and the payment of interest to a Jew by a Jew is no longer within the prohibition.

These alternate proposals each present difficulties.

a) The use of a התר עיסקא certainly has the force of centuries of precedent behind it and has been recognized as a valid instrument by Ashkenazic Jews. Although Rabbi Shalom Mordecai Schwadron extended the use of an עיסקא to loans of a strictly personal nature[7] there have been Ashkenazic authorities who have questioned the validity

of its use for non-commercial borrowing, such as mortgage lending, consumer spending, etc.[8]

There would also be a question as to whether a writ of התר עיסקא would have to be executed for each bond purchaser, or whether a blanket התר עיסקא, such as the banks in Israel use, would be sufficient.

In any case, some form of התר עיסקא could probably be legitimately created. I suppose that one could argue that the funds raised by the synagogue would be used to build facilities which would increase the annual revenue of the synagogue. The bond would therefore constitute a loan for commercial purposes, distasteful as such a designation might be in conjunction with a synagogue.

b) While it is tempting to compare the relationship between congregant and synagogue to that between the individual Jew and the State of Israel, the comparison fails on two related counts.

i) The relationship between the Jewish bond purchaser and the State of Israel is one which arises constructively from the fact that the purchaser is a Jew and Israel is a Jewish state. Even without the purchase of bonds, every Jew has a stake in Israel's welfare, including its economic stability. Every Jew may be considered a partner of the Jewish state, that relationship arising automatically – not entered into formally or voluntarily. The congregant's relationship to the synagogue arises out of his voluntary and formal enrollment in the congregation, which can also be terminated at his option. That is not the case with one's relationship to the Jewish people and to the State of Israel as symbolic of and representative of the body politic of the Jewish people.

ii) Just as the bondholder who terminates his membership in the congregation would no longer be in a partnership relationship with the synagogue, a future bondholder who acquires the bond by transfer from the original purchaser would also not be in a partnership relation with the synagogue. A bond is a negotiable instrument. The original buyer may, at some future time, transfer ownership to some other Jew who is not a member of the synagogue. In the case of Israel bonds, the same relationship exists between the second Jewish holder of the bond and the State of Israel as existed for the original purchaser. That is not necessarily true in the case of synagogue bonds. The fact that such a transfer to a non-member of the synagogue is an unlikely prospect issue. The likelihood of such a transfer or the remoteness of such a likelihood does not affect the definition of relationship which it points up.

3) The third suggestion also founders upon the fact that the ruling that notes are not subject to the laws of ריבית[9] (interest) is contested by prominent *Aḥronim*.[10] Also *Ḥatam Sofer* argues that since the notes are legal tender by governmental authority or fiat, and no one can refuse to accept it as such, whether the material used to represent money is gold,

or silver, or paper is irrelevant.[11] Even when metal was used as money, its value fluctuated in terms of its buying power. Its value depended on a consensus and its value was not a constant in relation to other commodities.

If money is defined as buying power, then it would appear that money is money no matter what form it takes and is subject to the laws.

I would therefore propose the following solution to our question:

It should first be pointed out that if we take the prohibition against collecting interest from or paying interest to a fellow-Jew seriously, the problem is not limited to a synagogue and its bonds. Since Jewish law does not recognize the legal fiction created by western legal systems of the "personality of the corporation," a financial corporation is not a separate entity but constitutes a partnership in which the shareholders are the partners. Therefore, a Jewish depositor in a bank which may have a substantial number of Jewish shareholders is guilty of collecting ריבית (interest) from fellow-Jews. Similarly, the Jewish shareholder, whose dividends at least partially derive from interest payments by Jewish borrowers, is guilty of exacting interest from a fellow-Jew.

Therefore, to deal with this question in the light of present-day financial realities, I would propose that we now consider a constructive התר עיסקא operative in all financial transactions between Jews.

To explain the concept of "constructivity": In law, there are instances wherein certain conditions, stipulations, agreements, etc. are considered operative even though they have not been formally or explicitly established. To take an example from Jewish law, in the case of דינא דברי מתרא[12] wherein the seller of land must give the abutting neighbor the right of first refusal, should the seller sell it to a third party without first offering it to the neighbor, said neighbor may, at his option, demand it from the purchaser. The status of the purchaser would be described in law as holding the land in *constructive* trust for the abutting neighbor.

This concept of "constructivity" is readily found in Talmudic jurisprudence. When the *Gemara* says נעשה כאומר לו[13] (it is if he tells him) it is positing a constructive agreement between the parties even though no words to that effect ever passed between them. When the *Mishnah* states, for example, that even though the בנין דכרין and בנין נוקבן clauses are not explicitly written into the ketubah, they will be considered as included because they are תנאי ב"ד,[14] (court enforced condition). This is nothing other than declaring them as constructive stipulations operative in every ketubah. Perhaps the most striking example for our purposes is the statement of Rav Nachman regarding the prozbol[15] that even if not written, he would consider it as written. In other words, even without the formality of a prozbol, a constructive prozbol is operative in all loans between Jews.

CONCLUSION

Thus, operating with the same jurisprudential construct, in the face of the highly complicated economic system to which we have to accommodate, we should now consider a constructive התר עיסקא as operative in all transactions between Jews. Even an individual Jew lending to another Jew on interest (which is an everyday occurence) would not be considered as violating the law, since a constructive התר עיסקא is now considered operative.

In the specific case of the synagogue issuing bonds, it should be suggested that the bond make reference to its operating within the parameters of a constructive התר עיסקא. This is suggested for educational purposes. It would provide an opportunity to teach the congregation about Jewish law and the problem of ריבית (interest). It would also provide an excellent opportunity to teach the congregation the dynamic approach of Conservative Judaism to issues of Jewish law.

In conclusion, I humbly submit the above responsum in the belief that it is halakhically sound and constitutes a significant step in furthering the innovative and dynamic halakhah of the Conservative movement.

NOTES

1. Ex. 22:24; Lev. 25:35–37; Deut. 23:20-21.
2. Mishneh Torah, Hilkhot Malveh v'Loveh 4.2
3. See J. David Bleich, *Tradition* 19/2, Summer 1981.
4. Responsa Ḥikrei Lev, Yoreh Deah II, 2b
5. Rabbi Handler attributes this approach to a suggestion proposed to him personally by Prof. Jose Faur. I have found a similar suggestion put forth by Rabbi Arthur Silver in *Tradition* 15/3.
6. Mishneh Torah, Hilkhot Malveh v'Loveh 5.14 et al.
7. Responsa of Maharsham II, 216
8. M. Feinstein, Iggrot Mosheh, Yoreh Deah II, 62. See also Weiss, ויחי יוסף, דיני ריבית להלכה, 1984
9. See ראש ב״ם פ׳ה, agreed to by many *Rishonim*, among them however see Shitah Mekubbetzet, Bava Metzia, 60b for a citation of the Rashba that is the opposite of that in our printed text of the Rashba.
10. Taz Yoreh Deah 161.1
11. Responsa of Ḥatam Sofer, Yoreh Deah 134
12. Bava Metzia 108a
13. Bava Metzia 34
14. Mishnah, *Ketubot* 4:10, 11 – See also Mishnah 12 for other examples of תנאי ב״ד, (a court enforced condition)
15. Gitin 36