

Inflation Issues in Jewish Law

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Introduction

In recent times, inflation has been widely recognized as a menacing social problem. While the rate of inflation in 1982 has considerably abated, its scourge wrenches recent memory. For the years 1980 and 1981, the widely followed measure of inflation, the consumer price index (CPI) increased at 12.8% and 8.9% respectively.

Inflation is decidedly injurious to anyone whose money income does not keep pace with the rising price level. Especially hard hit on this account are pensioners and other people who subsist on a fixed dollar income.

Unanticipated inflation redistributes income from creditors to debtors as the latter group pay back dollars of less purchasing power than they received.

Still another impact of inflation is to create an unwillingness on the part of market participants to enter into long term contractual agreements.

Inflation creates various issues for Jewish law. It will be the purpose of this paper to explore these various issues.

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Real vs Nominal Interest Rates and the Ribit Interdict

One area of Jewish law profoundly impacted by the phenomenon of inflation is Judaism's prohibition against interest charges (*ribit*). Helping to focus on one aspect of this impact is the distinction between the *real* and the *nominal* interest rate. The real rate of interest is the percentage increase in purchasing power that the borrower pays to the lender for the privilege of borrowing. It indicates the increased ability to purchase goods and services that the lender earns. In contrast, the *nominal* rate is the percentage by which the money the borrower pays back exceeds the money that he borrowed, making no adjustment for the fall in the purchasing power of this money that results from inflation. Does *ribit* law merely prohibit the lender from realizing a *real* return on his loan; or is he interdicted from even earning a *nominal* return on his loan? Should the former view be taken, legitimacy would be found in the practice of indexing the repayment of a loan to the consumer price index.

Bearing directly on the *real-nominal* interest rate issue is an analysis of the following Talmudic text in *Bava Kamma* 97b:

Raba asked R. Hisda: What would be the law where a man lent his fellow something [on condition of being repaid with] a certain coin and that coin meanwhile was made heavier? He replied: The payment will have to be with the coins that have currency at that time. Said the other: Even if the new coin be of the size of a sieve? — He replied: Yes ... But in such circumstances would not the products have become cheaper? — R. Ashi therefore said: We have to look into the matter. If it was through the [increased weight of the] coin that prices [of products] dropped, we would have to deduct [from the payment accordingly], but if it was through the market supplies [increasing] that prices dropped, we would have not have to deduct anything. Still would the creditor not derive a benefit from the additional metal? [We must] therefore [act] like R. Papa and R. Huna the son of R. Joshua who gave judgment in an

action about coins, according to [the information of] an Arabian market commissioner that the debtor should pay for ten old coins [only] eight new one.

Classic rabbinic interpretation of the above Talmudic text understands the case to refer to the circumstance where subsequent to the loan the government removed from circulation the coin that was lent. In addition to not circulating domestically, the old coin was not used as a medium of exchange elsewhere, or if it was so used the creditor did not enjoy ready access to merchants from the country where it did circulate. Prohibiting the old coin from being used as a medium of exchange, the government replaced it with a new one of greater metallic content. Given the obligation to make payment of a debt with a medium of exchange, the debtor must make payment with the new circulating medium.¹

With the new monetary unit embodying greater purchasing power than the defunct unit, avoidance of *ribit* law violation apparently calls for the debtor to return *fewer coins* than he borrowed. A blanket downward adjustment on this basis is, however, rejected by the Talmud. Such an adjustment is not appropriate when the supply of commodities simultaneously increased in the relevant interval. Here, the debtor would be obligated to return the *same* number of coins he borrowed, notwithstanding the increased purchasing power embodied in the new coins. To be sure, a simultaneous increase in supply of commodities does not automatically rule out favorable treatment for the debtor. Since a coin has intrinsic value, aside from its value as a medium of exchange, downwardly adjusting the payment obligation of the debtor is in order when the increase in metal content of the new coin was at least 20%. Here, melting down the new coin and selling it for its metal content will surely fetch a higher price in the marketplace than the current value of the coin as a medium of exchange. No such advantage would presumably

1. R. Samuel b. Isaac Sardi (Spain, ca 1185-1255), *Sefer Ha-Terumot, sha'ar 46, helek 8, ot 2*; R. Asher b. Jehiel (Germany, 1250-1327), *Rosh, Bava Kamma IX-12*; R. Solomon b. Abraham Adret (Spain, ca. 1235-1310), *Rashba Bava Kamma 97b*.

accrue to the coin holder when the increase in the metal content was less than 20%. Here, the cost of converting the coin into bullion as well as the loss of metal involved in the melting down process combine to make the melting down process unprofitable.²

The above formulation sheds light on the halachic treatment of the converse case involving currency debasement. Suppose the monetary unit A lent B was declared defunct by the government at the time repayment was due and was replaced with a monetary unit containing less metal than the old unit. Suppose further that the new monetary unit commands less real goods and services than the old unit. Does halacha require an upward adjustment in the debtor's payment obligation? Application of the above rules led decisors to call for such an adjustment only if the supply of commodities did not decrease in the interim. Under conditions of stable supply, such an adjustment would not be in order unless the metal content of the monetary unit decreased by 20%.³

R. Ashi's distinction requires an explanation. With inflation eroding the purchasing power of the monetary unit lent out, why is the debtor's obligation upwardly adjusted only when the exclusive cause of the inflation is an increase in the monetary unit but not when its exclusive cause is a decrease in the supply of commodities?

The distinction, in our view, can be rationalized on the assumption that given the stability of the community's consumption pattern, an increase in the monetary unit, other things equal, will only cause the *absolute* price level to rise, while leaving the *relative* price structure intact. In contrast, when the supply of commodities is reduced, other things equal, only the *relative* price structure will change, while the *absolute* price level

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2. *Rosh*, loc. cit. R. Abraham b. David of Posquires (1125-1198), quoted in *Shittah M'kubezet*, Bava Kamma 97b), however, advances a different rationale for the 20% rule.
 3. R. Isaac b. Jacob Alfasi (Algeria, 1013-1103), *Rif*, Bava Kamma 98a; Maimonides (Egypt, 1135-1204), *Yad*, Malveh IV:11; *Rosh*, loc. cit.; R. Jacob b. Asher (Germany, 1270-1343), *Tur*, *Yoreh De'ah* 165; R. Joseph Caro (Turkey, 1488-1575), *Shulhan Arukh Yoreh De'ah* 165. A dissenting view is advanced by R. Abraham b. David. In his view no accommodation is made for the lender in case of currency depreciation.

will remain intact. What brings about the change in relative prices in the latter case is the competitive bidding for the commodities in short supply. More money is now spent on the commodities in short supply and less money is spent in other areas. This change in the community's spending pattern will change the relative price structure.

Why the absolute-relative price distinction should prove decisive in determining whether an upward adjustment in the debtor's obligation is in order requires explanation. Examination of the nature of the debtor's obligation to the creditor is here critical. Bearing directly on this issue is the following Talmudic passage in *Bava Kamma* 94a:

It was stated: If a man lends his fellow [something] on condition that it should be repaid in a certain coin, and that coin became obsolete. Rab said that the debtor would have to pay the creditor with the coin that had currency at that time, whereas Samuel said that the debtor could say to the creditor, "Go forth and spend it in Mishan." R. Nahman said that the ruling of Samuel might reasonably be applied where the creditor had occasion to go to Mishan, but if he had no occasion [to go there] it would surely not be so

Tosafot et alia understand the dispute between Rav and Samuel to refer to the circumstance where A bought merchandise from B on credit or borrowed money from him, *with the stipulation that repayment should be made with the medium of exchange*. In the absence of this stipulation, all disputants agree that payment is made with the medium of exchange that existed at the time the loan was entered into, notwithstanding that the original monetary unit is now declared defunct and does not even circulate in a foreign country at the time payment is due.⁴

4. *Tosafot Bava Kamma* 97a; *Rosh*, IX:11; *Tur*, *Choshen Mishpat* 74:9; R. Moshe Isserles (Poland, 1525-1572), *Ramo*, *Sh. Ar. Choshen Mishpat* 74:7; R. Jehiel Michel Epstein *Byelorussia*, 1829-1908, *Aruch ha-Shulchan*, *Choshen Mishpat* 74:8. R. Solomon b. Isaac (*Rashi*, *Bava Kamma* 97a), however, draws a

Extension of the non-stipulation case to the instance where the monetary unit consists of fiat money, apparently leads to the startling conclusion that the debtor discharges his obligation with the original medium of exchange, notwithstanding that its defunct status renders it literally worthless. Rejecting this extension, R. Jehiel Michel Epstein et alia posit that returning what was lent is an appropriate course of action only when the original medium of exchange was metallic and hence had intrinsic value. Here, despite its becoming defunct, the monetary unit retains its intrinsic value. Discharging the debt with it can hence be viewed as a form of "payment." Discharging a debt with defunct fiat money, however, amounts to *no payment at all*. Hence, the debt must be discharged with the new monetary unit.⁵

Proceeding clearly from the above understanding of the dispute between Rav and Samuel is a rejection of the notion that the debtor's responsibility consists of an obligation to restore to the lender the purchasing power he gave up at the time of the loan. What the obligation consists of is merely to return what was loaned out. When a *stipulation* is made to make payment with currency, Rav and Samuel dispute the obligation of the debtor. Talmudic decisors follow Samuel's view.⁶ Accordingly, payment is made with the original medium of exchange, even if it was declared defunct at the time of repayment, provided, of course, that it continues to circulate *somewhere*, e.g. in Mishan.

With the debtor's obligation essentially consisting of a duty to return what was lent to him, discharging the debt with the original monetary unit satisfies the stipulation as long as it *minimally*

distinction between the legal treatment of a monetary loan and a credit sale. It is only in the former case, in his view, that non-stipulation allows the debtor to discharge his debt with the defunct original medium of exchange, though at the time of repayment it circulates nowhere in the world. R. Mordechai b. Hillel (Germany, 1240-1298,) *Mordechai Bava Kamma* IX:110 asserts that toward the end of his life, R. Solomon b. Isaac recanted this view and subscribed to *Tosafot's* view.

5. *Aruch Ha-Shulchan*, op. cit.; R. Abraham Isaiah Karelitz (Israel, 1878-1953), *Chazon Ish*, *Bava Kamma* 17:31 and *Likkutim* siman 19 at *Bava Kamma* 89b.
6. *Yad*, op.; cit.; R. Israel of Krems (fl. mid 14th cen.), *HaGahot Asheri*, *Bava Kamma* IX:11; *Tur*, op. cit. 74:9; *Sh. Ar.*, op. cit. 74:7; *Ar. hash*, op. cit.

retains its identity as a medium of exchange. Minimal identity retention obtains when the medium of exchange retains its purchasing power in respect to one or more of the *entire* set of commodities previously available, albeit now available only in a foreign country. Since the original medium of exchange still circulates in Mishan, it may reasonably be assumed that it retains its purchasing power in respect to at least one or more of the entire set of commodities previously available.

Rav, in our view, may very well also subscribe to the principle that minimum identity retention allows the original medium of exchange to be used to discharge a debt. Retaining its purchasing power in respect to one or more commodities available only in a foreign country does not, however, suffice. Minimum identity retention obtains only if the monetary unit retains its purchasing power in respect to one or more of the entire set of commodities available *domestically*. With the government declaring the original monetary unit defunct, payment must be made with the new monetary unit.

Proceeding clearly from the above is a rationale of why inflation induced by a commodity shortage, other things equal, does not call for an upward payment adjustment for the debtor. Since the money supply is assumed to remain constant, the monetary unit can well be expected to retain its original exchange value in respect to one or more of the entire set of commodities available domestically. Given that the medium of exchange retains its identity, a nominalistic approach is adopted for the payment obligation of the debtor, despite the loss in real terms this approach causes the lender.

In sharp contrast, when the inflation is caused by an increase in the money supply, other things equal, the *absolute* price level will rise. With the medium of exchange losing its identity, a nominalistic approach is rejected in favor of a payment obligation that would effectively restore for the lender the purchasing power he gave up at the time of the loan.

When both commodity shortage and money supply growth are simultaneously operational, the monetary unit could very well maintain its purchasing power in respect to one or more of the

entire set of commodities, despite the rise in the absolute price level occasioned by the monetary growth. Should the medium of exchange maintain its identity despite the monetary growth, the nominalistic approach recommends itself.

Within the framework of a modern economy, monetary expansion invariably impacts on the relative price structure as well as the absolute price level. What brings this about is the workings of the fractional reserve system.

A fractional reserve system requires a bank to hold as idle cash only a fraction of a deposit it receives. To illustrate, a legal reserve requirement of 20% would require a bank to hold as idle cash only \$200 of a \$1000 deposit received.

Within the framework of a fractional reserve rule, monetary expansion is accomplished when holders of cash assets decide to exchange these cash assets for demand deposits or bank credit. Creating for a cash asset holder a demand deposit does not in itself expand the money supply as the increase in the money supply occasioned by the creation of the demand deposit is exactly counterbalanced by an equal reduction of currency in circulation. While the initial deposit changes only the composition but not the size of the money supply, the stage is set for monetary expansion. Meeting the 20% reserve requirement allows bank A to lend out \$800 of the \$1,000 deposit. This process of monetary expansion continues as the loan is spent and its proceeds are redeposited in another bank. Successive rounds of expansion eventually come to a halt when the entire original cash deposit of \$1,000 is held as idle cash by the banking system as a whole.

Monetary expansion occurs also in consequence of expansionary federal reserve credit policy. Financing a deficit by selling bonds to the federal reserve illustrates such an expansionary policy. Let us suppose, for instance, that for the purpose of financing a \$20 billion deficit, the treasury sells \$20 billion of bonds to the federal reserve. The federal reserve pays for the bonds by increasing the treasury's account with it by \$20 billion. Given its newly created demand deposit, the treasury can now write \$20 billion of additional checks against its account at the federal reserve.

What the above description of commercial bank and federal reserve credit expansion indicates is that monetary expansion profoundly impacts on the relative price structure. Farmers, consumers and businessmen compete for the available credit. Each of these groups is by no means homogeneous. The spending pattern of the recipients of the bank credit impact upon the relative price structure. Similarly affecting the relative price structure is the spending pattern of recipients of federal spending, financed by means of monetary expansion.

Inflation in a modern economy is rooted in causes other than an increase in the monetary unit and a reduction in the supply of commodities. Phenomena exerting an inflationary impact on the economy include: a general loosening of credit conditions; increased government deficits; a breakdown of the competitive structure of the economy and an increase in the population. Besides exerting an upward pressure on the price level, these phenomena effect the relative price structure as well. The set of goods and services in a modern economy is indeed enormous, including commodity prices, consumer goods, the fees of professional services, financial assets and the country's foreign exchange rates. While inflation generally exerts an upward pressure on prices, some prices, such as bond prices and foreign exchange rates, actually decline. Moreover, within the framework of normal economic progress, industries rendered obsolete by technological advance experience price declines. Since the medium of exchange in a modern inflationary economy can be expected to maintain its exchange value in respect to one or more of the entire set of available goods and services, the nominalistic approach recommends itself in the treatment of loan transactions.

Commodity Loans

Inflationary times often create an incentive for market participants to substitute barter transactions for cash transactions. Commodity loans calling for payment in kind instead of a cash payment guarantee for the lender that the same purchasing power he gave up in making the loan will be restored to him when repayment is made.

Out of fear that the market value of the commodity may increase at the time of repayment, the Sages prohibited commodity loans in kind (*se'ah be'se'ah*). Such a transaction violates the rabbinic extension of *ribit* law, called *avak ribit*.⁷ The prohibited agreement places the creditor at a disadvantage: Should the commodity appreciate at the time of repayment, the debt may not be discharged by means of payment in kind. Instead, a cash payment is required, with the debtor's obligation set equal to the value the commodity had at the time the loan was entered into. Depreciation of the commodity, on the other hand, disallows a cash payment. Here, payment must be made in kind.

Legitimacy is, however, given to a commodity loan when repayment is to be made in cash based on the market value of the commodities at the time the loan was entered into. Since the commodity serves here merely as the medium of the loan and the debtor's obligation is fixed in cash, the possible appreciation in the value of the commodity at the time of repayment is immaterial.⁸

Since the *se'ah bese'ah* transaction is prohibited only by dint of *avak ribit* law, the Sages suspended their interdict under certain conditions.

One qualifying circumstance occurs when the debtor is in possession of the commodity he borrows at the time the loan was entered into (*yesh lo*). To illustrate, suppose the loan consisted of a ton of wheat and the debtor had this amount of wheat in his possession at the time he entered into the or loan. Given the above correspondence, the amount of wheat the borrower has is regarded as if it were given immediately to the lender as payment at the time the loan was entered into. Any appreciation of the commodity subsequent to the loan is therefore regarded as having occurred while the commodity was in the domain of the lender.⁹

The *yesh lo* point of leniency in *se'ah bese'ah* law extends

7. *Hochmat Adam* 134:1.

8. *R. Sheshet Bava Mezia* 75a; *Rif* ad locum; *Rosh*, op. cit. V:74; *Tur*, op. cit.; *Sh. Ar.*, op. cit.; *Hochmat Adam*, op. cit.

9. *R. Isaac, Bava Mezia* 75a; *Rif* ad locum; *Yad*, op. cit., X:2; *Rosh*, op. cit. V:75; *Tur*, op. cit. 162:2; *Sh. Ar.*, op. cit. 162:2; *Hochmat Adam*, op. cit. 134:2.

even to the instance where the amount of the commodity in the debtor's possession at the time of the loan amounts to only a small portion of the commodity loan. Since the *se'ah bese'ah* interdict is *only* prohibited by dint of *avak ribit* law, the *yesh lo* loophole is valid even when its rationale is not entirely applicable.¹⁰

When a *se'ah bese'ah* transaction is legitimized by means of the *yesh lo* mechanism, both parties must be aware that the debtor has some amount of the loan commodity at the time the transaction was entered into and that this circumstance is what *halachically* validates their agreement. Nevertheless, ignorance on the part of the parties of these facts does not disallow the debtor to return the loan commodity, even if it appreciated in value.¹¹

Under the *yesh lo* circumstance the transaction may call for the commodity to be repaid at such time when it is expected to appreciate in value. This clause, according to R. Shabbetai b. Meir ha-Kohen (ר"ש), is valid even when the contract disallows early payment.¹²

Another circumstance that may suspend the *se'ah bese'ah* interdict obtains when the commodity involved trades at a definite market price (*yaza ha-sha'ar*).¹³ With repayment in kind possible at any time, the borrower is regarded as being capable of discharging his debt by making the requisite commodity purchase before it appreciates above its value at the time of the loan.¹⁴ Rambam et alia legitimize the above mechanism even when the borrower lacks the necessary cash to make the commodity purchase. Though lacking cash the borrower is regarded as capable of securing the necessary commodity purchase by means of establishing a line of credit.¹⁵

10. *Responsa Rosh, K'lal 108 sief 16*; R. Yom Tov Vidal of Toloso (fl. 14th cen.), *Maggid Mishneh, Yad, Malveh X:2*

11. R. David b. Samuel ha-Levi (Poland, 1586-1667), *Turei Zahav, Sh. Ar. Yoreh De'ah 162* note 38; R. Shabbetai b. Meir ha-Kohen (Poland, 1621-1662), *siftei Kohen, Sh. Ar., Yoreh De'ah 162* note 7 R. Jacob Blau, *B'rit Yehudah* (Jerusalem: Akiba Yosef, 1976), p. 317 note 37.

12. *Siftei Kohen, Sh. Ar.*, op. cit. 162 note 11.

13. *Bava Mezia 72b*; *Yad*, op. cit.; *Rosh, Bava Mezia V:61*; *Tur*, op. cit., *Sh. Ar.*, op. cit.; *Hochmat Adam 134:5*.

14. *Hochmat Adam*, op. cit.

15. *Yad*, op. cit. X:1; *Siftei Kohen*, op. cit. 162 note 10; *Hochmat Adam*, op. cit.

The *yaza ha-sha'ar* mechanism is subject to several restrictions. Calling for the commodity loan to be repaid at a particular time is, according to Rambam, prohibited. Such a stipulation indicates an expectation on the part of the lender of price appreciation at the specified date.¹⁶ Disputing this position, R. Abraham b. David of Posquires (ראב"ד) et alia legitimize the *yaza ha-sha'ar* mechanism even if the lender sets a date for repayment.¹⁷

A variation of the specified date of repayment case occurs when the *se'ah bese'ah* transaction disallows early repayment. Since early repayment cannot be made, the borrower cannot be regarded as capable of making repayment before the commodity appreciates in value. The transaction is hence prohibited.¹⁸

Another restriction for the *yaza ha-sha'ar* mechanism, according to Rambam, is that it is invalid when either the lender or the borrower is unaware that the loan commodity is traded at a definite price when they entered into their *se'ah bese'ah* transaction.¹⁹ Unawareness creates a presumption of intention to make repayment at such time that the commodity will appreciate in value.²⁰ Apparently equating the rationale of the *yaza hasha'ar* mechanism with the *yesh lo* method, R. Asher b. Jehiel (ראש"ה) legitimizes the former procedure even if one or both of the parties was unaware that the loan commodity was traded at a definite price.²¹

Taking a stringent view in this matter, R. David b. Samuel ha-Levi (ד"ש) rules in accordance with Rambam.²²

Requiring parties to a *se'ah bese'ah* arrangement legitimized by means of the *yaza hasha'ar* mechanism to be aware of the market price at the time they enter into their agreement, the *Shach* does not prohibit repayment in kind with an appreciated

16. *Yad*, op. cit.

17. R. Abraham b. David of Posquires, *Rabad* at *Yad*, loc. cit.; *Ramo, Sh. Ar.*, op. cit. 162:3; R. Isaac b. Sheshet Perfet (Spain, 1326-1408), *Responsa Ribash* 19.

18. *Siftei Kohen, Sh. Ar.*, op. cit. note 11.

19. *Yad*, op. cit.

20. R. Joseph Caro, *Beit Yosef, Tur*, op. cit.

21. *Responsa Rosh* quoted in *Beit Yosef*, loc. cit;

22. *Turei Zahav, Sh. Ar.*, op. cit. 162 note 3

commodity in the absence of the awareness condition.²³

Advancing a middle ground view in this matter is R. Jonathan Eibschutz. Requiring the awareness condition, he does not prohibit repayment in kind with the appreciated commodity in the absence of this condition unless the ignorant party was the lender.²⁴

Still another restriction the *se'ah bese'ah* transaction is subject to is that it must be structured in a manner that it would not be regarded as "near to profit and far from loss" from the standpoint of the lender. The following ruling of R. Isaac b. Sheshet Perfet (ריב"ש) provides a case in point: A sold several measures of wheat on credit to a Jewish community, with the option of demanding at the due date either a payment in kind or a cash payment equal to the value of the wheat at the time of the sale. Since such an arrangement hedges for the seller against the possibility of price depreciation of the commodity, the stipulation violates *avak ribit* law. The *se'ah bese'ah* arrangement is legitimized only when the lender is willing to absorb the risk of commodity depreciation. When he is unwilling to do so the arrangement amounts to "near to profit and far from loss."²⁵

Currency may also be subject to the *se'ah bese'ah* interdict. This occurs when the currency involved is not the economy's main circulating medium of exchange. Providing a case in point is R. Yohanan's prohibition against a loan transaction calling for A to lend B a gold dinar and to be repaid in kind at a latter date. Given that silver coins were in his time the main circulating medium of exchange, a loan in kind consisting of a gold dinar must be treated in the same vein as a *se'ah bese'ah* transaction.²⁶

Currency loans taking on the legal character of commodity loans may nevertheless be arranged so as not to violate *avak ribit*

23. *Siftei Kohen*, Sh. Ar., op. cit. note 9

24. R. Jonathan Eibschutz (Prague, 1695-1764), *Kereti-u-Feleti*, Sh. Ar. Yoreh De'ah.

25. R. Isaac b. Sheshet Perfet, *Responsa Ribash* 19.

26. R. Yohanan, *Bava Mezia* 45a; *Rif ad locum*; *Rosh Bava Mezia* 45a; *Tur*, op. cit. 162:1.

law. Use of the mechanisms described above accomplishes this end.²⁷

Proceeding from the above discussion is the legitimacy of denominating loans in a foreign currency. This technique is frequently employed as an inflation hedge when the lender fears that during the term of the loan the domestic currency will depreciate in value more than the foreign currency. Since foreign currency is not the main medium of exchange of a country, it must legally be treated as a form of *perot* (commodity) and hence subject to the *se'ah bese'ah* interdict. Nonetheless, given that foreign exchange today is freely traded in a well-organized market and, in addition, the borrower can obtain the foreign exchange in question, both the *yaza hash'a'ar* and *yesh lo* mechanisms readily apply.

Reciprocal Labor Agreements

Inflation, especially when it is accompanied by recession, produces a marked substitution of barter transactions for market transactions. Barter allows a person, in some measure, to maintain his accustomed standard of living despite his loss in income and the higher price level he faces.

Reciprocal work agreements may violate *avak ribit* law. This occurs when A commits himself to compensate B for his labor services by rendering him, *at some future date*, a labor service either enjoying a higher market value²⁸ or requiring greater physical exertion than the service B provided A. Since the arrangement confers A a delay in performing his end of the agreement, the differential value or effort involved in his service amounts to compensating B for *tolerating the delay* in the payment due him (*agar natar*). No infringement of *avak ribit* law is, however, involved when the time delay element is absent from the agreement.²⁹ Legitimacy is therefore given to reciprocal labor

27. R. Hiyya Rofe (Safed, d. 1620), *Ma'aseh Hiyya* 17.

28. *Yad*, op. cit. VII:10; *Tur*, op. cit. 176:7; *Sh. Ar.*, op. cit. 176:7; *Hochmat Adam*, 136:3.

29. *Mishnah Bava Mezia* V:10; *Rif ad locum*; *Yad Malveh* VII:11; *Rosh Bava Mezia* V:78; *Tur*, op. cit. 160:9; *sh. Ar.*, op. cit. 160:9; *Hochmat Adam*, loc. cit.

agreements calling for simultaneous or consecutive performance of the respective services committed.³⁰

Interpreting R. Joseph Caro's view, R. Mordechai Dov Twersky³¹ (Hornestopol, 1840-1903) understands the essence of the prohibition to consist of the stipulation between the two parties, rather than the actual reciprocation of a service of higher value or one entailing greater physical exertion than the service initially rendered. Hence, should A perform a service for B, and at some future date, A agrees to allow B's higher valued service or service entailing greater physical exertion to constitute compensation for his service, the agreement does not violate *avak ribit* law when the transaction does not violate the biblical injunction against *ribit* (*ribit kezuzah*). While the mere payment of a premium without prior stipulation violates *avak ribit* law when the transaction involved takes on the character of a loan, no prohibition is violated when the transaction represents payment for service or product rendered. The above point of leniency would not, however, proceed according to the school of thought that regards payment of a premium without prior stipulation as violating *avak ribit* law even when the transaction does not take on the character of a loan.³¹

R. Jacob b. Asher³² (טור), on the interpretation of R. Joshua ha-Kohen Falk (פרישה) advances a very stringent view in respect to the reciprocal labor agreement interdict. Reciprocal labor agreements, in his view, may be prohibited even when the committed service is not assessed at the time of the stipulation to entail either greater exertion or be of a higher value than the service initially rendered. This occurs when there is merely concern that the committed service may entail greater exertion at the time it will be rendered in reciprocation.³³

R. Abraham b. David of Posquires understands the prohibited cases of reciprocal work agreements to fall under the rubric of the *se'ah bese'ah* interdict, discussed above.³⁴

30. R. Joshua ha-Kohen Falk. *Perishah, Tur*, op. cit. 160 note 14.

31. R. Mordechai Dov Twersky (Hornestopol, 1840-1903), *Turei Zahav, Yoreh De'ah*.

32. *Tur*, op. cit. 160.

33. *Perishah, Tur*. loc. cit. note 15.

34. R. Abraham b. David of Posquires quoted in *Shittah M'kubezet, Bava Mezia* 75a.

Proceeding from the above rationale is the applicability of the interdict even when the committed reciprocal service is not assessed as a definite matter to be of greater value than the service already performed.

A point of leniency also proceeds from the *se'ah bese'ah* rationale of the reciprocal work agreement by assessing the market value of A's initial service and agreeing that should B's service prove to be of a higher market value, A will make the necessary monetary compensation.

R. Jacob Blau posits, however, that R. Abraham b. David's rationale of the reciprocal work agreement interdict represents a minority view and should therefore be rejected. The majority view, posits R. Blau, regards the reciprocal labor agreement interdict as separate from the *se'ah bese'ah* prohibition. Given the distinctiveness of the reciprocal labor agreement interdict, concern that the committed service might entail *greater physical exertion* as well as it might be more valuable than the service already rendered forms the basis of the prohibition. Consequently, the assessment monetary compensation procedure described above would not be valid when the labor services involved are different, even if they are assessed to be of equal value.³⁵

The Charity Obligation and Inflation

Judaism's charity obligation consists of a duty to devote one-tenth of net income toward the needs of the poor. Falling within the income base against which the tithing obligation is calculated is the profits earned from the sale of an asset.³⁷ What is included in the base, according to R. Moshe Feinstein, is the *real* profit rather than the *nominal* profit earned. To illustrate, suppose A purchased an asset for \$1,000 and sold it two years later for \$2,000. Suppose

35. *B'rit Yehudah*, p. 208-209.

36. *Yad, Mattenot Aniyim* VII:5; *Tur*, op. cit. 249:1; *Sh. Ar.*, op. cit. 249:1; *Ar. hash.*, *Yoreh De'ah* 249:1. R. Ezra Basri's survey of the responsa literature concludes that the majority of the Talmudic decisors regard the 10% level as an obligation by rabbinic, as opposed to biblical, decree. See R. Ezra Basri, *Dinei Mammonot*, vol. 1 (Jerusalem:Rubin Mass, 1974) p. 403.

37. For a detailed discussion of the *maaser* base, see Cyril Domb, ed, *Ma' aser Kesafim* (New York Philipp Feldheim Inc., 1980), p. 41-54.

further that the rate of inflation in this interim period was 100%. Taking into account the 100% inflation rate, the nominal profit of 100% on the sale is reduced in *real* terms to zero. Consequently, the nominal profit earned here would not be subject to any tithing obligation. R. Feinstein further posits that the difference in the purchasing power of the monetary unit in the relevant periods of time hold take into account only changes in the prices of necessities. Changes in the price of residential homes and luxuries, however, do not enter the index.³⁸

Religious Ministrants and Inflation

Compensation for a religious ministrant hired by the community to devote his time exclusively³⁹ in the rendering of his service must be in accordance with his need.⁴⁰ Need takes into account both family size and the cost of living. This formula may very well allow the religious ministrant to command a salary *above* what he could earn outside communal religious service. With need serving as the criterion for his compensation, the religious ministrant's salary must be automatically increased when either his family size or the cost of living increases. Contracts of religious ministrants are hence subject to automatic escalator clauses.⁴¹

Delinquency in the Payment of Wages and Inflation

Proceeding from the legal principle that wages are due at the end of the wage period is the interdict against labor agreements calling for the worker to receive a premium in wages in the event the employer is delinquent in paying him on time. Since wages are

38. R. Moshe Feinstein, *Iggerot Moshe*, vol. 5, *Yoreh De'ah* 114.

39. See *Tosafot Ketubbot* 105a.

40. The Talmud in *Ketubbot* 105a records this formula only in respect for the publicly appointed judges of Jerusalem who preside over cases of robbery. Maimonides (*Yad, Shekalim* VII), however, extends the need rule to public proof readers of holy books. Maimonides' extension, by R. Moshe Sofer, leads to the generalization of the need formula to all religious ministrants hired by the public.

41. R. Moshe Sofer (Hungary, 1762-1839), *Responsa Chatam Sofer, Choshen Mishpat* 166; R. Leopold Winkler, (Hungary, b 1844) *Levushei Mordechai, Choshen Mishpat*. Part II.

due on the last day of the wage period, the premium offered in the event of delinquency amounts to an *avak ribit* payment to the worker for tolerating the delay in receiving his wages.⁴²

A mutually-arrived-at agreement between a worker and an employer calling for a premium wage in the event of delinquency in payment violates *avak ribit* law even if the agreement was not made at the outset of the labor contract. Accordingly, should the worker, upon demanding his wage at the end of the wage period, acquiesce to the employer's offer to pay him a premium wage at some later time, the agreement violates *avak ribit* law. Since an employer's holding wages in arrears violates the wages delay interdict (*halanat sakhar*),⁴³ the worker's acquiesce to the delay in payment amounts to an agreement on his part to treat the balance due him as a loan. The higher wage called for at the later date therefore amounts to a premium for tolerating *delay* in payment and consequently violates *avak ribit* law.⁴⁴

A variant of the above case occurs when the employer is in default of the wages due to the worker, and the worker, in consequence, exerts a claim for the income he could have realized from the wages had he been paid on time. The legitimacy of the worker's claim here is disputed among Talmudic decisors. While R. Eliezer of Toul et alia validated the compensation claim,⁴⁵ R. Isaac b. Moses of Vienna et alia regarded the payment as constituting *avak ribit*.⁴⁶

Supporting R. Eliezer's view, R. Joel Sirkes (ב"ר) offers the following rationale of why meeting the worker's compensation demand does not violate *avak ribit* law: Since the wages are held in arrears against the worker's wishes, the worker cannot be said to

42. *Tur*, op. cit. 173:21; *Sh. Ar.*, op. cit. 173:12; R. Joel Sirkes, *Bach*, *Tur*, op. cit. 161;

43. *Leviticus* 19:13.

44. *Bah*, op. cit.

45. R. Eliezer of Toul, quoted in R. Meir ha-Kohen, *Teshuvot Maimuniyyot, Sefer Mishpatim* 15; R. Meir b. Baruch of Rottenburg, quoted in R. Jeruham b. Meshullam *Toledot Adam ve-Havvah*, n'tiv 29 pt. 3; *Bah*, op. cit., R. Moshe Sofer.

46. R. Isaac b. Moses of Vienna, *Or Zaru'a, Bava Mezia* V:21; R. Israel of Krems, *Haggahot Asheri, Bava Mezia* V:21; *Beit Yosef, Tur*, op. cit. 160.

have allowed the balance due him to take on the character of a loan for the duration of the delinquency period. With the loan character absent here, the extra payment the worker seeks can in no way be characterized as a premium for tolerating delay in the payment of his wages.⁴⁷

Noting the indirect link between the worker's foregone earning and the action of the employer, R. Judah Rosanes (Turkey, 1657-1727) posits that while meeting the worker's compensation demand does not violate *avak ribit* law, the employer is under no legal obligation to honor the demand. Responsibility for meeting the worker's extra compensation demand proceeds as a definite matter only when the employer invested at a profit the wages due the worker and the worker expressed an investment intent at the time he demanded his wages.⁴⁸

In the context of the current inflationary spiral, holding wages in arrears generates a definite loss for the worker in the form of reduced purchasing power. Noting this phenomenon, R. Nahum Rakover posits that legislating a penalty on the employer for delinquency in payment of wages is entirely appropriate.⁴⁹ In a similar vein, R. Jacob Blau concludes from his survey of rabbinic literature that the majority view would find no objection to the employer accommodating the worker for holding his wages in arrears.⁵⁰

Theft Liability and Price Changes

Another instance where price change is a matter of *halachic* concern occurs in connection with the liability obligation of a thief. As long as the article of theft remains intact and was not materially changed, the thief must return it, rather than make monetary

47. Bach, *op. cit.* For alternative rationalizations of R. Eliezer of Toul's view, see *Novellae Hatam Sofer, Bava Mezia 73a*, and *Beit Yizhak, Yoreh De'ah 11:2* ot 2.

48. R. Judah Rosanes, (Turkey, 1657-1727) *Mishneh la-Melech, Yad, Malveh VII:11*.

49. R. Naham Rakover, "Pizuyim al Ikkuv Kesafim," in I Raphael, ed., *Torah she-be'al Peh* (Jerusalem: Mosad haRav Kook, 1977). p. 216.

50. *B'rit Yehuda, op. cit.*, p. 35.

compensation.⁵¹ Should the article of theft no longer be in the culprit's possession, i.e., it was stolen or lost, a monetary obligation is imposed on him. This payment is set equal to the value of the article at the time of the theft.

An exception to the above rule obtains when the thief damages or consumes his pilferage. Here, in the event the article appreciated above its value at the time of the theft, liability for the thief is set in accordance with the article's value at the time when the damage was committed.⁵² Nevertheless, in the event the article depreciated in value in the interim, liability is set in accordance with the higher value prevailing at the time of the theft.⁵³ Imposing the higher penalty on the thief is justified on the ground that it would be morally reprehensible to allow him to gain when he compounds the theft with the commission of a tort.⁵⁴

The above criteria for theft liability apparently apply whether or not the change in the price of the subject article was accompanied by a general change in the price level in the same direction.

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51. *Bava Kamma* 66a; *Yad*, *Gezalah* 1:5; *Tur*, *Choshen Mishpat* 360:1; *Sh. Ar. haSh. Choshen Mishpat* 360:1; *Ar haSh. Choshen Mishpat* 360:1. Provided the article of theft has not been materially changed, the thief must return it intact even if doing so would involve the extraordinary inconvenience of removing it from a structure he subsequently built. Nevertheless, to encourage evildoers to make amends, the Sages suspended the obligation in this instance, and instead, required the thief merely to make restitution monetarily (see *Mishnah Gittin* V:5)
52. *Bava Mezia* 43a; *Rif* ad locum; *Yad*, op. cit. 111:1; *Rosh*, *Bava Mezia* 111:27; *Tur*, op. cit. 362:7; *Sh. Ar.*, op. cit. 362:10; *Ar. haSh.*, op. cit. 362:15.
53. *Bava Kamma* 5a; *Rif* loc. cit.; *Yad*, op. cit. 362:11; *Ar. haSh.* loc. cit.
54. R. Joshua ha-Kohen Falk, *Sma*, *Sh. Ar.*, op. cit. 362 note 21; *Ar haSh.*, loc. cit.