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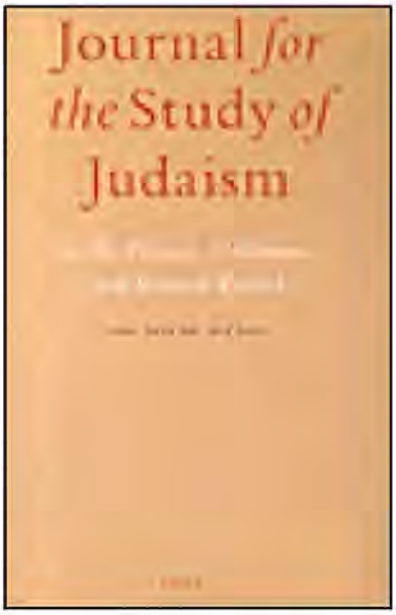
HILLEL GAMORAN



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TALMUDIC USURY [1]) LAWS AND BUSINESS LOANS

BY

HILLEL GAMORAN

Hoffman Estates, Ill., U.S.A.

The authors of the Bible designed the law on interest to prevent increasing the debt of a poor Israelite in need of a loan [2]). The Biblical law did not take business loans into consideration. But in the Talmudic period, in Judea during and following the days of the Second Temple, and more so in Babylonia in Amoraic times, there developed a demand for loans of a business nature [3]). Shopkeepers and animal breeders needed capital for their enterprises, and tradesmen of all sorts required credit to carry on their dealings. There also were wealthy persons, usually large landowners or established merchants, with idle money. They wished to put their funds to work for them. The question thus arose as to whether the Biblical law against interest would stand in the way of profitable business loans and investments.

In this paper, we will discuss several ways in which the rabbinic authorities allowed the economic life of their time to proceed without being hampered by the prohibition against usury. We will note that the Tannaim established rules to prevent business transactions from resulting in usury, but that the rules were written in such a way as

[1]) The words usury and interest are used in this paper interchangeably. Both mean any payment at all for the use of money.

[2]) Exod. 22:24; Deut. 23:20-21; Lev. 25:35-37.

[3]) On the development of the Judean economy see Joseph KLAUSNER, *Beemay Bayit Shaynee*, Jerusalem 1954, pp. 82-168; Solomon ZEITLIN, *The Rise and Fall of the Judean State*, Vol. I, Philadelphia 1962, pp. 306-309; Gedalyahu ALON, *Toldot Hayehudim B'eretz Yisrael Betkufat Hamishna Vehatalmud*, Vol. 1, Israel 1958, pp. 92-107. On the Babylonian economy see N. T. GETZAV, *Al Naharot Bavel*, Warsaw 1878, pp. 58-60; Salo BARON, *A Social and Religious History of the Jews*, Vol. 2, Philadelphia 1952, pp. 241-251; J. NEWMAN, *The Agricultural Life of the Jews in Babylonia between the Years 200 C.E. and 500 C.E.*, London 1932, and by the same author, *Commercial Life of the Jews in Babylonia between the Years 200 C.E. and 500 C.E.* (in mimeograph form); Moshe BEER, *Ma-amadam Hakalkali Vehatbevrati Shel Amora-ay Bavel*, Jerusalem 1962; Jacob NEUSNER, *A History of the Jews in Babylonia*, Vol. III, Leiden 1968, pp. 295-338, Vol. IV, Leiden 1969, pp. 220-278. See also L. JACOBS, "The Economic Conditions of the Jews in Babylonia in Talmudic Times Compared with Palestine," *Journal of Semitic Studies* 2 (1957), pp. 349-360.

to permit the desired dealings to be accomplished. We will also see that when conditions in Amoraic times brought about a desire to liberalize the Tannaitic regulations, the Amoraim interpreted the laws to satisfy the needs of the economy.

Loan of Produce

Ordinary loans of money do not appear widely in the literature on interest because the law concerning them was perfectly clear. Any increase was strictly forbidden as interest [4]). But loans of produce are frequently discussed because of the possibility of market price fluctuations resulting in interest. For example, if someone borrowed a *kor* of wheat worth 25 *dinars* and he returned it a month later when it was worth 30, the increase in value was considered usury. The Tannaim therefore ordained that a person could borrow produce for produce only if he had the goods in his possession at the time of the loan [5]). The logic behind this ruling was that if the borrower possessed the goods, then, at the time of the loan, they became the property of the lender, and if they appreciated in value before the loan was repaid, they were the lender's own goods which appreciated and there was no interest.

To the question why a person would borrow goods that he already had in his possession, the Tannaim responded that the goods were temporarily inaccessable, for example, the key to the storehouse had been lost or the borrower's son had the key and would soon return with it [6]). But surely this situation could not have obtained frequently. How often does one find his own goods out of reach so that he must borrow from his neighbor? It is clear that this formula was simply a device used by the Tannaim to allow borrowing of produce.

A statement in the Tosefta confirms the fact that the goods of the borrower did not, in truth, become the property of the lender at the time of the loan. If a person owned a barrel of wine, but because his wine cellar was locked he borrowed a barrel of wine from his neighbor, according to the Tannaitic law, the barrel in the cellar became the property of the lender. Nevertheless, according to the

[4]) For example the bonds of the Mechuzeans in which the estimated profits were recorded. B.M. 68a.

[5]) M.B.M. 5:9. The Mechilta contains an outright ban on loans of produce. Ed. J. Z. LAUTERBACH, III, Philadelphia 1935, p. 148.

[6]) M.B.M. 5:9.

Tosefta, if, when the cellar was opened, the barrel fell down and broke and the wine was lost, the borrower had to pay for it [7]). This example clearly shows that the product did not really belong to the lender until he received it.

The only Tanna who is recorded as opposing the above formula which permitted the lending of produce was Hillel (1st century). Hillel insisted that the only way to be certain of avoiding usury when produce was lent was for the product to be assessed in value at the time of the loan. Then, when the time for repayment came, the debt could be restored with goods equal in value to the goods borrowed. Hillel would not even permit a housewife to borrow a loaf of bread from her neighbor unless the bread was first weighed and its value determined. But the majority of the Tannaim were not as exacting as Hillel and allowed borrowing of produce as long as the borrower had the produce in his possession [8]).

Among the Amoraim, Hillel's point of view was supported by Samuel [9]) and by his disciple R. Sheshet. In defending his position, R. Sheshet gave a remarkable interpretation of a Tannaitic statement [10]). A Baraita stated that if a man borrowed wheat from his neighbor and stipulated a monetary return, if it depreciated, he could return wheat, but if it advanced, he could repay its monetary value at the time of the borrowing. Since the Baraita stated that a monetary return was stipulated, the question was put before R. Sheshet, why, if it depreciated, could he return wheat? R. Sheshet answered that the Baraita dealt with a case where no stipulation was made. It is difficult to understand how R. Sheshet could explain the Baraita in this way for the Baraita explicitly states that there was a stipulation. Furthermore, if the ruling of R. Sheshet were adhered to, it would mean that the creditor could lose but he could not possibly gain. This kind of arrangement was in accord with Hillel's view, but it was not accepted by the majority of Amoraim.

The prevailing Amoraic opinion can be seen from the outcome of a discussion between R. Huna (3rd century) and R. Isaac [11]).

[7]) T.B.M. 6:10.

[8]) M.B.M. 5:9; T.B.M. 6:10. A Baraita (Y.B.M. 5:8, 10d) suggests that it would be permissible if it were only for two or three weeks. In Derech Eretz Raba, Chap. 8, we read that a person should not say to his neighbor, "Come and eat with me the way you fed me," lest the second meal be greater thus containing interest.

[9]) B.M. 75a; Y.B.M. 5:8, 10d.

[10]) B.M. 75a.

[11]) Ibid.

These two sages were dealing with the Mishnaic ruling that the borrower had to have the produce in his possession at the time of the loan. The question arose, did he have to have as much of the produce in his possession as he wanted to borrow, or could he have a lesser amount. According to R. Huna, he could not borrow more than he actually possessed. This was in keeping with the principle of the Mishna that the borrower's goods technically became the possession of the creditor replacing the goods he loaned. But R. Isaac said that even if he had only one *seah* of wheat, he could borrow many *kors* of wheat against it. His reasoning was that each *seah* of wheat borrowed could serve as the standby for the next one. R. Isaac's decision in effect nullified the ruling of the Mishna because a person could almost certainly lay his hands, at least temporarily, on a small amount of produce and could thus borrow at will.

Nonetheless, the Gemara supports the view of R. Isaac citing a statement of R. Chiya (2nd and 3rd centuries) to bolster its argument. R. Chiya said that one could not borrow wine or oil if he did not have a drop of wine or oil. The Gemara deduces from this statement that if he had a single drop, he could borrow a large quantity against it [12]). That the Amoraim adopted a liberal outlook on the question of borrowing produce is further evidenced by a decision of R. Huna. We recall that in the above decision with R. Isaac, it was R. Huna who upheld the strict interpretation of the Mishna. The question was raised, could a person borrow produce not actually having it in his possession, but only having it available to him on the open market. R. Huna, at first, ruled no. Later, however, he was influenced by a liberal decision on this matter by his Palestinian colleague, R. Eleazar and thereafter allowed students to borrow wheat in Tishre and repay it in Tevet. They did not have to possess the wheat in Tishre. It was sufficient that it was for sale and available to them [13]).

It is evident, then, that by the end of the Talmudic period, there were no restrictions to speak of on borrowing produce. Whereas the Tannaim had established a fictional regulation to prevent a rise in prices from resulting in usury, the Amoraim, to all intents and purposes, abandoned the fiction and allowed unrestricted borrowing of produce.

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[12]) Ibid.
[13]) B.M. 72b.

Rent

Another area of the economy that came under rabbinic scrutiny was rent. If a person leased a spade for a fixed sum of money per day, this was allowed. But if he were to borrow a sum equal to the value of the spade, it was forbidden for him to pay any fee for its use. Why was rent permitted but interest on a loan forbidden?

The answer can be found if we recall the origin of the prohibition of interest. Interest was outlawed during an era when loans were designed to help out the destitute. It was wrong to take advantage of a poverty-stricken person by burdening him with interest. But this didn't preclude rentals. A person might want to use a house or a field, a spade or a cow, and was willing to pay for the privilege of such use. This was a business transaction and had nothing to do with assisting a poor person. The essential difference between a loan and a rental was that whereas a loan was an act of charity, a rental was a business deal.

Of course, in later times many loans were of a business nature. Nevertheless, interest was still banned. And long after the original reason for permitting a rental while prohibiting a loan on interest had disappeared, certain practical differences remained which distinguished a loan from a rental. For one thing, when a person restored a rental, he returned the actual item which he had hired. If he rented a spade, he returned the same spade. But when someone borrowed money, it was not required that he refund the same coins that he had borrowed. A return of the equivalent amount was adequate.

This leads to an important difference. In the case of a rental, the lessor bore the cost of depreciation. Returning to the case of the spade, one could lease the spade only a limited number of times before it would break and be of no value. Presumably, after each use the spade depreciated to a certain extent. In the case of a rental, the lessee was not responsible for this depreciation as long as he used the spade properly [14]). However, regarding a loan, the borrower had to repay the full value of the loan.

There was one more difference in the rules governing loans and rentals. In the case of a rental, the lessee was responsible for theft or loss of the item but not for some unavoidable accident. However, regarding a loan, the borrower was responsible not only for loss or theft but also for an unavoidable accident [15]).

[14]) See M.B.M. 6:3-5.
[15]) See M.B.M. 8:8 and 8:2 and the Baraita in B.M. 69b.

One vivid way of demonstrating the difference between a rental and a loan is to take the case of a rental of money. Surely, this would appear to be a subterfuge to avoid the interest prohibition. However, even money was rented with the approval of the Tannaim under certain circumstances. A case taken up in the Tosefta [16]) is that of a coin dealer who wanted to hire coins for display purposes. He paid a sum of money to rent these coins from their owner. This differed from a loan for (1) the coins which were borrowed were actually the same coins which were returned, and (2) the coin dealer was not responsible for some unavoidable accident which might befall the merchandise. If he were, then it would have been considered an ordinary loan and his payment of rental would have been forbidden as usury.

In spite of the clear distinction between a loan and a rental, the rabbis allowed the law to be stretched to serve the economic needs of their times. We learn in a Baraita that one was allowed to rent a cow and still be responsible if it died [17]). The fact that the lessee was liable for an unavoidable accident really made him a borrower and should therefore have barred a rental payment as usury. Nonetheless, the Baraita permitted it. It was this Baraita which was cited by R. Sheshet (3rd century) when the question was raised concerning a ship [18]). According to the Gemara, Rav was unable to respond when asked how he could allow a person to pay rental for the use of a ship while at the same time be responsible for a shipwreck. R. Sheshet pointed out that Rav need not have remained silent. He could have defended his ruling based on the Baraita concerning the cow. R. Sheshet further explained that the lessor should not be considered a borrower because although he was responsible for an unavoidable accident, he was not liable for depreciation which is normally the case with a borrower. R. Papa (4th century) also allowed the hirer of a ship to accept responsibility for a shipwreck [19]). It is thus apparent that in this area also, the interest law did not hinder economic pursuits.

Iron Flock Investments

Turning now to investments, we find that the Tannaim forbade what they called the "iron flock" investment [20]). They used this

[16]) T.B.M. 4:2.
[17]) B.M. 69b.
[18]) Ibid.
[19]) Ibid.
[20]) M.B.M. 5:6; T.B.M. 5:14. Baraita in Y.B.M. 5:7, 10c. The Tosefta says

name to describe an arrangement whereby the investor couldn't lose. It was as if he invested in sheep made of iron which couldn't die. The only difference between an "iron flock" investment and a loan on interest was that in the case of the investment, the profit was shared, so the investor's gain depended on the success of the business, while in regard to a loan, the lender's interest was a fixed amount agreed to in advance. But in both cases, the borrower (or the investee) accepted full responsibility for the funds he received. The "iron flock" investment was thus considered similar to a loan on interest and was prohibited.

Half-Profit Investment

But the Tannaim did find a way to legitimatize gainful investments. It was through the half-profit investment [21]). Unlike the "iron flock" investment where the investor couldn't lose, in the half-profit investment, the investor assumed 50% of any loss. He also shared any profits equally with the investee. Because the investor risked a portion of his capital, which was not the case in an ordinary loan, the rabbis permitted him to profit if the venture proved to be successful. It was the risk which distinguished the investment from the loan and which made it legal in Tannaitic law.

Payment for Labor

There was one difficulty, however, in the half-profit arrangement. Even though the investor didn't profit any more than the investee because he had provided the resources for the venture, he did receive the benefit of the investee's labor. The Tannaim ordained, therefore, that a half-profit investment was not legitimate unless the investee was paid for his labor [22]).

But the sages disagreed as to how much the investee was to be

that an "iron flock" investment of a field is permitted. The rabbis allowed the investee to accept liability for the investment since the chances of damage to a field are practically nil. Such an investment amounted to sharecropping.

[21]) M.B.M. 5:4-5; T.B.M. 4:11-22; Baraitot in Y.B.M. 5:5, 10b. Sometimes the arrangement was for one-third or one-fourth profit or loss. T.B.M. 4:15.

[22]) M.B.M. 5:4; T.B.M. 4:11. The Tosefta explains that if the investor worked with the investee part of the time, then he had to pay him wages only for that period when he worked alone. Or, if the investor paid for the rental of the store, this could be balanced out against the investee's labor. On the other hand, if the produce were on deposit in the investee's premises, then the investor had to add a payment for rental to the wages. T.B.M. 4:14.

paid for his labor. R. Judah believed that the payment needed to be only symbolic. It was sufficient if he dipped his bread in the investor's vinegar or ate one of his dried figs. R. Simon b. Yochai, however, maintained that the requirement to pay the investee was not to be taken lightly. He was to be paid in full for his labor. R. Meir took a middle view. He was to be paid, but not the high wages that a businessman would normally receive. It was sufficient to pay him the low wages that an unemployed worker would accept for such a job. In other words, according to R. Meir, a minimum salary was adequate [23]).

This difference of opinion between R. Judah and R. Simon b. Yochai was reflected in their rulings concerning a woman who owned a hen and accepted eggs as an investment. R. Judah permitted an arrangement whereby the hen owner and the investor divided the chicks equally whereas R. Simon forbade it because the owner of the hen was not paid for her labor [24]).

R. Judah's son, R. Jose, followed in his father's footsteps taking a lenient view regarding the payment required for labor. Although the majority had agreed that when the investment was an animal that could perform labor for the breeder (like an ox or an ass), then no payment had to be made to the breeder for his labor, R. Jose extended this privilege to include goats and sheep claiming that the milk or shearings produced by these animals were sufficient payment for labor [25]).

Another Tanna who was not as exacting as the majority when it came to payment for labor was R. Simeon b. Gamliel. The rabbis had said that where it was the custom to make an additional payment to the breeder for carrying small beasts, the breeder should be so paid. But R. Simeon b. Gamliel maintained that the labor of the mother animal was adequate payment for shouldering the young and local custom need not be followed [26]).

The dispute among the scholars concerning payment for labor carried into Amoraic times. Rav (3rd century) said that an investor could make an agreement with an animal breeder that this payment

[23]) T.B.M. 4:11; Baraitot in B.M. 68a and 68b. In the Baraita, R. Meir's words are "whether much or little." In the Tosefta, he said, "as an unemployed worker." That the Gemara (B.M. 68a and b) discusses the meaning of an unemployed worker as part of an anonymous Baraita suggests that this was the accepted view.

[24]) T.B.M. 4:25; Baraita in B.M. 68b.

[25]) T.B.M. 5:4; Baraita in B.M. 68b.

[26]) M.B.M. 5:5; T.B.M. 5:6; Baraita in B.M. 68b; Baraita in Y.B.M. 5:6, 10b.

for labor be any excess above a one-third profit on the investment. But Samuel (3rd century) said that this was not adequate payment, for the profit might not reach one-third. Samuel maintained that the investor had to pay the breeder a definite amount of money not dependent on a speculative gain. Rav apparently also agreed that the breeder could not go home empty handed for he also said that the breeder should receive the head of the animal. The Gemara suggests that Rav meant that if the profit didn't reach one-third, then the breeder received the head; it is also possible, however that Rav meant that in any case he received the head [27]).

We cannot consider the animal's head to be a large payment for the breeder's labor, but, that it was of some worth is suggested by the following woeful story [28]). R. Eleazar of Hagrunia (4th century) bought a cow and gave it to his tenant to raise on a half-profit basis. When the animal was fattened, the tenant received half the profit and, for his labor, the animal's head. Now the tenant's wife berated her husband for not having been in partnership with R. Eleazar for then, she said, he would also have received the tail. So on the next occasion, the tenant paid for half of the cow and was an equal partner with his landlord. This time, however, when the profits were split, R. Eleazar took half of the head and half of the tail. "What!" exclaimed the tenant, "Shall I not receive even as much as before." R. Eleazar replied that before he had to give him more than half of the profit lest his labor of caring for the cow appear as usury, but now that they were partners, there was no danger of usury and the split could be exactly 50%-50%. This incident provides an example of an investor fulfilling his obligations, albeit in a small way, of payment for labor.

The third century Amora, R. Nachman took the liberal view in the dispute concerning payment for labor. He said that the law was in accordance with R. Judah [29]), that is, that it was sufficient if the investee dipped his bread into the investor's vinegar. But in the fourth century, Rava overruled R. Nachman explaining that R. Nachman did not say that the law was in accordance with R. Judah but merely that the law, as stated by R. Judah, followed a certain principle [30]). In this way Rava upheld the requirement for at least a minimum payment for labor.

[27]) B.M. 69a.
[28]) Ibid.
[29]) And with R. Jose b. Judah and with R. Simeon b. Gamliel, B.M. 68b.
[30]) Of leniency. B.M. 69a.

The Tosefta includes one formula which made no separate payment for labor necessary [31]). In this arrangement, for one-third of the investment, the investor would accept the entire risk of loss while still sharing the profit equally. For the other two-thirds, the normal half-profit rules prevailed. It would then turn out that the investor was risking 66-2/3% of his capital while still receiving only 50% of the profit. In such a case, the reduction of the investee's risk was considered adequate compensation for his labor.

This formula was apparently employed in Amoraic times, for when R. Ilish died, a bond was presented to his children showing that their father had accepted funds on a half-profit basis without any provision for compensation for his labor. When Rava heard what happened, he said that R. Ilish was a great man and it couldn't be true. He must have employed the Tosefta formula giving him a greater opportunity for gain than for loss and making unnecessary a separate payment for labor [32]). Rava's explanation of R. Ilish's action is in accord with his interpretation of R. Nachman's statement mentioned above. Rava maintained that the investee had to be recompensed in some way for his labor.

Even with the requirement that the investee be paid for his labor the half-profit investment became widely used. It gave the investor an opportunity for profit which was forbidden with a loan and it provided the businessman with the capital he needed to carry out his enterprise. The Nehardeans called the half-profit investment an *iska* and considered it one-half a loan and one-half a deposit [33]). They looked upon the *iska* as a fine rabbinical enactment "satisfactory to both borrower and lender." The fact that they used the terms borrower and lender in praising the enactment is revealing. It suggests that the half-profit investment indeed served as a substitute for the ordinary loan. A creditor could not legally profit from a loan, but from an *iska* he could. Thus the *iska* grew in popularity, satisfying the rabbis that the interest laws were not being violated yet meeting the demands of the economy for credit.

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[31]) T.B.M. 4:11.

[32]) B.M. 68b-69a.

[33]) Undoubtedly because half of the risk (the loan) was borne by the investee and half by the investor. The discussion among the Amoraim (B.M. 104b-105a) indicates that *iska* was a technical term in common use in Rava's time.

Near to Profit and Far from Loss

Tannaitic law forbade not only an investment in which the investor took no risk but also one in which he took a lesser risk than the investee. Such an investment was called "near profit and far from loss".

R. Eleazar, the third century Palestinian Amora, invested money with a businessman saying that until Chanuka he (R. Eleazar) would receive the profit; after Chanuka the businessman could have the profit. When Chanuka came, the man brought the profit to R. Eleazar but he would not accept it. During the time between making the investment and Chanuka, R. Eleazar had a change of heart. He realized that the chances of profit were greater before Chanuka then after the holiday and he disengaged himself from the enterprise which was "near to profit and far from loss" [34]). In a similar situation, R. Isaac (also 3rd century) refused to accept the profit from an investment [35]).

Orphans

In the case of orphans, the Amoraim made an exception to the rules of investment. The third century sage, R. Anan, expressed the view that orphans' money may be lent on interest quoting Samuel as his authority. But R. Nachman (also 3rd century) questioned R. Anan saying, "Because they are orphans, are we to feed them with forbidden food?" And R. Nachman proceeded to show that Samuel did not permit usury in behalf of orphans and that R. Anan was mistaken in citing Samuel as his authority [36]).

But R. Nachman was unable to stem the tide of rabbinic thinking which favored liberalizing the interest laws for the benefit of orphans. For the third century scholars, R. Sheshet and R. Chisda were quoted as permitting orphans' money to be lent on terms that were "near to profit and far from loss" [37]).

We find the same trend continuing in the fourth century. Although R. Joseph said that orphans' money should be given to the court and paid out to the orphans in installments, Rabbah objected, for he reasoned, if this were done, their funds would disappear. He

[34]) Y.B.M. 5:8, 10c.
[35]) Ibid.
[36]) B.M. 70a.
[37]) Ibid.

suggested that the money be invested with a wealthy man on terms "near to profit and far from loss". R. Ashi (late 4th and early 5th century) agreed with Rabbah and laid down rules for finding the right person with whom to invest the funds [38]). The prevailing view then, was to permit a favorable investment of orphans' funds, that is, an investment which provided the investor with greater opportunities for gain than the investee and less likelihood of loss. Such an investment was considered usurious by the rabbis and there was no answer to R. Nachman's objection that the orphans were being provided with forbidden food. But they felt that the welfare of the orphans took precedence over the anti-interest laws.

Exceptions

Through the course of the years other exceptions to the interest laws were instituted. The Tannaim allowed the Temple a usurous gain [39]). The third century Amora, R. Jochanan, allowed one to borrow on interest in order to celebrate the new month or for the observance of other commandments [40]). The Tannaim had said that were it not for the danger of people getting in the habit of usury, members of a family would be allowed to borrow from each other on interest counting the additional payments as gifts [41]). Based on this principle, the scholars of Amoraic times, borrowed from each other on interest considering themselves like part of the same family. Samuel (third century) explained that since the rabbis knew well that usury was forbidden there was no danger of misleading them, and any additional payment was merely a gift [42]). Samuel is reported as having proposed to Abbuha b. Ahi, "Lend me 100 peppercorns for 120" [43]). Likewise, his colleague, Rav, said that he was accustomed to borrow and lend on interest with Raba b. bar Chana [44]).

There was another procedure which cannot be classified as an exception but which apparently allowed the interest law to be circumvented. Rava permitted a person to give money to a second party in order that he (the second party) lend to a third party. He allowed

[38]) Ibid.
[39]) T.B.M. 4:2; Baraita in B.M. 57b.
[40]) Y.M.K. 2:3, 81b; Y. San. 8:2, 26b.
[41]) T.B.M. 5:15; Baraita in Y.B.M. 5:7, 10c.
[42]) B.M. 75a.
[43]) Ibid.
[44]) Ibid.

this transaction because the person who gave the gift was not the one who received the loan [45]). Again, Rava permitted a person to give money to a second party in order that he influence a third party to lend him money. He did not consider this interest since the money was not given to the person who lent the funds [46]). The Gemara in fact cites an example of this practice. Certain wax merchants used to give balls of wax to Abba Mar in order that he persuade his father, Rav Papa (4th century) to lend them money. Rav Papa defended this practice by saying that there is no prohibition against accepting such a gift if you are not the lender [47]).

Restitution

Of all the rabbinic decisions allowing for unhampered economic activity, none was more significant than that regarding restitution. Tannaitic law required the cancellation of the interest clause from a loan contract and the repayment of interest already exacted. Usurers were grouped with robbers who had to restore what they had wrongfully taken [48]).

But when the Amoraim took up the question of requiring a creditor to return interest, they severely limited its application. They ruled that only direct interest, that is, interest explicitly stipulated in a loan contract was reclaimable in court. All other interest, which was called rabbinical interest, or indirect interest, or the dust of interest, could not be recovered through the legal processes [49]). We can understand why Dr. Boaz COHEN has called this decision, "a minor revolution in law" [50]). For the vast majority of cases where interest was taken was not stipulated interest, but rather indirect interest through a business transaction. The clamoring of the day for leniency was not from the poor nor from lending agencies; it

[45]) B.M. 69b.
[46]) Ibid.
[47]) Ibid. Jacob NEUSNER (*op. cit.*, Vol. IV, p. 226) correctly points out that this was a simple alternative that could be employed by those who wanted to avoid transgressing the law, but it was not, as he suggests, the only one, or even the most important one.
[48]) Baraita in B.M. 62a and B.K. 94b.
[49]) B.M. 61b-62a, 65b. This was in accordance with the view of R. Eleazar (3rd century). R. Jochanan didn't even want direct interest to be recoverable in court but his view did not prevail. See also Y.B.M. 5:1, 10a.
[50]) Boaz COHEN, "Antichresis in Jewish and Roman Law," *Alexander Marx Jubilee Volume*, New York 1950, p. 191.

was from the business community. The rabbis had built up an elaborate legal structure to prevent sales, investments, mortgages, leases, and loans of produce from resulting in usury. By declaring indirect interest unrecoverable in court, they abdicated their power of enforcement in all of these areas. They made adherance to the vast body of law designed to prevent business dealings from resulting in usury dependent for its compliance upon persuasion and moral influence.

Conclusion

The Talmudic literature shows how the rabbinic authorities created an anti-usury structure made largely of straw. They established a law that a borrower had to have the produce in his possession if he wanted to borrow produce. But the requirement was fictional for if he had the product he wouldn't need to borrow it. And then even this fictional regulation was nullified by the ruling that only a drop of the product had to be in the borrower's hands.

They clarified the difference between a borrower and a lessee in order to prevent a borrower from paying interest or a lessee from accepting the liabilities of a borrower and then proceeded to make exceptions which allowed the lessee to take on those liabilities. They forbade the "iron flock" investment for fear of usury, but then allowed investors to gain through the formula of the half-profit investment. They made exceptions for the orphan, for the Temple, for religious celebrations and for themselves. Thus by use of fictions and exemptions they allowed the economic life of their day to proceed with little hindrance from the Biblical law against interest.

There are many statements in rabbinic literature condemning the evils of usury. And simple loans on interest were indeed forbidden and their prohibition enforced [31]). But the legal fabric woven to cover business transactions of all sorts became tattered and torn before the economic pressures of the times.

[31]) B.M. 65a.