

THE DEVELOPMENT OF THE PROHIBITION AGAINST
USURY IN JEWISH LAW DURING THE
MISHNAIC AND TALMUDIC PERIODS

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ABSTRACT

Upon evidencing the fact that the Torah's prohibition against usury is related to the socio-economic situation, we have hypothesized and shown that during the Mishnaic and Talmudic times the prohibition would respectively be developed with the concomitant socio-economic framework.

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I INTRODUCTION

A) Outline of Thesis¹

Before one can discuss the development of any halacha, one is obliged to discover the state of that halacha before the process of development sets in. Therefore, one can not examine the evolution of the law prohibiting usury during the period of the Mishna and the Talmud without first committing oneself to explore the earliest source of Hebrew law - the Torah, i.e. the Pentateuch. We must therefore, first deal with the prohibition against usury as it so clearly appears in the Biblical text.

From the Torah, we shall continue on to the Mishnaic period² in order to see if any changes took place in the prohibition against usury, in whatever direction, and contrast these changes with the original Biblical text.

Next, we shall move on to the Talmudic period when it shall become necessary to divide our discussions into two parts, in keeping with the two centers of Jewish learning of

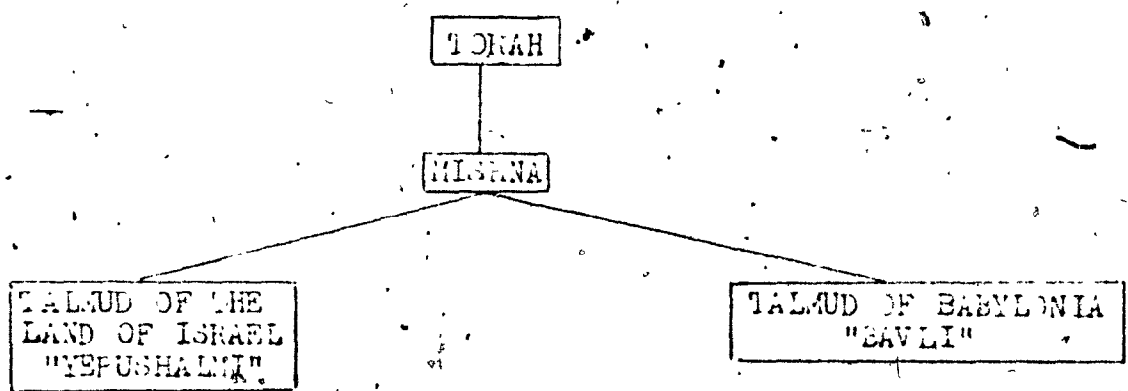
¹ A detailed bibliography and glossary (which includes terms that play a major role in the understanding of our paper) will be found at the end.

² The quotations that are brought from the Mishna and Bavli are generally those that are from the English translation by I. Epstein, Soncino Press, London, 1962. The translation that we used pertaining to Baba Metzia are mostly those by H. Freedman.

that period: that in the Land of Israel³ and that in Babylonia.⁴ We shall compare the halacha as it was expounded in these two centers in order to examine the development of the halacha since Mishnaic times.

At the same time we shall be able to compare differing halachic developments during the same period, though in different places.

The diagram below portrays the historical-textual periods with which we shall deal in this thesis:



Our discussion on the development of the laws prohibiting usury shall be divided into the following topics:

- A) the nature of the prohibition against usury.
- B) on whom does this prohibition fall.
- C) vis-a-vis whom is this prohibition directed.

³ The translation of the quotations from the Yerushalmi and most of those from the Midrashim are ours.

⁴ See n. 2.

D) the taking of usury from gentiles.

E) the relationship of the legislator to the prohibition and to those who transgress the law.

B) What is an Examination of Halachic Development?

An examination of halachic development necessitates an historical examination of the halacha. When necessary we shall require more than simply noting the differing halachot of various times and places: i.e. the examination of the halacha will take into account the historical factors which could explain the changes which took place in the prohibition against usury - especially in the limiting and the extension of the prohibition in the different periods.

A scholar in halachic development wisely said:

"The prime purpose of an historical examination of halacha is to grasp the secret of its formation. Halacha is a legal compromise between contradictory vital interests; it is a way to reconcile antagonistic social needs. If today we wish to understand ancient halacha, it is not sufficient for us to simply examine the final product as preserved in the halacha; rather, we must penetrate into the very process of the halacha's formation in order to uncover all the factors which participated in its creation. Toward this goal, we must break down the structured halacha into its different historical components. The duty of the scientific research is, therefore to once again place the halacha in its time and place, into its place in history where it was born." 5

⁵ S. Pederbush, Bi-Netivot ha-Talmud (In the Talmud's Paths) (Jerusalem, Mosad ha-Rav Kook, 1957) p. 15. (Emphasis mine).

Another scholar itemizes the sort of factors which influence the halacha and its development; he claims that there is no doubt "that the halachot are most definitely the creation of the religious, social, political and economic realities."⁶

Since the prohibition against usury belongs to the economic and social laws of the Torah,⁷ we shall have to link the prohibition's development with socio-economic causes. The difficulty with the approach, however, as one well-known scholar has already pointed out, is that we face great limitations when we delve into the development of halacha: "The social history of our nation, in general, and of the periods of the Second Temple, and the Mishna and the Talmud,

⁶ Chaim Tchernowitz, Toledoth ha-Halakah ("History of Hebrew Law") (3 Vols.) (New York: Chaim Tchernowitz, ed. and pub. 1943) Vol. III, p. 9.

Concerning the socio-economic influences on the halacha see: Gedaliahu Alon; Toldot ha-Yehudim be-Eretz Yisrael bi-Tekufat ha-Mishna ve-ha-Talmud ("The History of the Jews in Palestine in the Mishnaic and Talmudic Period") (Hakibbutz Hameuchad, Israel, 1954) Vol. II, pp. 153-158; S. Pederbush, op. cit., pp. 13-24. A new aspect which illuminates our path to a deeper understanding of the development of the halacha, is brought about by D. Halivni in his introduction to his book; Sources and Traditions (Heb. Tel-Aviv, Dvir Publishing House Ltd., 1968) pp. 7-19:

"One may not shut his eyes to the fact that some of the halachic changes, which are found in the Talmudic literature are based [were caused] on the deliverer's verbal inexactness [of transmitting the halacha which he had heard]".

⁷ Infra, p. 24ff.

specifically, are not yet written,"⁸ and the wide realm of halachic development "is, for the greater part, still concealed from us,"⁹ and many a time the scholar gropes like a blindman in the dark.¹⁰

We can conclude that we shall not be able to establish hard and fast conclusions as to the different factors contributing to the evolution of the prohibition against usury, during different historical periods. We shall try, nonetheless, to present well-founded hypotheses whenever possible.

⁸ G. Alon, Studies in Jewish History. (Heb. 2 Vols., Israel, Hakibbutz Hameuchad, 1967) Vol. II, p. 182.

⁹ Ibid., p. 227.

¹⁰ Ch. Tchernowitz (Toledot, Vol. III) p. 9.

II THE SOCIO-ECONOMIC SETTING¹

A) The End of the Period of the Mishna

It is an interesting fact that almost all the Tannaitic material relating to the prohibition against usury and especially the approach to the prohibition developed precisely during the generation of Rabbi Akiva and the generation following him. This phenomenon will become clearer when examined in the socio-economic context of that period.² Rabbi Akiva was born into a broken and ill-fated generation. Bar-Kochba's rebellion had failed and Betar was destroyed. These events had been closely preceded by the destruction of the Second Temple and a general destruction of the Jewish settlement in the Land of Israel. Poverty and distress spread throughout the land.³ There was a rise in the number of tenants who till the owner's ground for a certain share in the produce (arism) while farm-laborers who worked in their own farms (ikarim) dwindled.⁴ The Jewish settlement became weakened and in its place eventually came a Gentile community,⁵ who prospered

¹ The emphasis in our introduction will be a brief account of the things which we shall later deal with in our discussion on the development of the halacha.

² See Alon, Toldot, Vol. II, pp. 2-3; Michael Avi Yonah, In the Days of Rome and Byzantium (Heb. Jerusalem, Bialik Institute, 1960) pp. 21-29.

³ Alon, op. cit., pp. 66-69.

⁴ Ibid., p. 52.

⁵ Ibid., pp. 54-55.

and became rich.⁶ Many Jews fled the Land of Israel, including scholars with their students.⁷ The difficult economic condition caused a break-down in morale and a general despair on the part of the Jews remaining in the Land of Israel.⁸ For different reasons the economic condition created bitterness and even hatred toward the Tannaim.⁹ There were also a number of Jews, who in despair of Judaism and its people, and in an attempt to find a social, economic and spiritual refuge, befriended the Gentiles and the ruling class,¹⁰ thereby becoming partners with the "oppressors" and the exploiters of the land, i.e. with the Gentiles.¹¹

⁶ Alon, op. cit., p. 68.

⁷ Ibid., p. 67.

⁸ Ibid., pp. 58; 82; Joseph Klausner, Ha-Historiah Shel Ba'it Sheni ("The History of the Second Temple") (5 Vols., 2nd ed., Ahlissaf Pub., Jerusalem, 1951) Vol. 5, pp. 290-295.

⁹ Alon, op. cit., pp. 81-82.

¹⁰ Ibid., p. 82.

¹¹ Ibid., pp. 55-56.

It was only natural that the spiritual and economic state should have repercussion in the realm of social behavior.¹² In fact, anti-social behavior virtually blossomed during this period. Idleness, games of chance, and illegal business dealings became the lot of certain segments of the society. Another segment of society supported itself through the taking of usury,¹³ thereby enriching itself at the expense of the poor who were compelled to accept the terms of

¹² Without a doubt, the transgression of the usury prohibition on the part of the Jews was also the result of the fact that their neighbours (already in the time of the Torah) did not have a prohibition against usury. (See: P. Korngrin, ("The Laws of the Ancient East") (Heb. Tel-Aviv, Yavneh Pub. House, 1944) pp. 135-136; J. Hastings, Dictionary of the Bible (Revised by F. Grant and H. Rowley) (Edinburgh: T. & T. Clark, 1963) p. 1020; E. Lionstamm in Ency. Biblica (6 Vols. Bialik Inst., Jerusalem, 1968) Vol. V, p. 93; H. Cohn (in Ency. Judaica (16 Vols. Keter Pub. House, 1971) Vol. 16, p. 28; S. Stein (in Ency. Judaica, Vol. 12) p. 253; C. Edwards, The Hammurabi Code and the Semitic Legislation (N.Y.-London, Kennikat Press, 1971) Sections 48-52, pp. 36-37; D. Daube, Infra, p. 134); J. D. Davis, The Westminster Dictionary of the Bible (The Westminster Press, Philadelphia, 1944) p. 361; E. Neufeld, in J.Q.R. 44 [1953-4] pp. 194-6.

The Jews were, therefore, influenced by their Gentile environment with which they came into contact during the different periods. For additional influences which could cause the Jews to violate the prohibition, see Rashi and Tosafot (Infra, p. 133, n. 312). However, to the best of our knowledge, the occurrence of violations of the prohibition increased with the special circumstances of the end of the period of the Mishna, and the Tannaim's battle against these violations intensified.

¹³ On this same period, Alon comments: (Toldot, Vol. 1, p. 325):

"It could be seen [from the expressions] of the sages of that generation that they carried with them, in the depths of their hearts a great load of anger and pain. ... towards social corruption and disintegration in religious life."

usury in order to subsist.

A Mishna whose purpose was to disqualify such people from being witnesses or judges, brings clear evidence of the existence of such offenders,¹⁴ and also that the Tannaim waged battles against such offenders, whenever possible. "And these are ineligible [to be witnesses or judges]: a gambler with dice, a usurer, a pigeon-trainer, and traders [in the produce] of the Sabbatical year."¹⁵

The same Mishna testifies that there were certain people whose entire livelihood was earned through the taking of usury and related evils:

"R. Judah said: 'When is this so - If they have no other occupation but this, but if they have other means of livelihood, they are eligible.'" ¹⁶

Additional evidence of the existence of usurers during this period is to be found in the words of Rabbi Simeon:

¹⁴ Indeed, a great deal of evidence to this exists in Tannaitic and Talmudic literature. We here however, discuss several major evidences that pertain solely to the existence of the transgression of the prohibition against usury. Throughout the research, the reader could discover many others.

¹⁵ Mishna Sanhedrin III, 3; Josefta, Ibid., IV, 2; Yerushalmi, Ibid., III, 5.
This Mishna is definitely from the same generation following the betar destruction (135 A.D.). For we see in its contents a discussion involving R. Simeon b. Jochai and R. Judah b. Elai.

¹⁶ Mishna, Ibid. (Sanhedrin III, 3).

"Those who lend on usury lose more than they gain. Moreover, they impute wisdom (a euphemism for folly) to Moses, our Teacher, and to his Torah, and say, 'Had Moses our teacher known that there is profit in this thing (usury) he would not have written (prohibited) it.'" 17

A different Baraita, from the second generation after the destruction of Betar, also testifies to this phenomenon:

"Our Rabbis taught: 'If robbers or usurers [repent and of their own free will] are prepared to restore [the misappropriated articles], it is not right to accept [them] from them, and he who does accept [them] from them does not obtain the approval of the Sages'. R. Johanan said: 'It was in the days of Rabbi [Judah the Prince] that this teaching was enunciated, as taught: It once happened with a certain man who was desirous of making restitution, that his wife said to him: Reika (good for nothing!) [if you] are going to make restitution, even the girdle [you are wearing] would not remain yours, and he thus refrained altogether from making repentance'. It was at that time that it was declared that if robbers or usurers are prepared to make restitution it is not right to accept from them" 18

17 Bavli B.M. 75b; Tosefta Baba-Metzia [B.M.] VI, 6 (Zuckermann, ed., p. 385); Yerushalmi B.M. V, 13.

18 Bavli Baba Kama 94b; Tosefta Sheviit VII, 12. (Emphasis mine). Concerning this Baraita, cf. infra, pp. 149-150.

Although Rabbi's generation felt a relief, to a certain extent, from the general stress, nevertheless, the transgression of usury did not diminish as is seen from this Baraita. Compare with another Baraita, apparently before the directive enacted by Rabbi (B.M. 62a).

We can therefore assume that there were members of society who earned the bulk of their wealth through the taking of usury.¹⁹

From the same period, we have clear evidence of the public's opinion and relationship toward usurers, who were notoriously expansive with their lives. Usurers prospered like pig farmers in that they saw large profits with a minimum amount of effort. Thus did a matron say to Rabbi Judah b. Elai:

"Your face is [red (fashi); yellow] like that of pig-breeders and usurers. To which he replied: On my faith, both [occupations] are forbidden me" ²⁰

B) The Talmudic Period in the Land of Israel

In general, it is possible to say that the description of life at the conclusion of the period of the Mishna holds true for the Talmudic period in the Land of Israel, as well. The same difficulties, crises and phenomena took place even then. During the third century C.E. the Romans introduced various taxations on the Jews.²¹ During

¹⁹ This certainly was not an isolated incident for Rabbi would not have changed the halacha had it only been based on one case alone. Cf. also Stein (Encyclopedia Judaica, Vol. 12) p. 253. "There is evidence that as Jews moved in the city life of the Roman Empire, some of them gave loans on interest."

²⁰ Berachot 55a, and in that same period one finds a similar case in Nedarim 49b.

²¹ G. Alon, Toldot, Vol. II, pp. 182-193; M. Avi-Yonah, In the Days of Rome and Byzantium, pp. 80-88.

the fourth century, under Christian Rome, these taxes fell on merchants too, and eventually on all the other craftsmen.²² The situation is well described in the Yerushalmi (i.e. that which was compiled in the Land of Israel):

"... And not only this but you even impose upon us land tax ("pissim"), fines ("zimmiot") head tax ("gulgaliot") and crop tax ("arnoniot").²³

The situation continues in a similar vein during the Byzantine period.²⁴ The phenomenon of fleeing the country because of the difficult economic state became frequent.²⁵ A story is even told of one who was forced to sell himself to people from Lod and Rabbi Abahu decided that because of the circumstances of the time, one was required to pay to ransom him²⁶ even though a very clearly stated Mishna prohibits such an act.²⁷

²² Alon, op. cit., p. 212.

²³ Yerushalmi Sheviit, IV, 3. The terms were interpreted according to Alon or Avi-Yonah. (Cf. In the Days of Rome and Byzantium, p. 84).

²⁴ Alon, Toldot, Vol. II, p. 259.

²⁵ Ibid., p. 260; Avi-Yonah, op. cit., p. 192.

²⁶ Yerushalmi, Gittin IV, 9.

²⁷ Gittin IV, 9. Concerning this period, see additional details: Avi-Yonah, op. cit., pp. 88-94; 98-99.

In this period, too, are found several sources of evidence which testify to the fact that a segment of the community supported itself through the taking of usury. In the Yerushalmi's introduction to the chapter "What is Neshek?" the following is told:

"A question was asked in front of R. Johanan: How is it (is it possible?) that usury could be reclaimed in court? He said to them: If it can, we won't leave anything to the most wealthiest men of the Land of Israel." 28

We can conclude from this source that during the second generation of Amoraim in the Land of Israel, there was still a segment of the population whose main source of income was derived from the taking of usury. 29

28

B.M. V, 1.

*Compare with Samuel's remarks in the Yerushalmi, Baba Batra III, 3.

29

Cf. also Alon's viewpoint, *Infra*, p. 150.

The very act on the part of the rabbis of ascribing certain Biblical passages to the transgression of usury, despite the fact that those passages contained not even a hint of dealing with usury, and despite the fact that there was no need to so interpret these passages - this act serves as reliable evidence of the existence of usury during the time when such an interpretation was first suggested: Rabbi Isaac attributes the passage in Proverbs 28:22: 'He that hath an evil eye hasteth after riches' - to the usurer; our sages accused Lot as being a usurer (Bereshit Rabba 51:6 [on Genesis 19:29] Theodor, ed., p. 537); another Midrash contends that in Jerusalem, during the times of the First Temple, there were usurers whom the people called "repulsive money" (Tanhuma Mishpatim 9. Though the final version of the Tanhuma is later than the Talmudic period in the Land of Israel, it certainly contains material from an earlier period). For other examples, see Tanhuma, ed. by Shlomo Buber (2 Vols., 2nd printing, Jerusalem, 1964) Mishpatim, 5-9 (pp. 83-84).

In summary we may therefore assume, that during the Talmudic period in the Land of Israel, both the socio-economic state of the people and the incidence of prohibited usury were similar to what was witnessed during the latter years of the Tannaim.

In our discussion of the halacha of the Land of Israel during the Talmudic period, we shall concern ourselves mainly with the basic code of law - the Yerushalmi. It is therefore only fitting that we mention a few points characteristic of the Yerushalmi which should help us in our understanding of the way the prohibitions against usury developed differently in the Land of Israel and in Babylonia.

An Introduction to the Yerushalmi

The Jerusalem Talmud differs from the Babylonian one in its method of instruction; it prefers not to dwell upon argumentation and explanations, unlike the Bavli which plunges into the depths of each argument.³⁰ In contrast to the Bavli, the Yerushalmi follows the path of simple logic, and its explanations are simple and rational.³¹ Even the

³⁰ Z. Frankel, Me'vo ha-Yerushalmi, ("Introduction to the Yerushalmi") (Heb. Breslow, 1870, reprinted Jerusalem, 1967) p. 33a; E. Z. Melamed, Mayo le-Sifrut ha-Talmud ("Introduction to the Talmudic Literature") (Jerusalem, Kirgat Sepher, 1954) pp. 79-80; J. N. Epstein, Introduction to Amoraitic Literature (Heb. Magnes Press & Dvir Pub. Com., Jerusalem, Tel-Aviv, 1962) p. 274.

³¹ Frankel, op. cit., p. 32b. Cf. also D. Halivni, op. cit., introduction, p. 17 text and n. 27.

halacha of the Yerushalmi differs, often, from that of the Bavli.³²

Zechariah Frankel attributes the differences between the Jerusalem and Babylonian Talmuds to the time factor: the Yerushalmi's completion was closer in time to the period of the Mishna and hence more likely to interpret the Mishna in a straight forward manner. Not so the Bavli whose completion was later,³³ thus allowing for so many commentaries on commentaries that often the simple, original idea was lost.³⁴

Another historical explanation of Frankel is also tied up with the time factor: the distress of those days brought it about that the Rabbis living in the Land of Israel "were not of clear enough minds to delve into the halachot of their predecessors and of those who preceded

³² Frankel, op. cit., p. 35b; Melamed, op. cit., pp. 83-85.

³³ All the more so, as a result, the tractate B.M. of the Bavli is a later edition than that of tractate B.M. of the Yerushalmi. This is a result of the fact that tractate B.M. (as well as Baba Kama and Baba Batra) was edited two generations earlier than the rest of the tractates of the Yerushalmi. (S. Lieberman, The Talmud of Caesarea [Heb. Jerusalem, 1931] p. 18ff; Melamed, op. cit., p. 89). However Epstein, op. cit., p. 286, says that there is no basis to this claim.

³⁴ Frankel, op. cit., p. 35b; Melamed, op. cit., pp. 84-85.

them in order to analyze them and challenge them."³⁵ And Frankel adds that during difficult times there is no opportunity to arrange the texts in their proper order nor to delve deeply into their details.³⁶

In any case, one can see that the socio-economic pressure exerted upon the Land of Israel was one of the main factors contributing toward the brevity of the Yerushalmi and towards its 'simple' literal explication of the Tannaitic literature. Without a doubt, the geographic proximity of the Yerushalmi to the Tannaim and their literature was as valid a factor as their historical proximity. And both factors influenced the halachot of the Yerushalmi.

C) The Talmudic Period in Babylonia

Actually, poverty was present in both centers of learning, in Babylonia and in the Land of Israel. But it was predominately the lot of those who tilled the soil. Craftsmen and artisans fared better³⁷ while the merchants

³⁵ Frankel, op. cit., Melamed, op. cit., p. 95 claims another factor which could explain the differences between the two Talmuds: The different customs in the two different places. Concerning other hypotheses which do not seem to be well-founded enough, see Frankel, op. cit., pp. 35b; 36a.

³⁶ Frankel, op. cit., p. 48a; Avi-Yonah, op. cit., p. 106.

³⁷ And the Rabbis even overpraised them: "Great is labour, for it honours the worker (Nedarim 49b)"; "Craftsmen are not allowed to rise before scholars whilst they are engaged in their work" (Mulin, 54b, Cf. Rashi's and Tosafot's controversy); "He who does not teach his son a craft, it is as though he taught him brigandage" (Kidushin, 29a).

fared the best. In an attempt to improve their economic state, the Jews of Babylonia tried to enter the fields of craftsmanship and commerce. Such positions were more available and easier to enter than for their brethren in the Land of Israel. Therefore, the economic and social conditions of the Jews of Babylonia, during the period of the Amoraim, was generally greatly superior to that of the Jews in the Land of Israel.

We already find evidence on the part of the Rabbis living during the first generations of Babylonian Amoraim which vividly demonstrates the role of commerce in the cities,³⁸ and the relationship of the Jews to commerce. Rav advises his son to go into commerce;³⁹ Rava praises commerce over agriculture:

"A hundred zuz in business means meat and wine everyday; a hundred zuz in land - only salt and vegetables." 40

³⁸ Since the Mishnaic period, the prohibition against usury (as we shall see later) does not fall only in trade transactions, but also in the other areas of the economy, including agriculture (see Infra, pp. 82-83) which was the principal source of livelihood in Babylonia (see Joshua Meir Grinz (in: Encyclopedia Hebraica, Encyclopedia Pub. Co., Jerusalem, Tel-Aviv, 1954) Vol. 7, p. 575; S. Dubnov, The History of the Jews (Heb. 11 Vols., Dvir Pub., Tel Aviv, 1950) Vol. 3, p. 176; I. Shiffer, Toldot ha-Kalkalah ha-Yehudit ("The History of the Jewish Economy") (2 Vols. A. J. Shtibbe, Tel-Aviv, 1935) Vol. II, p. 12.

³⁹ Pesahim, 113a.

⁴⁰ Yevamot, 63a. Pertaining to the matter, see B.B. 144a.

Rav Judah, explaining a sentence from Psalms,
(116, 9) says:

"I shall walk before the Lord in the
lands of the living' - Rav Judah said:
That means the place of the markets." ⁴¹

From our sources we know of many different kinds
of market places, and in each one of them, the Jews of
Babylonia produced and sold different types of merchandise. ⁴²

In addition it would suffice to examine the con-
tent and incidence of discussions in the Bavli, in the chap-
ter entitled "What is Neshek?" in Baba Metzia, in order to
have clear evidence that the life of commerce played an
important and significant role in the lives of the Jews of
Babylonia. ⁴³

Even banking developed in Babylonia:

"... During the Babylonian era, Jews
had greater opportunities to come
into contact with a highly developed
banking tradition; and to participate

⁴¹ Yoma, 71a. (Emphasis mine).

⁴² Concerning the various kinds of markets, see B.M.
24b; B.B. 22a, 38a, 38b; Hulin, 48a and 48b; Hagigah, 9b.

⁴³ See especially the many discussions on the Mishna:
"A man must not fix a price." (B.M. 72b-74b).

in credit operations. In Babylonia,
Jews engaged in financial transactions:
some were farmers of taxes and customs,
and the wealthiest of them were land-
owners." 44

44 Hermann Kellenbenz (Encyclopedia Judaica, Vol. 4),
p. 166. For further details concerning the economic life
of the Babylonian Jews in the Talmudic period, see Ency-
clopedia Judaica, Vol. 2, p. 399; 4, p. 166; 5, p. 1045;
15, p. 1037; 16, p. 1270; Encyclopedia Hebraica, Vol. 7,
pp. 375-378.

III THE TEXTUAL SOURCES FOR THE PROHIBITION AGAINST USURY

A) The Torah¹

Exodus 22:24:

"If thou lend money to any of my people, to the poor with thee, thou shalt not be to him as a creditor; ye shall not lay upon him (tesimunn)² usury (neshek)³"

Leviticus 25:35

"And if thy brother be waxen poor, and his means fail with thee, then thou shalt uphold him"

36: "Thou shalt not take from him usury (neshek) nor increase (tarbit)⁴ and thou shalt fear thy God; and thy brother shall live with thee."

37: "Thou shalt not give thy money to him upon usury (be-neshek);⁵ and thou shalt not give him thy food for increase (marbit)"⁶

¹ In reference to the quotes from the Bible we used for translation purposes, all available means including ancient translations. Many translations were perused because we felt occasionally that some lacked the precision needed in the research of our subject.

² Concerning the term "tesimunn" which is in plural form, cf. infra, p. 89, n. 196.

³ Infra, pp. 29-30.

⁴ Ibid.

⁵ Infra, p. 90, n. 197.

⁶ Infra, pp. 29-30.

Deuteronomy 23:20:

"Thou shalt not lend upon usury (tashik)⁷ to thy brother, usury (neshek) of money, usury (neshek) of food, usury of anything that might bite (ishak)"⁸

21: "Unto a stranger thou mayst lend upon usury (tashik)⁹, but to thy brother thou shalt not lend (tashik) upon usury; [that the Lord thy God may bless thee in all that thou puttest thy hand upon, the land into which thou comest to inherit it.] "

B) Other Biblical Sources

Ezekiel 18:8:

"Hath not given forth upon usury and hath not taken any increase, and shall turn back his hand from injustice"

13: "Hath given forth upon usury, and hath taken increase; shall he live? He shall not live - he hath done all these abominations; he shall be put to death, his blood shall be upon him."

17: "Hath withdrawn his hand from the poor, hath not taken usury nor increase"

22:12: "In thee they have taken bribes to shed blood; thou hast taken usury and increase"

Psalms: 15:5:

"He that putteth not out his money upon usury nor takes a bribe against the innocent; he that doeth these things shall never be moved."

⁷ Infra, p. 91, n. 198.

⁸ Cf. Ibn Ezra to Deut. 23:20; M. Jastrow, Dictionary (Pardes Pub. House, N.Y., 1950) p. 940 (Infra, p. 34 n. 19).

⁹ Infra, p. 110, n. 252.

Proverbs 28:8:

"He that increaseth his wealth by usury and increase, gathereth it for him that is gracious to the poor."

Before we begin to deal with the question of what is usury and how one can define it within the framework of Jewish halacha, let us briefly review the theories explaining the background to, or the causes of, the development of the prohibition of the Torah.

IV THE REASONING BEHIND THE TORAH'S PROHIBITION AGAINST USURY.

The basic principle, accepted by all commentators, is that usury, in and of itself, is not a crime, nor theft, nor injustice in the legal sense. The controversial issue among the commentators is, however, what is it that prohibits usury if it is, in fact, not a form of robbery?

There are several hypotheses which attempt to answer this question.¹ The traditional Jewish sources present a reason for the Biblical injunction against usury, which is supported by most scholars. It is not in our ability to decide whose opinion is more justified, nor is this our aim. However, since we are dealing with the development of Jewish law, it becomes clear that the reasons for the changes which befell the halacha will have to be found in the spirit of the halacha, and in knowing the spirit and intentions of those Rabbis who bore the responsibility for the law's observance and for its necessary changes. It is by no mere chance that the reasoning presented by the traditional Jewish commentators, as we shall see throughout this thesis, is precisely the tool which will

¹ J. D. Eisenstein, Ozar Dinim u-Minhagin ("A Digest of Jewish Laws and Customs") (Heb. Hebrew Publishing Company, N.Y., 1938) p. 381, column b; J. D. Eisenstein, Ozar Yisrael ("An Encyclopedia of all Matters Concerning Jews and Judaism") (10 Vols. Pub. by the editor, N.Y., 1913) Vol. IX, p. 263, column A; Deuteronomy (A Commentary) (The Westminster Press, Philadelphia, 1966) on Deuteronomy 23:19-20, p. 148.

most clearly help us to explain the changes which befell the prohibition against usury and explain Judaism's attitude toward usury.

The theme, which is constantly repeated in the traditional sources is that the prohibition against usury is quite simply one of the economic and social commandments. The injunction against usury is one of the Torah's commandments requiring tzedakah (charity), and hessed (kindliness) on the part of the followers of the faith, rather than simply a following of the strict letter of the law,² because the Jewish society was in need of such leniency in order to preserve its existence and stability.

Abarbanel writes:

"It is not that the taking of usury is an indecent act, but rather that the lending of money without usury is an act of hessed (kindliness), and such kindliness, the Torah required only between brothers." ³

Maimonides established a hard and fast rule. "If one carefully examines all commandments pertaining to a

² Infra, pp. 132 ff.

³ Deut. 23:20 s.v. "La-nokri tashik" in his fourth answer. (Emphasis mine).

R. Judah he-hassid claims that without the prohibition against usury the tzedakah commandment could finally be idled away (or abolished). Sefer Hassidim (The Book of the Righteous) (Mekitzei-Nirdamim, Berlin, 1891) 532.

lender and a borrower, one finds that they all reflect a sense of compassion toward the poor."⁴

In his search to find textual support for his ideas, Nachmanides most clearly said:

"... however usury which is exacted with the knowledge and consent of both parties is prohibited only out of a sense of brotherhood and hessed (kindliness). Therefore it is written: 'That the Lord thy God may bless thee,' that is because the [lender] does hessed (kindliness) and mercy with his brother [the borrower] when he lends him not upon usury and this is considered as tzedakah (righteousness) made by him ... because the Torah only mentions the blessing in relationship to tzedakah (righteousness) and hassadim (kindliness), and not in the matters of robbery, theft and fraud" ⁵

Nachmanides' approach was accepted even by modern scholarship:

"It has been said that the prohibition against interest rests on two grounds: firstly, that the prosperous ought to help the indigent, 'if not by gifts then at least by free loans; and secondly, that interest (or excessive interest) was seen to lie at the root of social ruin and was therefore to be outlawed in toto." ⁶

⁴ Guide of the Perplexed, III, 39.

⁵ Nachmanides, to Deut. 23:20. (Emphasis mine).

⁶ Haim H. Cohn (in Encyclopedia Judaica) Vol. 16, p. 28. (Emphasis mine).

Max Weber nicely commented on the socio-economic aspect of charity:

"The original basis for the thoroughgoing rejection of usury was generally the primitive custom of economic assistance to one's fellows, in accordance with which the taking of usury among brothers was undoubtedly regarded as a serious breach against the communal obligation to provide assistance." 7

The element of brotherhood within the prohibition against usury was emphasized by Neufeld:

"The social and political life of the early Hebrew society was ... governed by the concept of unity of blood, by collective or solidary liability; by the principle of retribution, by a berit" 8

In fact, it seems that a good case can be made for the view that the prohibition against usury is an act of

⁷ Max Weber, The Sociology of Religion (London, Methuen, 1965) Ch. 13, p. 215, see also: Weber, Ancient Judaism (The Free Press, Illinois, 1952) Ch. 13, pp. 342-343; A Cyclopedia of Biblical Literature, ed. by John Kitto (3 Vols. Edinburgh: Adam and Charles Black, 1969) Vol. III, p. 1060; R. Zwi Werblowsky and G. Wigoder, The Encyclopedia of Jewish Religion (Holt, Rhinehart and Winston, Inc., N.Y. - Chicago - San Francisco, 1966) p. 394.

⁸ E. Neufeld, in H.U.C.A., Vol. 26 (1955) p. 399. (Emphasis mine). See also: John Kitto, op. cit., p. 1060; J. Hastings, op. cit., p. 1020; R. E. Clements, The Cambridge Bible Commentary (on: Exodus 22:24) (University Press, Cambridge, 1972) p. 146; S. R. Hirsch, The Pentateuch on Exodus 22:24 (Judaica Press, N.Y., 1971) p. 377; R. Dov Shevel, Sefer ha-Hinuch (Heb. Mosad ha-Rav Kook, Jerusalem, 1952) Commandment no. 68; S. E. Lionstamm (in: Encyclopedia Biblica) Vol. 5, p. 930.

kindliness and brotherhood by looking at the Biblical context in which this prohibition appears; the adjacent passages are filled with commandments concerning the poor, the weak, the stranger, the orphan, and the widow.⁹ A reading of other Biblical sources will also make this case.¹⁰

Early sources also support this view, i.e. that the prohibition against usury was an act of brotherly kindness. Philo writes:

"Now lending money on interest is a blameworthy action; for a person who borrows is not living on a superabundance of means, but is obviously in need, and since he is compelled to pay the interest as well as the capital, he must necessarily be in the outmost straits. And while he thinks he is being benefitted by the loan, he is actually like senseless animals suffering further damage from the bait which is set before him."¹¹

Josephus Flavius also takes this stand:

"It is prohibited to take usury from a fellow Hebrew not for food nor for drinks, for it is not fair to take advantage of the misfortunes of one of thy people. Rather as for the

⁹ Infra, pp. 103-104.

¹⁰ Supra, pp. 21-22; Infra, p. 103, n. 232. Cf. also Z. W. Falk, in: Dine Israel ("Jewish Laws") Vol. III (Tel-Aviv University, 1972) p. xxxvii.

¹¹ Philo (Eng. trans. F. H. Colson, Harvard University, 1958) Vol. 7, "The Special Laws," Book 2, [sec.] 74, pp. 353-355. (Emphasis mine).

assistance you extend to your brother in his hour of need, let his gratitude and the Divine reward for good deeds be as profit unto you." 12

Without a doubt we can conclude by stating that the prohibition against usury grew from two strong forces, as we have seen in the early texts and even as presented by the bulk of modern scholarship: the forces are justice and mercy on one hand, and brotherhood and friendship on the other.

12 Josephus, trans. by William Whiston (Kregel Publications, Michigan, 1973) "Antiquities of the Jews," Book IV, Chapter VIII, p. 100. (Emphasis mine).

Our theory is reinforced by David Daube's remarks, infra, p. 134. Cf. also S. E. Lionstamm's remarks concerning the authority of the prohibition against usury (infra, p. 134).

V AREAS IN WHICH THE PROHIBITION AGAINST USURY DEVELOPED

From here on, we shall systematically deal with different aspects of the prohibition against usury in the various periods, and with each aspect, we shall trace its halachic development.

A) The Nature of the Prohibition Against Usury

In this section, we shall deal with the question, "What is Usury?" and what basic principles are involved in this prohibition.

We would set ourselves up for a failure, if we were to attempt to define "usury" without considering the halachic development of the prohibition. The literal meaning of usury, as it appears in the Torah, does not have, as we shall later see, the same significance as in the Tannaitic literature. Therefore, we must preface our words by stating which meaning of usury we wish to define: that of the Torah, or that of the Mishna.

The Torah used three terms when it stated its prohibition of usury: "neshek"¹, "tarbit"² and "marbit."³

¹ Exodus 22:24; Leviticus 25:36-37; Deuteronomy 23:20.

² Leviticus 25:36.

³ Leviticus 25:37.

"tarbit" and "marbit" are apparently synonyms from the same root.⁴ These nouns were chosen because they inform us that usury (tarbit or marbit) increases (marbah) the wealth of the lender.⁵

The term "neshek" is derived from the Hebrew source "to bite" (N'.SH'.K'.) and is used because usury bites the borrower, reduces his principal,⁶ pains him, and eats away at his flesh.⁷

The conclusion is similar to the Talmud's⁸ where "neshek" and "tarbit" present the same idea, and the use of different nouns results from two outlooks: from the perspective of the lender, usury is "tarbit" or "marbit" (because the essential quality is one of increase) but from the perspective of the borrower, usury is "neshek" (because it

R'. B'. H'. See Abraham Ibn Ezra, Leviticus 25:36 who also brings examples.

⁵ Similarly there appears in Proverbs (28:8): "He that increaseth his wealth by usury and increase." See also B.M. V. 1 (Infra, p. 32). Cf. also Boaz Cohen, Jewish and Roman Law (J. T. S. of America, N.Y., in 2 Vols., 1966) Vol. 2, p. 452, n. 97a. In the later Hebrew, usury was called "ribbit" which comes from the same root and is in regular usage today.

⁶ See also Rashi, Exodus 22:24, and other sources, infra, p. 32, n. 13.

⁷ Maimonides, Yad ha-Hazakah, Malveh-ve-Loveh, IV, 1.

⁸ Bavli, B.M. 60b.

bites).⁹

There are three forms of usury prohibited in the Torah: "usury of money" - monetary profit that the lender received from the borrower, "usury of food" - profit taken from the loan of fruits and other good items; and "usury of anything that might bite"¹⁰ - profit made in any other category provided that it bites into the borrower by reducing his possessions.¹¹

To gain a clearer distinction between the development which took place in the Tannaitic concept of the nature of usury and that similar development in the Torah, we shall have to thoroughly compare the Biblical text¹² with the

⁹ See also: "Keli Yakar" commentary by Solomon Luntschitz to Lev. 25:36, D. Z. Hoffman, Leviticus (Mosad ha-Kav Kook, Jerusalem, 1954, trans. Z. H. Sheffer and A. Lieberman) pp. 234-235; S. R. Hirsch, op. cit., Vol. III, (Leviticus), p. 365; Chaim H. Cohen, op. cit. (in Encyclopedia Judaica) Vol. 16, pp. 27, 28; E. Neufeld (in H.U.C.A.) Vol. 26, 1955, pp. 355-357; Bavli 60b-61a. Concerning other attempts to differentiate between "neshek" and "tarbit," see Nachmanides' commentary to Lev. 25:36; S. E. Lionstamm (in Ency. Biblica) Vol. 5, pp. 929-930; H. S. Horowitz and I. A. Rabin, Mechilta D'Rabbi Ismael (2nd ed.) (Bamberger and Wharman, Jerusalem, 1960) p. 315, n. 14; Aharon Nikomödio, the Karaite, Sefer Mitzvot Gadol ("A Complete Book of the Commandments") (A. Firkovitch Pub. House, ed. by Jodah Sa'avaskan Gozlava, 1866) pp. 186-188.

¹⁰ Deut. 23:20. See later why this point was emphasized.

¹¹ That is the simple literal meaning of "that ishak". (See Supra, p. 21, n. 8). See also Maimonides, supra, n. 7; Rashi and Tannaitic sources (supra, n. 13) and principle B, infra, p. 34.

¹² Supra, pp. 20-21.

Mishna, which interprets the Biblical text on usury:

"What is 'neshek' and what is tarbit'?
What is 'neshek'? One who lends a sela
[four denarii] for five denarii, or
[lends] two se'ahs of wheat for three;
that is forbidden because he [thereby]
bites [the debtor]. And what is 'tarbit'?
The taking of usury on produce. E.g...." 13

When the Talmud introduces this Mishna, it is
puzzled at how, on the issue of "What is tarbit" (which is
employing a Biblical term) the Mishna presents an example
of a type of usury which does not even appear in the Torah.

"Now, since [the Tanna] disregards the
Biblical [meaning of] usury, and defines
its Rabbinical [connotation]" 14

In the end, the Talmud deduces that the example brought by
the Mishna to what is "tarbit" is actually an example thought
up by the Rabbis and not by the Torah.

"Hitherto it [was] until "because he bites")
is usury in the Biblical sense, but

13 B.M. V,1; Yerushalmi B.M. V,1. In earlier sources:
Mekhilta D'Rabbi Simon b. Yo'hai, Mishpatim s.v. "Ye shall
not lay upon him usury" (Epstein-Melamed ed., p. 212); Sifra
be'har V,2 (Weiss ed., p. 109a).

"Neshek" and "tarbit" mean "usury" - in the language
of the Torah. (See supra, pp. 29-30). It means that the
Mishna interprets the essence of "the law against usury" as it
comes out from the Torah.

14 Bavli B.M. 60b. Where does the Talmud get this
assumption if not from the fact that the principles of
Biblical usury were known!

from here onward (from "what is tarbit")
by Rabbinical law Thus far it is
fixed usury, from here onward it is just
of usury." 15

The final conclusion from these Talmudic discussions is that the majority of the cases of prohibition against usury, which appear in the Mishna, are not to be found in the Torah, but are rather Tannaitic prohibitions.

In order to emphasize the halachic development which occurred in the issue of the quality and nature of usury, we shall list below the basic principles which can be derived from a literal reading of the Torah and from other early sources. These principles shall show us under what circumstances the Torah forbade the taking of usury and then, quite logically we can know that in the remaining areas, usury is permitted.

1...The Biblical Concepts of Usury

... Applies Only to a Loan Transaction

In the Book of Exodus 22:25 we read:

"If thou lend money to any of my people
... ye shall not lay upon him usury." 16

15

S.M. 61b.

16

And in Lev. 25:37: "Thou shalt not give thy money to him upon usury." See also: Deut. 23:20, 21 and p. 91 n. 198.

When the Mishna wishes to bring examples of Biblical usury, it brings cases only of loans:

"One who lends a se'la for five denarii,
or [lends] two se'ahs of wheat for three." 17

When the Talmud comments on this Mishna, it, too, points out that only the first part of the above Mishna deals with the Biblical concept of usury.¹⁸

B. Applies Only to a Transaction Involving a Loss to the Borrower

In Deuteronomy 23:20 it is written:

"...Usury (neshek) of any thing that might bite (ishak)." 19

¹⁷ B.M. V, 1. (Hereafter all emphases in the Mishna are mine).

Seemingly a proof from the Mishna (concerning Biblical principles) is unfit, since our theory deals with development and is based on the changes of the halacha in the different periods. Nevertheless, an evidence from this particular Mishna is valid, since even the Amoraim (*infra*, p. 49) admitted that this part of the Mishna truly defines the Biblical concept of usury.

¹⁸ Commenting on this section of the Talmud, Rashi (B.M. 60b s.v.: "Biblical meaning of usury") wrote that "usury" in the Biblical sense, means that the usury comes as a result of a loan; see also: "P'nei Moshe," to Yerushalmi B.M. V, 6 s.v.: "that is not usury but tarsha." Philo, and Flavius Josephus, *supra*, p. 27; S. Lieberman (in: *Dine Israel*) Vol. IV, p. 117:

¹⁹ Concerning the term "neshek," see *supra*, pp. 29-30. The term "ishak" comes from the root N'. SH'. K'. See the various tenses and conjugations of this term in Deut. 23:20, 21.

The implication is, that the Biblical concept of usury forbade any loan which would eventually take a bite out of the borrower's money, thereby reducing his capital.²⁰ The Mishna too explains thus:

"... because he [thereby] bites [the debtor]." 21

From this statement follows: (Lev. 25:36):

"Thou shalt not take (at least something) from him (the borrower) usury (that uses him and bites him)." 22

Even the example brought by the above Mishna enforces this opinion:

"What is neshek? One who lends a se'la (four denarii) for five denarii (the borrower loses one denar., or [lends] two se'ahs of wheat for three (the borrower loses one se'ah))." 23

²⁰ See supra, p. 30 and Philo, supra, p. 27.

²¹ Supra, p. 32, n. 13, where you will also find further sources.

²² Concerning this sum that the lender receives (which must be at least something), see also Ezek. 18:8, 13, 17; 22:12.

²³ From all this discussion we can safely assume that the loss to the borrower is also a very concrete matter. See also infra, p. 41.

C. Applies Only to a Transaction Involving a Profit to the Lender

In Leviticus (25:36) we read:

"... Thou shalt not take (at least something) from him usury nor increase (tarbit - that increases your substance)." ²⁴

In the Book of Proverbs (28:8), we also find the idea that usury increases the wealth of the lender: "He that increaseth his wealth by usury and increase"

Similarly, the Mishna states:

"What is neshek? One who lends a se'la (four denarii) for five denarii (the lender earns one denar), or [lends] two se'ahs of wheat for three (the lender earns one se'ah)." ²⁵

D. Applies Only to Instances Where the Gain or Loss is Quantitative

This principle supports the notion that the Torah uses the term usury, not in dealing with an increase in quality or worth, but rather, a quantitative increase of size, number, or weight, relative to the value of the loan.²⁶ For

²⁴ Supra, p. 30.

²⁵ Supra, p. 35, n. 23.

²⁶ That is a conclusion derived from principles B, C and their sources (supra, pp. 34-36). See also S. E. Lionstamm (in Encyclopedia Biblica) Vol. 5, p. 929 who bases his remarks on a Ugaritic Document.

example, "One who lends a se'la (four denarii) for five denarii."²⁷ In this case, the added value of one denar is a sizeable increase in proportion to the quantity of denars which had been lent.

E. Applies Only to Instances Where the Payment of Usury was by Mutual Consent ²⁸

Logic compels us to accept this idea: If the Biblical term of usury applies only to loans,²⁹ how would it be possible for the lender to exact usury from the borrower without a mutual agreement? Furthermore, what can be the meaning of: "Thou shalt not take from him usury nor increase?"³⁰ Is it conceivable that the borrower would agree to pay usury if there had been no mutual agreement? Furthermore, why did the Torah choose to use the term "neshek"?³¹ After all, without a mutual agreement, there can be no chance

²⁷ Supra, p. 32, n. 13.

²⁸ That is, even if this agreement was in conflict with the desire of the borrower. Further on (p. 39, principle F) we shall see that the agreement of usury was by prior agreement.

²⁹ This was our conclusion, supra, p. 33, principle A.

³⁰ Lev.: 25:36.

³¹ The expression: "Ye shall not lay upon him usury" (Exodus 22:24) also gives evidence that the usury was considered as an obligation which was laid upon him in the original agreement.

of "neshek."³² Again, if there had been no agreement, why should the usury be referred to as "neshek"? The usury would be a gift given by the borrower, of his own free will, without any previous obligation, to the lender who had not requested it!³³

The Mishna also brings one to this conclusion when it brings an example of usury from the Torah:

"What is neshek? One who lends a se'la (four denarii) for five denarii, or [lends] two se'ahs of wheat for three." ³⁴

The conclusion is that there had been such an agreement made at the time of the loan. The Mishna explains why such usury is forbidden: "Because he [thereby] bites [the borrower]" ³⁵ - if usury was not exacted by mutual consent, why would we talk of biting here? If the borrower wishes to pay usury,

³² Cf. supra, p. 31.

³³ To support our claim see: Chilperic Edwards, The Hammurabi Code and the Semaitic Legislation, (Kennikat Press, Port Washington, N.Y.-London, 1971) pp. 36-37; P. Korngren, op. cit., pp. 135-136; E. L. G'obus in: Ha-Mishpat, 2nd year, (1927) p. 26, which will also show evidence that during the ancient times, a loan was made via contract (mutual agreement). Similarly, see evidence in the Mishnaic period: Tosefta B.M. V, 9: VI, 6 (M. S. Zuckerman, ed. [Wahrman], Jerusalem, 1963) pp. 383, 385); Tosefta, Sanhedrin V, 2.

³⁴ B.M. V, 1; see also supra, p. 32, n. 13.

³⁵ Ibid.

he will; if he does not want to, he will not!

We can conclude that the Torah includes in the concept of usury, the notion of mutual agreement, by which the borrower is compelled to pay usury, lest he be refused a loan which he needs.

F) Applies Only to Instances Where the Payment of Usury is by Prior Agreement

Here, too, logic compels us to note: if there had been no prior agreement, why would the borrower pay usury once the loan was in his possession?

G) Applies Only in the Instance Where the Payment of Usury is of the Same Kind as the Item Borrowed

The Mishna explains that the usury payment must be of the same kind as the item borrowed:

"What is neshek? One who lends a se'la (four denarii) for five denarii (i.e.

³⁶ This principle also derived from the Mishna's choice of language. (Supra, principle E and supra, sources p. 38, n. 33; see also: John Kitto, op. cit., p. 1060: "... an unlawful contract"; J. Lieberman, op. cit., p. 117.

money for money), or [lends] two se'ahs of wheat for three (i.e. wheat for wheat)." 37

The Biblical definition of usury, as is derived from the different sources mentioned earlier, is perfectly simple: It is an illegal transaction of a loan, where the parties made a prior agreement, that on the day of the loan's repayment, the borrower will return the principal together with a quantitative supplement of the same kind as was borrowed.

2. The Concept of Usury: Its Extension and Its Diminution During the Periods of the Mishna and the Talmud.

A) The Extension of the Concept of Usury During Mishnaic Times

Those negative social phenomena which blossomed at the end of the Tannaitic period due to economic distress,³⁸ pressed the Tannaim to do all that was in their power to prevent their continued occurrence, especially the taking of usury.³⁹

³⁷ Supra, p. 32, n. 13.

See also John Kitto, op. cit., p. 1060: "... to be returned again with exorbitant increase"; L. N. Dembitz, (in: The Jewish Encyclopedia, 12 Vols., ed. by Isidore Singer, Funk and Wagnalls Company, N.Y. - London, 1916) Vol. 12, p. 389 column 3: "The Bible ... contemplates a loan to be returned in kind, and forbids only the return of a greater quantity than that which was lent."

³⁸ Supra, pp. 6-7.

³⁹ Supra, p. '9; Infra, p. 134 ff.

One of the means used by the Tannaim, as we shall see later, was in their extension of the prohibition against usury, to include areas that the Torah had not forbidden. They believed that to the extent that the prohibition was stricter, the public would be more scrupulous in its obedience of the prohibition. The extension of the usury prohibition also prevented cases of evasion of the law of usury,⁴⁰ cases where the lender could have profitted from the borrower, in ways other than mentioned in the Torah.

Logic compels us to see the concept of usury in the Torah as a concrete matter:⁴¹ As "usury of money"⁴² and "usury of food"⁴³ are concrete expressions, so too does "usury of anything that might bite,"⁴⁴ have to be a concrete matter. However, the Tannaitic concept of usury differed. R. Simeon b. Jochai said:

"Whence do we know that if a man is his neighbour's creditor, the latter must not extend a greeting to him, if that is not his usual practice? From the verse 'Usury of any word' (davar) which

⁴⁰ See for example Tosefta (Zuckerman, ed., p. 379) B.M. IV, 2; Baraita Bavli B.M. 62b.

⁴¹ Derived from principles B, C, D, supra pp. 34-36 and n. 23.

⁴² Deut. 23:20.

⁴³ Ibid.

⁴⁴ Ibid.

may be usury (ishak) teaching that even speech is forbidden." 45

In addition, R. Simeon b. Jochai said:

"There is a form of verbal usury. Thus: he (the borrower) may not say to him (the lender) 'know that so-and-so has come from such-and-such a place.'" 46

It appears that inquiring into another's welfare, which is simply a matter of speech, or the clarification of facts is to be considered usury even though neither is a tangible matter!

Rabbi Simeon's concept of usury differs from the Torah's in yet another way: the Torah forbade usury when it bites the borrower, and increases the wealth of the lender.⁴⁷ But inquiring into another's welfare or doing one a favor by clarifying facts is not at all a matter of "biting" or of

⁴⁵ B.M. V, 10. This statement appears in different forms. See: Sifre on Deuteronomy Ki-Tetze section 262 (L. Finkelstein, The Jewish Theological Seminary of America, N.Y., 1969) p. 284; Mekhilta D'Rabbi Simon b. Jochai (supra, p. 32, n. 13); Tosefta B.M. VI, 6 (Zuckerman, p. 385); Bavli, B.M. 75b; Yerushalmi B.M. V, 13. In the Naples edition, instead of R. Simon b. Jochai the version is: "R. Ismael," and in the Tosefta B.M. VI, 6 (Zuckerman, p. 385): "R. Akiva." The Hebrew word "davar" has two meanings: (a) something; (b) a word (see Jastrow, op. cit., Vol. I, p. 278). In Hebrew "ishak" may be interpreted into two meanings: (a) will bite; (b) will (or: might) be usury (see Jastrow, op. cit., Vol. 2, p. 940).

⁴⁶ Sifre, op. cit.; Mishna, op. cit.
There is a different version which reads: "Know if so-and-so ..." instead of: know that so-and-so. (Cf. L. Finkelstein, op. cit., pp. 284-285, n. 15).

⁴⁷ Supra, pp. 34; 36.

increasing. From another Tanna we arrive at the same conclusion: Rabbi Akiva said:

"Usury is very severe because even a favor is usury [e.g.] if he [lender] said to him [borrower] to buy for him vegetables from the market, even though he paid him money - that is [a case of] usury." 48

Another Tannaitic extension of the nature of usury can be found in the words of Rabban Gamliel: Rabban Gamliel said:

"There is [a form of] prepaid usury, and there is [a form of] postpaid usury. E.g. If one made up his mind to borrow from his neighbour and sent him [a gift], saying 'it is in order that you should lend me' - that is usury in advance. If he borrowed from him, repaid his money, and then sent him [a gift] saying 'It is on account of your money which [as far as you were concerned], lay idle with me' - that is postpaid usury." 49

Rabban Gamliel brings three new interpretations. First, there is no need for the usury payment and the repaying of the principle to coincide. Second, it is not necessary that the payment of the usury be precisely at that time which had been previously agreed upon.⁵⁰ And third, it

⁴⁸ Yerushalmi B.M. V, 12.

⁴⁹ Sifre (Deuteronomy), Ki-Tetze, section 264 (L. Finkelstein, ed., p. 285); Mishna, B.M. V, 10; Yerushalmi B.M. V, 12.

⁵⁰ Compare with principle F, *supra*, p. 39.

is not necessary that a payment of usury be agreed upon at all,⁵¹ not ahead of time, nor at any other time.⁵²

Tannaitic usury differs from Biblical in another way: the sources quoted above testify to the fact that Tannaitic usury does not require that the additional payment acquired by the lender need be of the same kind of item as was the loan.⁵³ After all, to report on someone's welfare or to clarify a fact is not akin to the money or fruits which had been borrowed.⁵⁴

There is another surprising extension of the prohibition against usury: while according to the Torah, the initiator of usury is the lender who is eager for the usury, and therefore the prohibition is directed precisely against him,⁵⁵ the Tannaim prohibit usury even if initiated by the borrower. Moreover, even if the borrower forces the lender

⁵¹ Compare with principle E, supra, p. 37.

⁵² This point was also derived from other Tannaim: See R. Akiva's and R. Simeon's remarks (Supra, pp. 41-43).

⁵³ Compare with principle G, supra, p. 39.

⁵⁴ Another important principle which was changed was that with the Tannaim's definition of usury (in contrast to the Torah's) it was not necessary for the additional payment given by the borrower on the loan's maturity day to be of a quantitative benefit (see infra, p. 84) nor need the additional payment be part of a transaction which began as a loan. (See infra, p. 66). For additional examples of the differences between the Torah's definition of usury and the Tannaim's, see infra, p. 56ff).

⁵⁵ Infra, pp. 89ff.

to unknowingly accept usury, the prohibition still stands:

"If he borrowed from him, repaid his money, and then sent him [a gift], saying, 'it is on account of your money which, [as far as you were concerned], lay idle with me' - that is postpaid usury." 56

The Tannaitic concept of usury is much broader than the Biblical one. We are not speaking here of the broad quantity, but, of the broad nature of the halachot dealing with usury: it was precisely the principles defining the nature of usury which changed and expanded, and as we mentioned earlier, this broadening was the result of the socio-economic reality.⁵⁷

It appears that an additional factor played an important role in the broadening of the concept of usury; the understanding that the reason for the usury prohibition lay not only in justice and mercy but also in brotherhood,⁵⁸ was very relevant to this period of increased distress.⁵⁹ The concept of brotherhood grew and took on more importance

⁵⁶ In R. Gamliel's remarks (supra, p. 43).
Regarding further Tannaitic expansion of the nature of usury, even in a case where there is no prior assurance that there will finally be a profit for the lender, see infra, p. 67 and n. 136.

⁵⁷ Supra, pp. 40-41.

⁵⁸ Supra, p. 28.

⁵⁹ Supra, pp. 6-7.

during a time when the nation sorely needed such a concept. From a brother, family member, other relative, from a close and beloved friend, one cannot expect to be recompensated. Therefore, under no condition is one to profit from a loan to a fellow Jew.

3) The Diminution of the Concept of Usury During the Talmudic Period

There is no doubt that the Tannaitic broadening of the prohibition of usury created difficulties for the daily lives of the Amoraim who lived in Babylonia. They apparently feared that usury, as defined by the Tannaim, created enormous obstacles for a free economy, and greatly limited the possibilities for making a livelihood or forming the usual contractual agreements in the various business areas.⁶⁰

Hence we can now begin to understand why the Babylonian Amoraim tried to narrow the areas on which the Tannaitic prohibitions against usury fell.⁶¹

However the Amoraim faced a difficult problem: they

⁶⁰ See infra, pp. 56ff.

It is also possible that there existed a genuine fear that with the various restrictions put on the use of usury and with increased prohibitions on that which is permissible between members of society, many potential lenders will cease lending money. For it is written: "In order that you won't shut the door in the borrowers' faces." (B.M. 68a). Relying on this reason the Rabbis also cancelled the cash debts in the Sabbatical year. (Sheviit X, 3; Gittin IV, 3).

⁶¹ Regarding further Amoraic restrictions of various Tannaitic prohibitions, see later in the following chapters.

were not allowed to change or eliminate any of the principles established by their predecessors, the Tannaim. On one hand, they were obliged to accept the Tannaitic principles; on the other, they had to suitably implement these principles under conditions which were steadily changing. The Babylonian Amoraim did all that was in their power to see that the many prohibitions against usury did not harm the free and ordered economy, nor did they paralyze it.

They did not hold back from searching for any loophole in the prohibition against usury,⁶² provided their search found ways to remove the obstacles to a solid economy. However, at the same time, the Amoraim were careful to search for this release from Tannaitic interpretation only, within the framework of halacha, as we shall see below.

The First Amoraic Distinction of the Prohibition;
Torah Versus the Rabbis.⁶³

An important and basic change in the Amoraic concept of the nature of usury can be seen in their decision that almost all the Tannaitic prohibitions against usury were the result of Tannaitic thinking and were never claimed by the Tannaim to be found in the Torah.

⁶² Concerning this searching for loopholes, see also E. E. Globus (in: ha-Mishpat, 2, [1927]) pp. 34; 39-40; B. Cohen, op. cit., p. 445f.

⁶³ "de-Oraita" and "de-Rabbanan."

In contrast the simplest reading of the Tannaitic literature indicates that the Tannaim believed that all their restrictions on the various forms of usury were of Biblical origin: "Because that constitutes usury";⁶⁴ "Here is [a case of] usury";⁶⁵ "[That is] permitted because it is not [under the category of] usury";⁶⁶ "[That is] forbidden because it is [under the category of] usury."⁶⁷ "And thus they (the lender and borrower) come to [transgress the prohibition of] usury";⁶⁸ "That is usury in advance";⁶⁹ "That is postpaid usury."⁷⁰ "And he does not have to fear of usury."⁷¹

From this we can conclude that, in all the other cases where the Tannaim decided that a procedure was forbidden lest the taking of usury be involved, they saw this prohibition's source as being in the Torah.

⁶⁴ B.M. V, 2; V, 6.

⁶⁵ Tosefta, B.M. IV, 1; IV, 12 (Zuckerman, ed., pp. 379, 381).

⁶⁶ Ibid., IV, 9 (Zuckerman, ed., p. 380).

⁶⁷ Ibid., IV, 1.

⁶⁸ B.M. V, 9.

⁶⁹ B.M. V, 10.

⁷⁰ Ibid.

⁷¹ B.M. V, 5.

However, despite this view, the Babylonian Amoraim decided that except for half of the first Mishna of the chapter "What is Neshek?", all the Tannaitic restrictions are Rabbinic in derivation, and not from the Torah: "Hitherto it is usury in the Biblical sense, but from here onward by Rabbinical law,"⁷² and in a different way it is written: "Thus far it is fixed usury, from here onward it is dust of usury."⁷³

In support of the view that the prohibitions were seen as having their source in Torah, we can mention that when the Tannaim knew that a particular prohibition was not to be found in the Torah, they clearly said so: "They are essentially not [under the Torah's sense of] usury, however, [they are] forbidden as [constituting] evasions of usury;"⁷⁴ "Here is [a case of] usury, but the Torah declared it permitted;"⁷⁵ "Some things are [essentially] permitted [under the Torah's sense of usury], yet forbidden as [constituting] an evasion of usury";⁷⁶ "This is [essentially] permitted

⁷² Supra, pp. 32-33. This division, by the way, between that which originates in the Torah and that arrived at by the Rabbis is very clearly maintained by the Amoraim, not only in matters of usury but in all areas of halakha. Such is not the case with the Tannaim who only begin to make such a distinction. On the factors contributing to the differing Tannaitic and Amoraic perspectives, see B. De Vries, Studies in the Development of the Talmudic Halakha (Heb. Zioni Pub. House, Tel Aviv, 1962) pp. 94-95.

⁷³ Supra, pp. 32-33.

⁷⁴ Iosefta, B.4. IV, 2 (Zuckermann, ed., p. 379).

⁷⁵ Ibid., IV, 1 (Zuckermann, ed., p. 379).

⁷⁶ Baraita, Bayli, B.M. 62b.

[under the Torah's sense of usury], yet may not be done on account of the evasion of usury."⁷⁷

In a different place, the Tannaim clearly decided that a matter was permitted by the Torah but prohibited by them because the issue was not really one of usury; "This is [essentially] permitted [under the Torah's sense of usury] however, it is forbidden because [it has] the appearance of usury."⁷⁸

This is an important and basic change in the Amoraic concept of the nature of usury. Henceforth, since most of the prohibitions against usury were seen as Rabbinic, and not Biblical, in unclear cases, they could say: "a doubtful case in which a Rabbinical enactment is under consideration is decided in favor of the easier practice."⁷⁹ And the prohibition was lifted or, under circumstantial pressure, one could remove the prohibition if one knew that in these cases the Rabbis had not enacted a prohibition against usury.⁸⁰

⁷⁷ Baraita, Ibid.

⁷⁸ Tosefta, B.M. V, 18 (Zuckerman, ed., p. 382).

⁷⁹ See for example: Betzah, 3b.

⁸⁰ See for example the leniency granted to the orphans (B.M. 70a; Rashi, Ibid., s.v.: "Near to profit but far from loss"; Ravina remarks B.M. 71a (infra, p. 120)). But this does not prove, a priori, that every disagreement between the Torah's text and Rabbinical interpretation was pointed out by the Amoraim for the sake of easing the severity of the law, and also the Amoraim's attitude to the usury prohibition remained similar to that of their teachers, the Tannaim. (Cf. infra, p. 144ff).

When the Yerushalmi deals with the first Mishna - "What is Neshok?", it quotes Rabbi Yanai: "That is [a kind of] usury that can be reclaimed in court."⁸¹ This Talmud's intention is probably to say that the usury under discussion is from the Torah.⁸² Despite this statement, and unlike the Bavli, the Yerushalmi never clearly explains why the decision is such, and does not explicitly make a distinction between which prohibitions against usury are from the Torah, and which are Rabbinic.⁸³

The Second Amoraic Diminution: The "Appearance" of Usury

The Tannaitic prohibition which appears in a solitary instance only "because [it has] the appearance of usury,"⁸⁴ was greatly expanded upon by the Babylonian Amoraim who referred to it as: "because it looks like usury."⁸⁵

Their reasoning was that "the appearance of usury" didn't prohibit usury because of the arguments traditionally

⁸¹ Yerushalmi B.M. V, 1.

⁸² Cf. supra, p. 32.

⁸³ Concerning the Yerushalmi's methodology, which is systematically shorter than that of the Bavli, see supra, p. 14.

⁸⁴ Supra, p. 50, n. 73.

⁸⁵ See B.M.: 62b, 63a, 68a, 69a; Rashi, for example, ibid., 64b. s.v.: "Therefore he teaches us [otherwise]"; Rava's remarks: "That people may not say :..." (ibid., 65a).

given against usury, but because of the chance of desecrating the name of God, and out of a fear that the people would wrongly believe that usury is permitted.

The question arises: Why did the Amoraim of Babylonia who had tried to curtail the prohibition against usury,⁸⁶ actually broaden the law's power by invoking another supportive argument which had nothing to do with usury?

The question can be answered by looking at the social background of the time and place: the Jewish masses in Babylonia were uneducated and often were complete ignoramuses in matters of halacha.⁸⁷ Much like their fear that the masses would imitate the surrounding Gentiles,⁸⁸ the Rabbis feared that the masses would incorrectly understand laws which had been actually permitted in the halacha. The masses tend to be influenced by that which they can see. Therefore, the argument of "because it looks like usury" was often employed by the Babylonian Amoraim.⁸⁹

We can now understand why the term "because it looks like usury" does not appear even once in the chapter "What is Neshek?" of the Yerushalmi. The halacha, as it

⁸⁶ See supra, p. 46ff, and further on, additional examples can be found.

⁸⁷ Infra, pp. 125-126.

⁸⁸ Infra, p. 122ff.

⁸⁹ Supra, p. 51, n. 85.

developed in the Land of Israel, was not in need of such a supportive argument because the mass ignorance which created the need for such an argument, was restricted to the Babylonian community, which had forsaken the Torah and assimilated into the Gentile community.

In addition, one can imagine that in the halacha of the Land of Israel, there were already existing restrictions (i.e. broad use of the usury prohibition) on the economy which was itself in bad straits,⁹⁰ that therefore imposing the additional argument of "because it looks like usury" would present an overbearing and unnecessary burden on commerce and on the economy. In addition, it appears that the tendency for the Yerushalmi to be more consistent with the Tannaitic literature⁹¹ (than was the case with the Bavli) also reflected itself in this argument: the Tannaim used the argument "because [it has] the appearance of usury" only once,⁹² and even that appears not in the Mishna, but in the Tosefta. Therefore, the Yerushalmi saw no need to broaden the prohibition against usury on the basis of this

⁹⁰ Supra, pp. 11-12.

⁹¹ Supra, p. 15.

⁹² Supra, p. 50, n. 78.

solitary argument.⁹³

The Third Amoraic Diminution: "A Fee For Talking"⁹⁴

An additional and significant reduction in the prohibition's force was created by Babylonian Amoraim,⁹⁵ who established a new law in the halachot of usury: "The Torah forbade only usury which comes from the borrower to the lender."⁹⁶ The son of Rav Papa asked him to lend money to some wax dealers. In consideration of his request, Rav Papa's son received a very tangible benefit from the wax dealers:

"Just as Abba Mar, the son of R. Papa, used to take balls of wax from wax dealers, and then persuade his father to lend them money. But the Rabais protested to R. Papa: 'Your son enjoys usury'. He replied: 'Such usury we may

⁹³ With all this, the Babylonian Amoraim, themselves, often restricted their use of the argument "because it looks like usury"; otherwise, apparently, the way would have been opened for many additional prohibitions. See for example Rav's and R. Yanai's controversy of opinions (B.M. 63a, and Rashi, ad. loc., who connected it with the phrase: "because it looks like usury"). Rava (op. cit., 63a-63b, Babylonian Amora) and the Bavli (annonymously, 65b) didn't accept (in this case) the reasoning "because it looks like usury" and decided that the halacha is according to R. Yanai's opinion. It is possible that the reason R. Yanai (a first generation Amora, of the Land of Israel) declared a lenient rule, was due to our claim (supra, p. 52) that the halacha, in the Land of Israel, didn't adopt the reasoning "because it looks like usury."

⁹⁴ The matter will be clarified further on in the text.

⁹⁵ Rava (fourth generation) and Rav Papa (fifth generation).

⁹⁶ Bavli B.M. 69b.

enjoy: the Torah forbade only usury that comes from the borrower [direct] to the lender; but here he receives a fee for his talking, which is permitted." 97

The same principle was used by Rava in a different incident:

"Rava said: One may say to his neighbour, 'Take these four zuz and lend money to so-and-so,' (though the lender thus receives usury) [because] the Torah forbade only usury which comes from the borrower to the lender." 98

We see that it is permissible for a person to give a reward to one who lends money to a third party.

Rava even deduces another permissible action from this principle:

"One may say to his neighbour 'Here are four zuz, and persuade so-and-so to lend me money.' Why so? [because] he merely receives a fee for his talking." 99

We see that a person may reward a second party for convincing a third party to lend money without usury to him; i.e. to the first party. This reward is not viewed as usury but is defined as "fee for talking" which is a benefit for what

97 Bavli, B.M. 69b.

98 Ibid.

99 Ibid.

one had said, had asked, or had convinced another of.¹⁰⁰

The halacha of the Land of Israel was not in need of restrictions upon the usury prohibition as was the case of Babylonian halacha. It did not look for ways to throw off the yoke of the usury prohibitions because these prohibitions did not interfere with the economy and trade. Therefore, in the Yerushalmi's chapter "What is Neshkek?" we do not find any lenient rule as Rav Papa's.

3. The Areas in which the Prohibition Against Usury Falls

From here on, we shall deal with the various kinds of transactions and agreements on which fall the prohibitions against usury during the periods of the Mishna and Talmud. We shall also examine the development of the prohibition as it affected the various transactions. As an outcome of this study,¹⁰¹ we shall be able to extrapolate the Tannaitic and Amoraitic conceptions of usury.

A) Mortgages¹⁰²

We have already seen that the Tannaim forbade the

¹⁰⁰ How great was the difference between the Tannaim and the Amoraim! The Tannaim looked for any word or even letter concerning usury in the Torah, which might allow for a broadening of the prohibition's power, while Rava (in the examples we have seen) searches for cases which the Torah and the Tannaim did not explicitly prohibit in order to limit the prohibition's scope.

¹⁰¹ In addition to our discussion, supra, p. 40ff.

¹⁰² E.g. If a field was mortgaged, and no stipulation made about its crops, and the creditor took them (See Rashi, 67a s.v. "What of a mortgage.")

taking of usury even in cases where the borrower does not provide a profit for the lender of the kind that is being borrowed.¹⁰³ With this understanding the Tannaim also forbade usury in the following case:

"If a man lends [money] to his neighbour, he must not live rent-free in his [the borrower's] court, nor at a low rent, because that constitutes usury." ¹⁰⁴

From this principle, it is reasonable to deduce that as pertains to mortgages, it would also be forbidden for the lender to eat the fruits of the borrower's field, without paying for them, or even for the lender to buy the fruits at a reduced price.¹⁰⁵

The same reasoning of "it looks like usury" which caused the Babylonian Amoraim to broaden the prohibition of usury,¹⁰⁶ also played a similar role here.

"R. Joseph b. Minyomi said in R. Nahman's name: Though it has been ruled, if one

¹⁰³ Supra, p. 44.

¹⁰⁴ B.M. V, 2.

¹⁰⁵ In this way Rav Sherira Gaon concluded (Teshuvot ha-Geonim in: Shaarei Tzedek, 34th section 2, Saloniki, 1792). From the simple literal meaning of this Mishna, the following becomes clear. "... he must not live rent-free in his [the borrower's] court ..." - even when there had been no agreement between the two of them (similarly see supra, p. 44, and n. 52) for it is not written: "He [borrower] must not say to him: live rent-free in my court."

¹⁰⁶ Supra, pp. 51-52.

dwells in his neighbour's court without his knowledge, he need not pay him rent, yet if he lent him money and then dwelt in his court, he must pay him rent." 107

If a man had lived in another's courtyard, there would be no charge. However, since there had been a loan transaction between the two parties, rent on the property must be paid. Otherwise it would appear that the free rental received by the lender (the tenant) would be in lieu of usury.¹⁰⁸

In this matter, the Yerushalmi follows the simple, literal meaning of the Mishna, as is its custom¹⁰⁹ and does not legislate so severely such as the previous case with R. Nahman;

¹⁰⁷ B.M. 64b. This version ("if he lent him") was agreed upon by R. Isaac Alfasi (B.M. ad. loc.), Tosafot (ad. loc.) and Maivonides (Yad, Malveh ve-Loveh VI, 2). There are those who disagree and decide according to the second version which reads: "Lend me money and live in my court." See "Mareh ha-Panim" on Yerushalmi B.M. V, 1, s.v. "and he is certain." Perhaps one can view the second version as an attempt at limiting the prohibition in the Mishna; after all, according to the Mishna, this transaction is forbidden even if it has not been explicitly agreed upon between them. (Cf. supra, p. 44) while, according to the second version, the transaction was forbidden only if they had agreed upon it.

According to the Talmud's conclusion (Ibid.), R. Nahman's remarks even referred to a case where the court is not for renting purposes and the lender does not generally rent.

¹⁰⁸ Cf. Rashi, ad. loc., s.v.: "Therefore he teaches us otherwise." On the basis of the same principles as "it looks like usury" Rava, the son of R. Joseph Bar Hama, forbade his father in a different case, from retaining the borrower's servants and forcing them to work for him. (op. cit., 64b, 65a).

¹⁰⁹ Supra, p. 15.

"A man lent denarii to his neighbour, and [the borrower] permitted him [by shutting his own eyes to the fact that the lender] was living in his (the borrower's) house. [After a while] he (the borrower) said to him: 'pay me the rental for my house' [and the lender] said to him: 'give me my denarii [which I lent you]'. The case was brought before Sa'ar Hina, [and] he said to him (to the borrower): 'Deduct [from his denarii] the amount [of money] which he [owes for] having lived [in the house] in the borrower's disregard.'" 110

In other words, one deducts the rental from the debt, lest the profit of free rental be seen as usury taken for the loan.¹¹¹

We see here, that the Yerushalmi forbade the free rental for fear it would be considered a form of usury, while the Bavli, with its broader application of the prohibition, forbade it for reasons of "It looks like usury,"¹¹² not simply because it was usury.

On the strength of their argument that any profit that the lender receives from the borrower be seen as usury, even when the profit be of a different kind from what was borrowed, the Tannaim also forbade the lender to eat the

¹¹⁰ Yerushalmi B.M. V. 1.

¹¹¹ According to R. Jacob David Ben Ze'ev's (Ridvaz) commentary to the Yerushalmi, ad. loc.

¹¹² This reason as we saw, supra (p. 52) is not mentioned at all in the Yerushalmi.

fruits of a mortgage conditional to sale¹¹³ which he received from the borrower:

"If he (a man) owes money to him (a neighbour) for which he [conditionally] wrote his field [as a mortgage] to sale; if the vendor enjoys the usufruct, it is permitted; if the purchaser - it is forbidden." 114

Rabbi Judah differs from the Rabbis on the matter of eating the fruits of the mortgaged land under these circumstances:

"[It does not matter who enjoys the usufruct] in both cases it is permitted." 115

According to the Yerushalmi, Rabbi Judah supports his argument on the basis of what he learned from the case of houses situated in a walled-city: these houses are sold for one year even if the seller returns the money before the year's end. The result is that the buyer lives in the house as a reward for his waiting for payment since the free lodging is not deducted from the debt:

"R. Johanan and R. Lezer and R. Hoshaeia say: 'R. Judah learnt it from the homes

¹¹³ The borrower writes to the creditor: "If I don't repay by a certain date, the field is sold to you from now."

¹¹⁴ Tosefta, B.M. IV, 1 (Zuckermann, ed., p. 379); Baraita, Bavli, B.M. 63a.

¹¹⁵ Ibid.

of the walled city [in the Torah]...
The one who says 'this is real usury
except that the Torah has permitted
it [in this case]' - [is] R. Judah." 116

We see that according to the Yerushalmi, Rabbi Judah allowed
this only in this specific case,¹¹⁷ and only because there
was precedence for such an allowance in the Torah in conjunc-
tion with the walled cities.

The Babylonian Amoraim explain Rabbi Judah's con-
troversy with the Rabbis in a totally different way:

"Wherein do they differ? - Abaye said:
They differ with respect to one-sided
usury." 118

According to Babylonian doctrine, a mortgage conditional to
sale, may involve usury; but it is also possible that there
will be no usury; if the seller (i.e. the borrower) eventu-
ally redeems his field, the buyer can be seen as having
received a form of usury by his eating of the fruits of the
field. But if the field is not eventually redeemed, there
is no form of usury involved. If there is any doubt as to
whether usury is involved in this case, Rabbi Judah judges

116 Yerushalmi B.M. V, 2.
Cf. also R. Johanan's remarks, Bavli Arakin 31a.

117 Supra, p. 60, n. 114.

118 B.M. 63a.
The Rabbis forbid, and R. Judah permits. (Similarly
see Samuel's and R. Huna's (b. R. Joshua) remarks (op. cit.,
65b).

leniently. 119

With this interpretation of the controversy between Rabbi Judah and the other Rabbis, we can assume that according to the Babylonian Amoraim, there existed a Tanna who would be lenient when there was a matter of doubt as to whether the eating of the fruits would constitute usury or not. 120

Another Babylonian Amora interpreted the controversy between R. Judah and the Rabbis in a different way, which also broadens R. Judah's leniency:

"Rava said: 'They differ with respect to usury [received] on condition that it shall be returned.'" 121

The controversy then is, where is it stipulated that if the loan is repaid, the creditor must return the value of the crops he has taken? R. Judah permits this arrangement since thereby, an infringement of usury is precluded. This is in spite of the fact that when the purchaser enjoyed the usufruct it was actually usury on money lent.

119 R. Judah then permitted usury in a transaction where there was a chance but not a certainty, that usury would result.

120 Cf. also: Tosafot, B.M. 63a, s.v.: "one-sided"; Rava's different interpretation of R. Judah's controversy with the Rabbis (op. cit.); Talmud, B.M. 63a, s.v.: "usury on condition that it shall be returned"; B.M. 31b.

121 B.M. 63a.

We see that while the Yerushalmi restricted Rabbi Judah's leniency in a mortgage conditional to sale to this case only (of walled cities), the Bavli broadened Rabbi Judah's decision to include every case built on the principles which are derived from Abaye or Rava's interpretation.

There is no doubt that the severe limitations placed by the Tannaim on the benefits that could be derived from various mortgage transactions¹²² created difficulties for the Babylonian economy. The Talmud teaches us that two forms of mortgages were known in Babylonia: "A mortgage where it is the practice to make [the creditor] quit [whenever the loan is repaid]"; and "a mortgage where it is not the practice to make [the creditor] quit [whenever the loan is repaid]"; - a case where neither party could demand anything until the settling-day.

* Since the Babylonian Amoraim had decided that most of the Tannaitic prohibitions were Rabbinic,¹²³ it was easier for them to find a way out which would allow for mortgages:

"Rava the son of R. Joseph, said in Rava's name: with reference to a mortgage it is the practice to make [the creditor] quit [whenever the loan is repaid], one must

¹²² Supra, pp. 57, 58, and the Rabbis' opinions, p. 60.

¹²³ Supra, pp. 32-33.

not enjoy the usufruct without making a [fixed annual] deduction." 124

It means that the lender deducts a set sum, per year, from the loan, thereby eliminating any doubt of usury because this set sum is seen as purchasing the fruits of the field at a reduced price.¹²⁵ However, this practice was forbidden to the Rabbis:

"but a Rabbinical scholar must not enjoy the usufruct even at a [fixed] allowance." 126

It appears that the bending of the law in the case of "fixed annual deduction" involved many halachic difficulties,¹²⁷ and therefore the halacha forbade this leniency at least in the case of the Rabbinical scholar, who was obliged to put greater demands upon himself to be more meticulous and more stringent than was the norm, because God

124 B.M. 67b.

See ibid., 68a, that on the other hand Rava forbade different forms of mortgages, and although the Amoraim also attempted to permit this, the halacha was finally kept according to Rava: "but, still this is no justification."

125 According to Rashi, op. cit., 67b.

126 B.M. 67b.

127 Indeed, see B.M. 67b, that R. Babana, R. Papa and R. Ashi didn't eat in a case of "fixed annual deduction." Similarly, see the "tarsha" matter (*infra*, pp. 72-73 text and n. 150).

expects more from him.¹²⁸

The question which the Talmud asks next, demonstrates how great was the need for an halachic way out due to strong economic pressure: "How else shall he eat them (enjoy the usufruct?)"¹²⁹ According to a second version there does exist an incontrovertible halachic loophole:

"When it is as the mortgage bonds arranged in Cura, in which it was written, 'On the expiry of a certain number of years this estate reverts [to the debtor] without any payment.'" ¹³⁰

Since the borrower receives his field back after the set time, and since he is not left with any debt which must be paid, such a transaction can not be considered a

¹²⁸ And Rashi interpreted thus: "A Rabbinical scholar must perfect his behavior, and sanctify himself even in matters which are completely permissible, lest others will learn from him to make light of restrictions." His interpretation presents difficulties: First, why did they forbid the Rabbinical scholars precisely in this case and not in the many other situations where it is permitted? We can conclude that we are correct in our argument that the case of "fixed annual deduction" was bound up with halachic difficulties. Second, if according to Rashi, the fear of: "lest others will learn from him to make light of restrictions," was so great, that which is permissible becomes forbidden, why did the Amoraim allow the scholars to take usury from the Gentile while forbidding such an act to the masses? (See infra, pp. 120-21). Furthermore, why were the Rabbinic scholars allowed to lend money to one another and to borrow money from each other upon usury? (infra, p. 98). After raising these questions, our argument above seems more plausible.

¹²⁹ B.M. 67b.

¹³⁰ Ibid.

loan, and the act of the eating of the fruits, on the part of the lender, can be seen as part of a prior agreement.¹³¹

— This therefore is known as "mortgage bond arranged in Sura" a Babylonian creation which halachically solved the problems of an economy disrupted by a network of Tannaïtic prohibitions. In contrast, the Yerushalmi doesn't recognize any similar halachic loophole, nor does it mention one.

3) Trade Relations

During times of economic stress, a man is prepared, ahead of time, to sell the fruits that his fields are yet to produce, even at a reduced price. Such cases suggest all sorts of opportunities for the thief and robber for purchasing fruits under such terms represents an enormous profit for the buyer. Out of their broad interpretation of the concept of usury, even in cases in which usury need not be the result of prior mutual agreement,¹³² the Tannaim decided that even the following type of trade was prohibited.

¹³¹ According to Rashi, ad. loc. and Tosafot, on. cit., s.v.: "on the expiry of a certain number of years." Just how difficult and forced was the loophole which the Babylonian Amoraim found in the web of Tannaïtic prohibitions can be documented by the difficult questions posed by the Tosafot, on. cit., and also their question on 64b s.v.: "He may not take it on a low rental," and Rashi, ad. loc.

¹³² Sura, p. 44.

"A man must not fix a price for produce until the market price is known; once the market price is established, a fixed price may be agreed upon, for even if one has no stock, another has." 133

If it should happen that the market price for the fruits increases after such a trade was agreed upon, the seller will end up giving the buyer more than had been previously agreed upon, and this profit can be seen as usury, for having received the money ahead of time. 134

It becomes apparent that the Tannaitic concept of usury includes not only cases where a loan had been agreed upon, but also situations which began as trade agreements. 135 Moreover the prohibition against usury is invoked even in cases where there is no assurance that there will finally be a profit for the lender. 136 And finally, we find that the prohibition falls also on cases where the lender's profit is of another kind from the original loan. 137

133 B.M. V, 7.

134 However if he wants to sell the crops only a few processes before they are ready for delivery it is permitted, (see the continuation of the above Mishna and Tosefta D.M. VI, 4 (Zuckermann, ed., p. 384) because in such cases the sale is not considered to be a loan.

135 Compare with principle A, p. 33.

136 Since it is possible that the crops will finally decrease in value! Compare with principle C, p. 36.

137 Since the lender gave money, and the profit he will finally receive (here considered as usury) is in crops (and not money). See also supra, p. 44 text, and n. 53.

From their original concept of usury, the Tannaim came to see the prohibition as falling not only on cases of advance payment as described above, but also on situations where one has to wait for payment, as with credit buying.

"If he sells his field, and says to him (the purchaser): 'If you pay me now, it is yours for a thousand zuz (ten manehs); but if at harvest time, for twelve manehs'; - that is forbidden." 138

Requesting additional money in order to delay the repayment until the threshing season is seen, at least from their point of view, as a form of usury.

With all this, it is conceivable that the prohibition against fixing the price of the fruits of the field is only in the area of measurement and weight, for after all, the Tosefta permitted a man to buy all that a field was to produce, ahead of time, whether the amount be little or great.

"A man may say to his neighbour: 'Here are [I pay you] two hundred zuz on whatever your field will produce'." 139

The early Babylonian Amoraim were divided in their acceptance of the Tosefta's decision on an issue which was

138 B.M. V, 2.

139 Tosefta, B.M. VI, 7 (Zuckerman, ed., p. 384).

not one of measurement and weight: "An orchard: Rav forbade it; Samuel permitted it."¹⁴⁰ In other words, according to Rav, a man is forbidden to buy the fruits of an orchard at a reduced price, before they are harvested, and without knowing the eventual quantity.

Here too the Bavli's deviation from their usual custom of looking for a loophole can be understood against the background of broadening the prohibition's power in cases of having "the appearance of usury."¹⁴¹ In fact, the Talmud argues: "Rav forbade it: Since it is worth more later on, it looks like payment for waiting."¹⁴² In other words, Rav's prohibition is not simply because of usury but rather out of a concern for "Because it looks like usury."¹⁴³

The Tannaitic prohibition on fixing a price for fruit which was not close to ripening¹⁴⁴ is not clearly

¹⁴⁰ B.M. 73a. (Cf. also Rashi's commentary, ad. loc.). In the end, the halacha decided that it was forbidden. Maimonides, Yad, Malveh ve-Loveh, VIII, 5; Tur Shulhan Aruch, Yoreh-De'ah, 173:10). However, this decision had no specific purpose, but is a result of a later halachic principle which established: "Rav is the adopted authority in ritual law." (Bechorot 49b).

¹⁴¹ Supra, p. 52; p. 51 text, and n. 85.

¹⁴² B.M. 73a.

¹⁴³ Ibid., 64b. Hava's conclusion based on R. Yanai's argument, and his reply to R. Papa, in which he makes a clear distinction between loans and sales - these matters certainly reduce the fear of usury taking place in trade agreements.

¹⁴⁴ Supra, p. 67, n. 138.

defined (exactly how close to ripening are they) and could be taken in its narrow or broad sense. The Amoraim of Babylonia and the Land of Israel both decided to clearly define the prohibition against fixing a price:

"Rav said: If [only] two [processes] are wanting [before the crops are ready for delivery] - a contract may be made; if three, no contract may be made. Samuel said: [If they are to be done] by man, even if a hundred [are lacking] an agreement may be effected; if by Heaven, (i.e. processes not dependent on man), even when one [is lacking] no contract may be made." 145

This debate differs in the Yerushalmi:

"Rav said: If [only] one process is wanting [before the crops are ready for delivery] - he may make a contract; [But] if a few processes are wanting - he may not make a contract. R. Johanan and Reish Laqish both say: Even [if] a few processes are wanting - he may make a contract." 146

Rav's opinion, as stated in the Yerushalmi, forbids more than is stated in the Bavli's interpretation of his ruling. However, the Yerushalmi explicitly rejects his ruling. "But the Mishna differs [in opinion] from Rav." 147

145 Bavli, B.M. 64a. "Rav is the adopted authority in ritual law." (Bechorot 49b), and indeed Rav's opinion here was accepted in the halacha. (Maimonides, Yad Hazakah Malveh ve-Loveh IX, 2; Tur Shulhan Aruch, Yoreh-De'a 175:4).

146 Yerushalmi, B.M. V, 6.

147 Ibid.

The result is that the final decision is according to R. Johanan and Reish Laqish who are lenient even if the fruit has to undergo several more stages of ripening. The opinion of the Yerushalmi which is more lenient here than the Babylonian, is not the result of a conscious searching for an easy way out (which has been the tendency on the part of the Babylonian Amoraim), but rather as a result of its consistency in understanding the Mishna in its literal sense.¹⁴⁸

During the third generation of Babylonian Amoraim, we find an important legal allowance for making a profit by accepting a delayed payment in a buying-selling transaction. "R. Nahman said: A tarsha (lit. deaf or silent usury, an increased credit price) is permitted."¹⁴⁹ And Rashi interpreted: One may

"sell merchandise at a higher price when one is prepared to wait for the payment, but only when one does not say to the buyer: 'If you pay me now, I shall reduce the price.' Rather, there is a straight forward price set to be paid on an arranged day." 149a

¹⁴⁸ Since he said clearly (supra): "But the Mishna differs [in opinion] from Rav ..." See also supra, p. 15. The Yerushalmi systematically uses this expression. (See D. Halivni, Sources and Traditions, Introduction, p. 17, n. 27).

¹⁴⁹ B.M. 65a.

^{149a} Rashi, ad. loc.

From this, we can see how, in certain cases,¹⁵⁰ the Babylonian halacha permitted one to make a profit from a delayed payment. Eventually, everyone availed himself of this way out.

In contrast, in the Yerushalmi, we find that a case of "farsha" was brought before Rabbi Judah the Prince and he forbade it:

"R. Hiyya Rubba (the great) had flax; [and] ass-drivers came to buy [it] from him. [But] he said to them: 'I have no intention to sell it now, but only on Purim'. They replied: 'Sell it to us [now] at the same [price] you [intend] to sell it on Purim'. He went to ask Rabbi [if it is permitted]. [And Rabbi] answered: 'It is forbidden'. [So R. Hiyya] went out and established this halacha in [his] collections of Mishnas (not embodied in Rabbi's Mishna)." 151.

It is apparent that in the Yerushalmi "tarsha" was not

¹⁵⁰ See also R. Papa's and R. Hama's statements (op. cit. and Rashi's commentary to R. Papa's). From their choice of language, it appears that the entire matter of "tarsha" was disputed: "R. Papa said: my tarsha is permitted. Why? Because ... R. Hama said: My tarsha is certainly permitted. Why? ..." - which implies that there is "tarsha" of different kinds which are forbidden. (Cf. for example, Rava's statement B.M. 63a).

From their language, it also appears that they were rationalizing. This, therefore, serves as evidence for the economic pressure which existed then and which made "tarsha" permissible despite the objections to it.

¹⁵¹ Yerushalmi, B.M. V, 6.

Cf. "Pnei-Moshe" on the Yerushalmi, ad. loc.

Indeed we may find this prohibition in the Tosefta, B.M. IV, 12 (Zuckermann, ed., p. 381), and in the Baraita Bavli, B.M. 62b (according to "Pnei-Moshe" on the Yerushalmi, ad. loc.).

permitted and it remained prohibited in keeping with the Tannaitic view.

A different trade arrangement was permissible already in Tannaitic times: "R. Simeon b. Gamliel said: ... One may offer an increased land rental without fear of usury."¹⁵² The Bavli produces a Baraita to explain the matter:

"Our Rabbis taught: One may offer an increased land rental [above the original stipulation in consideration of a loan] without fear of usury. E.g., If one rents a field from his neighbour for ten kor annually, and proposes, 'Give me two hundred zuz to expand thereon [in improving the land] and I will pay you twelve kor annually,' it is permitted. But an increased rental may not be offered for a shop or a ship."¹⁵³

From a halachic point of view, the lessee becomes a tenant, and when he increases the value of the very item he is renting, this increment is not viewed as usury. However, with a store or ship, where the improvement is not intrinsic, the increased payment is considered to be usury, and hence, prohibited.¹⁵⁴

¹⁵²

B.M. V, 5.

Compare the Bavli's version (here) with the Yerushalmi's (B.M. V, 4). Cf. Rashi (on the Bavli, op. cit.); "Pnei-Moshe" (on the Yerushalmi, op. cit.).

¹⁵³

B.M. 69b.

¹⁵⁴

According to Rashi, ad. loc.

The Babylonian Amoraim found a way to allow this raising of the value of a store and a ship:

"R. Nahman said in the name of Rabbah b. Abbuhah: Sometimes an increased rental may be offered for a shop (e.g., in consideration of a loan) for decorations; or for a ship, to build a sail-yard therein." 155

And his reasoning was:

"For a shop, in return for decorations, that it may be attractive for customers and thus earn more profit; and for a ship to build a sail-yard therein; for the more beautiful its sail yard, the greater is the hire." 156

In such cases, the law of the field, as presented in the Baraita holds for the store and the ship since the improvement is intrinsic to the item rented.

The Yerushalmi is not more lenient than the Mishna. After presenting the controversy between R. Johanan and Reish Laqish over why one may overestimate the value of a field, the Yerushalmi presents another controversy between the two sages over the topic of the store and the ship:

"R. Jacob b. Aha said: They explicitly differ [as it is written]: R. Johanan said: A man may offer an increased

155 B.M. 69b.

156 Ibid.

rental for a shop or for a ship. Reish Laqish said: He may not offer an increased rental [for a shop or for a ship]." 157

The Talmud sides with Reish Laqish because of a Baraita which supports him:

"The Mishna supports Reish Laqish [opinion]: One may not offer an increased rental for a shop or for a ship or for anything which he (the lessee) does not increase [the value of] the very item (body)." 158

We have another case of a difference of opinion between the Yerushalmi which preferred the literal meaning of the Mishna and the Bavli which took a Mishnaic principle and used it to broaden the law's leniency even to include certain cases involving a store and a ship. Once again we see the Bavli searching for a way out of the Tannaitic prohibitions, while the Yerushalmi does not rush after such loopholes.

Partnerships

The Tannaim broadened the application of the prohibition against usury to include more than the areas of mortgages and trade. Rather, their broad understanding of usury brought them to the conclusion that even certain kinds

157 Yerushalmi B.M. V, 4.

158 Ibid.

of partnerships had an element of usury in them.

Partnership, an arrangement whereby one man gives something to a friend, and the friend uses this item in order to make a profit; - such an arrangement can sometimes lead to the taking of usury. If there had been an agreement that any business loss be the sole responsibility of the friend who is dealing with the mentioned item, the Tannaim then see this arrangement as a matter of usury, as a transaction which more resembles a loan than a partnership. He who gives the item or money is the lender who is guaranteeing himself, right from the start, that he only sees profit, and if there be any loss, the loss will be that of his friend; seen here as the borrower. The profit of the lender falls into the category of usury, and therefore, a partnership such as is described above is prohibited. "One may not accept from an Israelite an 'Iron Flock' because that is usury."¹⁵⁹ In another place, the Tannaim decided: "[One who invests money on terms] dear to profits but far from loss is a wicked man."¹⁶⁰

159

B.M. V, 6.

"Iron Flock" means an investment with complete immunity for the investor, i.e. "One may not accept a business on a profit-sharing basis, whilst guaranteeing the investor absolute safety of his money, like 'iron sheep' which cannot come to harm. For if the investor's money is secured, it is a loan on which he receives half profit as usury." (Freedman in: Soncino edition, B.M. 60a, section C, n. 3).

160

Sabbata, Savli B.M. 70a.

Nevertheless, a definite method of allowing partnerships was established:

"A man may not (commission) a tradesman on a half profit basis, nor advance money for provisions [to be sold] on it, if profits, unless he pays him a wage as a worker." 161

The giving of wages to a worker turns the whole arrangement into the usual one of a landlord and a worker who earns his wages from the landlord. Therefore, it is necessary to know the amount of wages he will receive in order to exempt this transaction from the prohibition against usury. There follows a controversy among the Tannaim:

"Our Rabbis taught: how much must he be paid? Whether much or little [it matters not]: this is R. Meir's view. R. Judah said: even if he merely dipped [his bread] into his vinegar, or joined him in a dried

161

B.M. V, 4.

"A half profit basis,"

"I.e., give him goods to sell in his shop and take half a share of the profits. Under this arrangement the retailer generally accepted complete responsibility for half the stock, and even if it depreciated, rendered payment in full. Consequently, the half is a loan, since its owner takes no risk whatsoever therein, and the labour of selling the second half for the owner's benefit is interest on the first and hence forbidden." (Freedman in: Concise edition, B.H. 68a, n. 6).

his that is his pay. R. Simeon b. Johai said: He must remunerate him in full." (Kashi: "as an unemployed worker"). 162

Rabbi Judah's opinion, in fact, turns the payment into a symbolic matter, alone. 163

The Babylonian Amoraim saw in Rabbi Judah's words an opportunity to free themselves from the Tannaitic restrictions upon partnerships, and they made use of his words: "R. Nahman said: The halacha is as R. Judah." 164 In the end, however, the halacha was not decided in accordance with Rabbi Judah, not because his decision was too lenient, but because of Rav Nahman's choice of language. 165

As a result of the unacceptable attempt at following Rabbi Judah's point of view, there remained one halacha, derived from the Savli's interpretation of the Mishna:

162. Baraita, Savli, B.M. 68b.

According to R. Meir, the donor of the money (here, the lender) must actually agree upon a payment to the recipient, there considered to be the borrower, which is acceptable to him, even if the amount be small. According to Rabbi Judah, it is not at all necessary to allocate a sum; rather, it is sufficient that he who provides the money, join him in eating an everyday meal (rather than a sumptuous one). (Kashi, ad. loc.)

163. See loc. cit., in the Baraita that R. Jose and R. Simeon b. Gamliel also tend to be lenient.

164. Ibid.

165. B.M. 68a. Cf. Rabenu Hananel's commentary, ad. loc., Tosafot, ib. cit., s.v.: "but principle".

"It has been taught: [unless he is paid] as an unemployed worker. What is meant by, 'as an unemployed worker?' Abaye said: as a labourer unemployed in his craft." 166

It is clear that, in order for a partnership transaction to be free of any suspicion of usury, the landlord must give the storekeeper - in addition to half the profits earned by the storekeeper - an additional payment: an amount that the average man would be willing to accept as worth his exchanging his physical labour (e.g. carrying, blacksmithing) for lighter work (e.g. storekeeping). 167

In regard to other forms of partnership, Rav and Samuel tend to be lenient:

"Rav said: [If one stipulates: 'I receive'] the excess above a third as your remuneration, it is permitted. But Samuel said: and if there was no excess above a third, shall he go home empty handed? Hence, said Samuel: he must stipulate a denar [for his labour]." 168

This means that all that is necessary is for the landlord to pay the entrepreneur (i.e. the storekeeper) only one denar. In the Bavli, we learn that Samuel deduces from this principle that a symbolic amount is sufficient to erase any

166 B.M. 68a.

167 See: Lash, B.M. 68b, s.v. "Abaye said"; Maimonides, *Yab*, *Halvet ve-Soveh*, V, 9; Shutafin, VI, 2 and "Hagafot *Salmoniot*," *ad. loc.*, b' VIII, 1; *Sanhedran Atuel*, *Yorah-De'ah*, 177:2.

168 B.M. 69a.

suspicion of usury from a partnership agreement, and renders the agreement legal.

The halacha of the Land of Israel, as defined in the Yerushalmi, also dealt with this issue:

"One man lent denarii to his neighbour, [and] he said to him: Take two denarii as your wages [due for your work with the money I have just lent you], and whatever the denarii [I lent you] will produce will be half and half mine and yours." 169

In order to render a partnership legal, the Yerushalmi as well as the Bavli take into account even the small amount of two denars. 170

We find a different limitation placed on the prohibition of usury in partnership agreements in the comment of another Babylonian Amora:

"Abaye said: A man may say to his neighbour, 'Here are four suz for a barrel of'

169 Yerushalmi B.M. V, 3. According to "Shet-Moshe" (op. cit.) this story was brought in the Yerushalmi as an example to the previous Mishna: "A man may not commission a tradesman to..." (Shema, 1:72).

170 Apparently, the difference between the Yerushalmi (which demands two denarii in order to permit such a partnership) and the Bavli (Samuel, who demands only one denar) as appears in the texts they tell, is not significant. I.e. the Yerushalmi held two denarii only because that was what actually happened in that particular case he brought, and not because he does not permit to any less than two denarii. In any case we don't have enough evidence to clearly prove that the difference between the Bavli and the Yerushalmi is significant.

wine; if it turns sour, it is in your ownership; but if it appreciates or depreciates in value, it is in mine." 171

Such an opinion astonished Rabbi Sherabia: "Said R. Sherabia to Abaye: But that is near to profit [if it appreciates] and remote from loss."¹⁷² And Abaye answered: "Since he accents the risk of depreciation, it is near to both [profit and loss]."¹⁷³ However, in fact Abaye permitted a partnership agreement where in three possible outcomes,¹⁷⁴ the owner of the barrel can lose in only one case.^{174a} In contrast, the recipient of the money has no chance of realizing a profit, other than his salary of four zuz and his loss if it should occur, would be enormous.^{174b} From the two other possible outcomes where no loss is involved, there is even a chance of profit. Why couldn't this be considered "near to profit and far from loss?"¹⁷⁵

¹⁷¹ S.H. 64a.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ If the wine: (a) turns sour; (b) depreciates in value; (c) appreciates in value.

^{174a} If the wine depreciates in value.

^{174b} A loss of the whole wine if it turns sour.

¹⁷⁵ For an additional diminution of the Lannaite prohibition which was instituted by the Babylonian Amoraim in Neharde'a, see S.H. 14b, s.v. "semi loan (milvan) and a semi trust (piqqadon).

In conclusion, we can state that the Babylonian Amora'im accepted, in principle the Tannaitic prohibitions against usury in matters of partnership, but whenever possible limited the prohibition's power, something which was not done by the Yerushalmi in matters of partnership.

D). Work Contracts

Out of a broad understanding of the concept of usury, the Tannaim came to forbid certain work agreements:

"But he may not suggest, 'Do you weed with me and I will hoe with you; do you hoe with me, and I will weed with you'." 176

When work is more arduous, it demands a higher wage. When one repays the favor of having a friend help in light work by helping that friend with more arduous labour, that returning of the favour is seen as usury. 177

176 B.M. V, 10.

177 Again we see that according to the Tannaim the prohibition against usury does not apply only to a loan transaction; nor does it apply only to instances where the payment of usury was by mutual consent; (here they agreed upon work and not upon usury); nor does it apply only in the instances where the payment of usury is of the same kind as the item borrowed; nor does the payment of usury have to be one of quantity. (Compare with supra, p. 36 principle D). In contrast, the Yerushalmi (B.M. V, 11) permitted in the case of "do you hoe with me, and I will weed with you." M. Schacter, (The Babylonian and Jerusalem Mishnah [Heb. Mosad ha-hav Kook, Jerusalem, 1959] p. 243 note 589) claims that it is a mistake, but adds "It is possible that in the Land of Israel hoeing was more easy going than weeding, [a situation] which was not so in Babylon."

However, an agreement to help one another in similar kinds of work is permissible:

"A man may say to his neighbour, 'Help me to weed, and I will help you: assist me to hoe, and I will assist you.'" 178

Least there be any chance of usury, one must take into account the season during which the work is to be carried out, because the wages for the same kinds of work vary according to the season, whether it is summer or winter:

"All the days of the dry season are equal; and likewise of the rainy season." 179

Therefore the Mishna decides:

"[But] one may not say, 'Plough with me in the dry season, and I will plough with you in the rainy season.'" 180

These kinds of agreements were apparently not very common during Talmudic times because neither Talmuds deal with this Mishna. Accordingly, we can also understand why the Bavli did not seek a way out of such prohibitions, especially since the Mishna itself was very lenient and unrestricted in matters of helping one another but in

178 Mishna, op. cit., Similarly see Sotefot B.M. VI. 5.

179- Mishna, op. cit.

180 Ibid.

similar kinds of work.

E) Loans Repayable in Kind ¹⁸¹

The rise in price of different items is not seen as a quantitative change in the items themselves: the fruit did not increase in number, nor in volume, nor in weight, yet the value and worth of the fruit did increase. One now pays more for it on the market. Even though this rise in price is due to a change in value, not quantity, the Tannaim saw this increase as a form of usury,¹⁸² when discussing borrower-lender relationships. This situation created the term "prohibition against se'ah be-se'ah":

"A man may not say to his neighbour: 'lend me a kor (thirty se'ah) of wheat, and I will repay you at harvest time', but he may say: 'lend me until my son comes, or until I find the key'. Hillel, however, forbade [even this], and thus Hillel used to say: A woman must not lend a loaf to her neighbour without first valuing it, lest wheat advances and thus they (the lender and borrower) come to [transgress the prohibition of] usury."¹⁸³

With all this, the Tannaim, as we see in the above Mishna, were lenient in cases where the fruit was actually ready in

¹⁸¹ The halachic term for this kind of loan is "Se'ah be-se'ah."

¹⁸² Compare with principle D, supra, p. 36.

¹⁸³ B.M. V., 9.

the house, for in such cases the repayment of the loan was imminent, thereby eliminating the possibility of a rise in price.

Out of consideration for the difficult plight of the land tenants living in that period¹⁸⁴ the Mishna understandingly accepted Rabban Gamliel's custom:

"A man may lend his tenants grain for [an equal quantity of] grain [to be returned] for sowing purposes, but not for food, for Rabban Gamliel used to lend his farmer-tenants grain for grain for sowing; and if it was dear and became cheap, or cheap and became dear, he would accept [a return], only at the lower price."¹⁸⁵

He even acted beyond the call of duty:

"not because the halacha is so, but because Rabban Gamliel desired to subject himself to greater stringency."¹⁸⁶

It is in the nature of the se'ah be-se'ah prohibition to severely paralyze both the social and economic life. Relatives and neighbours are restricted from lending fruit and other food to one another during times of need. A general paralysis could almost overcome the farmers and merchants when they needed to borrow articles or food, even

¹⁸⁴ Supra, p. 6.

¹⁸⁵ B.M. V, 9.

¹⁸⁶ Ibid.

when there existed a genuine desire to help one's brother out. With this background one can begin to understand the prime goal of the Babylonian Amoraim to limit, whenever possible, the restriction of se'ah be-se'ah, until the restriction was virtually abolished.

It seems that the Babylonian Amoraim took steps toward the abolishment of the se'ah be-se'ah prohibition when they relied on the permission granted by the Mishna¹⁸⁷ and broadened its applicability. First they rejected Samuel's reversing of the law which agreed with Hillel's strict view of the law:

"R. Nahman said in Samuel's name: 'The halacha agrees with Hillel's ruling'. The law is nevertheless not in accordance with him."¹⁸⁸

Second, they abided by another opinion of Samuel's:

"And thus Hillel used to say: a woman must not lend, etc. Rav Judah said in Samuel's name: This is Hillel's view, but the sages maintain: one may borrow and repay unconditionally."¹⁸⁹

And Rashi commented: "... that they no longer continued to

¹⁸⁷ Supra, p. 24, n. 123.

¹⁸⁸ S. S. 75a. (Emphasis mine).

¹⁸⁹ I. id. Concerning the intention of Samuel's remarks here, see infra, p. 88, n. 195.

be so strict in matters of se'ah be-se'ah." ¹⁹⁰ In the generation after Samuel, the halacha was already being decided thus: "R. Huna said: If he possesses a se'ah, he may borrow a se'ah; two se'ahs, he may borrow two se'ahs." ¹⁹¹ Eventually, the halacha incorporated Rashi Isaac's opinion which in essence nullified the Tannaitic prohibition of se'ah be-se'ah: "I. Isaac said: Even if he has only a se'ah, he may borrow many kors against it." ¹⁹² His opinion received additional support:

"R. Hiyya taught the following, which is in support of I. Isaac: [One may not borrow wine or oil for the same quantity to be returned, because] he has not a drop of wine or oil. Surely then, if he has, he may borrow a large quantity against it." ¹⁹³

We can clearly see that the prohibition of se'ah be-se'ah about which the Tannaim were strict, allowing for leniency in only certain cases, was in essence done away with by the Babylonian Amoraim, thereby eliminating any fear

¹⁹⁰ Talm. B.M. 75a, s.v.: "Eney [may] borrow."

¹⁹¹ B.M. 75a.

¹⁹² Ibid.

¹⁹³ Ibid. R. Hiyya's opinion was chosen by the Amoraim as supportive because it could advance their desired point of view: (R. Hiyya). He did not explicitly say this; the Amoraim extrapolated from his words that which could support their argument. In the Yerushalmi, R. Hiyya's opinion is not at all mentioned.

that there might be a case of usury in the situation where the prices rise before the loan's maturity date.

The Yerushalmi's conclusion on this subject is totally different:

"It is taught: A man may not say to his neighbour: 'Lend me a kor (thirty se'ahs) of wheat, and I will repay you at harvest time.' Surely then [but] if he said 'and I will repay you in [or: at the end of] two or three weeks' - it is permitted. [but] Hillel forbids [it]."¹⁹⁴

And the Yerushalmi's conclusion is: "Samuel said: The halacha agrees with Hillel [who forbids]."¹⁹⁵

¹⁹⁴ Yerushalmi B.M. V, 7.

¹⁹⁵ Ibid. The controversy between the Bavli and the Yerushalmi is very clear. Nevertheless Cf. "Pnei-Moshe" ad. loc., V, 6, s.v.: "They differ on loans" in which the interpretation to the Yerushalmi was forced to follow the Bavli's conclusion. This tradition mentioned in the Yerushalmi is similar to that of R. Simeon in the Bavli (supra, p. 86).

and it appears, after all, that Samuel actually did decide the law according to Hillel's opinion. Therefore it appears that R. Judah's opinions (supra, p. 86) do not constitute a different tradition which contends (on behalf of Samuel) that the halacha ought to be decided according to the Rabbis' view, rather, Rav Judah's opinions serve to clarify the controversy between Hillel and the Rabbis, without any bearing on how the halacha ought to be decided. Since an anonymous opinion of the Talmud rejects Samuel's opinion (which coincided with Hillel's view), they later used Rav Judah's opinion (presented in the name of Samuel) regarding the Rabbis' point of view and relied upon this opinion to decide the halacha.

B) On whom the Prohibition Against Usury Falls

In this section we shall deal with the question of whom the Torah was addressing when it forbade usury, and for whom the prohibition was enacted.

1) In the Torah

By their very choice of language, the Biblical passages show that the original prohibition against usury fell on the lender, alone, that is that the taking of usury was what was originally forbidden. In Exodus (22:24) we read:

"If thou lend money ... thou shalt not be to him as a creditor; ye shall not lay upon him ("tesimunn" usury)." 196

And in Leviticus (25:36-37) we read:

"Thou shalt not take from him usury nor increase ... thou shalt not give thy

196 In the Mishnaic period, as we shall see infra, (p. 95), the word "tesimunn" which was written in the plural, served as textual support for the Halakha to allow it to broaden the prohibition and have it apply to other people as well. But this argument is not compelling because many are the cases where the Torah mixed the singular form with the plural one: see the same chapter, 22:29: "... shalt thou (sing.) not wrong, neither shalt thou (sing.) oppress" - "for ye were (pl.) strangers ..."; 21-22: "Ye (pl.) shall not afflict ... - If thou (sing.) afflict them ..."; 23: "... shalt thou (sing.) not oppress - for ye (pl.) know ... ye (pl.) were strangers."; 13: "... take ye (pl.) heed, and make (pl.) no mention ... out of thy (sing.) mouth"; 21: "Take heed (sing.) ... and hearken (sing.) unto his voice, be not rebellious (sing.) - for he will not pardon your (pl.) transgression." Indeed the Septuagint and the Syriac Version translated "tesimunn" in the singular form.

money to him upon usury (be-neshek) and thou shalt not give him thy food for increase (be-ribbit)." 197.

In Deuteronomy (23:20-21) is written:

"Thou shalt not lend upon usury (tashik) to thy brother... unto a stranger thou mayst lend upon usury (tashik), but to,

197 There are two possibilities of explaining the appearance of the preposition "be" (the "Bet" letter) in Hebrew: (a) "as usury," in which case the command is addressed to the borrower or: (b) "under the terms of usury," in which case the lender is being addressed. There is no doubt that the second possibility is the correct one. After all, the previous sentence addressed itself to the lender ("Thou shalt not take") and it is reasonable to believe that the Torah is continuing to address him. Moreover, the same expression appears in Ezekial (18:7-8), and there is no doubt that there, the text is addressing the lender. (Cf. also the ancient translations). This preposition ("Bet") was used later, in the Tannaitic literature in the same meaning. (See Mechilta, Horowitz-Rabin, p. 316): "'be-neshek' - that is a warning to the lender"; Mishna (Infra, p. 112): "[One] may lend them be-ribbit."

thy brother thou shalt not lend (tashik)
upon usury; that the Lord thy God may
bless thee" 198

Also in this passage the Torah is addressing the lender and
forbidding him from taking usury from a fellow Jew. The

198.

The term "tashik," whose root is N'SH'K' and its conjugation is active causative (Hiphil), has two meanings for us today: (a) "Thou shalt take usury" (in which case the lender is addressed) or: (b) "Thou shalt bring it about that they take usury from you" (where the borrower is being addressed). The second meaning is later and originated with the Tannaitic aim of broadening the prohibition (see *Infra*, p. 93, n. 201) and received halachic authority during the Amoraic period (see *Infra*, p. 117). The first meaning of the term "tashik" is the original one, and there are many proofs for this argument: The ancient translations of the Torah (*ad. loc.*) render the term as "Thou shalt take usury." The Rashbam, a follower of the simple, literal interpretation of text, despite his knowledge of the later interpretation of the Babylonian Talmud, states (on Deut. 23:20): "'Lo tasik' - according to the simple literal meaning, this speaks of the lender." Apparently in keeping with the Talmudic meaning, Ibn Ezra accepted the second meaning but pointed out (on Deut. 23:20): "For the word has two verbal meanings and many said that 'tasik' ('Thou shalt take usury'), is the same as 'tishok' (or: 'tishak') (in qal - the simple conjugation) and that there is no difference between the two. So too are many other verbal forms in the Torah." Even Rashi who accepted the later Talmudic meaning established a principle based on a different text (Deut. 15:6) from which can be inferred an inference compatible with the first meaning: "any language related to loans, when it applies to the lender appears in the Maphil (Hiphil) form." There is additional proof based on the assumption that the term "tashik" has to have the same meaning each time it appears in the Torah, especially when it is repeated in the same context and even in the same sentence: in the same place in Deut., it is written: "Unto a stranger, tashik," and all the ancient translations, including Targum Onkelos (*ad. loc.*) the Sifre (*Infra*, p. 110, n. 253) R. Abbin (*Infra*, p. 114, n. 261) Rava (*Infra*, p. 117) Maimonides and those who questioned him (*Infra*, pp. 110-111) - they all agree that its meaning is "Thou shalt lend upon usury. See also the various dictionaries Value: Tashik. (All emphases in this footnote are mine).

reading of other sentences from later Biblical texts, also confirms the view that the prohibition against usury, is directed to the lender.¹⁹⁹

From all that has been said, we can conclude that the prohibition in the Torah falls on the lender and is a prohibition against the taking of usury.

2. In the Series of the Mishna

The conclusion to be found in the Tannaitic sources differs from the biblical view. It appears that the epidemic of loans with usury, which was prevalent among some sectors of the community, and which during times of distress, forced the poor to borrow even knowing they would have to pay usury, - this "epidemic" was reflected in the Mishna.

The Tannaim felt obliged to prevent the crime of usury by any means available to them, and tried to support their move by invoking biblical texts. One method used by the Tannaim was to broaden the concept of the prohibition and to have it fall on the borrower as well, and also on all the other parties involved in the illegal act of usury. The Tannaim apparently hoped that by placing the responsibility for the act of usury on each individual participant in the act, the chances would increase for one of the parties to withdraw from the act of usury, thereby eliminating the

taking of usury. One of the later sources similarly explained the broader interpretation of the prohibition: "... for without them (the other parties) the lender cannot collect anything."²⁰⁰ Accordingly, we find in the Midrash:

"'Lo tashik' - So far I know only of a warning to the borrower. But how would I know [of a warning] to the lender? Therefore it says [Lev. 25:36]: 'Thou shalt not take from him usury'."²⁰¹

Another Midrash, according to one of the versions, placed the responsibility for the prohibition on the borrower, based on a different verse:

²⁰⁰ Shemot (Exodus) Rabbah, 31:6.

²⁰¹ Sifre on Deuteronomy Ki-Tetze 262 (Finkelstein, ed., p. 284). (Emphasis mine); Baraita, Bavli, 61a. Here the meaning of "tashik" changes to be "Thou shalt bring it about that somebody else take usury from you." (Cf. *supra*, p. 91, n. 198). It is possible that R. Nahman's idea (*infra*, p. 117) of changing the meaning of "tashik" was founded upon this particular Tannaitic Midrash. Targum Jonathan (on Deut. 23:20) followed the Midrash's interpretation.

... 94

"Since it says: 'Thou shalt not give thy money to him be-neshek' (Lev. 25:37) that is a warning to the borrower that he should not borrow on usury." 202

It seems that there was a great need to place the responsibility on the head of the borrower, but the Tannaim did not know on what text to base this need, and hence the Midrashim Sifre and Mechilta were divided on this issue.

In spite of the fact that placing the responsibility for the prohibition on the head of the borrower was a strange move,²⁰³ one which contradicts the simple literal meaning of the Torah²⁰⁴ - in spite of this the need to broaden the usury prohibition was very strong, and therefore the Mishna was consistent with the Midrashim and decided: "The following transgress negative injunctions: the lender, the borrower" 205

²⁰² Mechilta, Mishpatim, 19. Cf. Horowitz-Rabin, ed., p. 316 (the various versions and n. 4). It is possible that the controversy between the two versions is a result of understanding the text either in a simple literal meaning (and then it applies to the lender) or in the Tannaitic spirit, which broadens the prohibition (and then it applies to the borrower). Compare with our interpretation to the preposition "bet" (Supra, p. 90, n. 197). In addition, Cf. Abaye's remarks (Infra, p. 97) who did not refer to the above verse as one of the "do not's" (prohibitions) violated by the borrower.

²⁰³ Cf. Rava's remarks (B.M. 61a): "... because it is anomalous, the prohibition lying even upon the debtor." (Emphasis mine).

²⁰⁴ Supra, p. 89ff; and notes 107-108.

²⁰⁵ B.M. V, 11; Yerushalmi, B.M. V, 3.

The Midrash further places the responsibility for the prohibition on all the partners involved in the act of usury: witnesses to the loan, the guarantor,²⁰⁶ and the clerk:

"So far I know only of a warning to the lender and to the borrower. But how would I know of a warning to the guarantor, to the witnesses, and to the notary? Therefore it says here: 'Neither shall ye lay upon him (tesimunn, usury - in any capacity at all.'" ²⁰⁷

Consistent with the broadening of the prohibition's intent, the Tannaim also came to place all the "do not's" directed at the lender also on the borrower, the guarantor, the witnesses, and the clerk:

²⁰⁶ Evidence that originally the prohibition against usury certainly did not apply to the guarantor is to be found clearly in the Sifra (be-Har, V, 2. [Weiss, ed., p. 109a]) and in the Bavli (B.M. 71a): "Thou shalt not take from him (a Jew) usury" - from him (a Jew) you may not take [usury], [but] you may be his guarantor." The Talmud (B.M. 71b) accepting the broadened conception of the Tannaim, was forced, therefore, to explain that "You may be his guarantor" (in Sifra) means the Gentile's guarantor. We even find several Tannaim, who thought it to be too far out of the Torah's intention, to include the guarantor in the prohibition. See Mechilta, Mishpatim, 19 (Horowitz-Rabin, ed., p. 316); Mishna B.M. V, 11; Tosefta, B.M. VI, 6 (Zuckerman, ed., p. 384). Cf. also *infra*, p. 97 text and n. 212 in Abaye's remarks that there are no "do-not's" (prohibitions) applied to the guarantor. (All emphases mine).

²⁰⁷ Mechilta, Mishpatim, 19 (Horowitz-Rabin, ed., p. 316); Mishna B.M. V, 11; Yerushalmi B.M. V, 8. Targum Jonathan (Exodus 22:24) followed this Midrash concerning the interpretation of the word "tesimunn." On the contrary compare with our remarks, *supra*, p. 89, n. 196.

"And just as the lender and the borrower transgress five injunctions, so also do the guarantor and the witnesses and the notary." 208

The above sources also enumerate the "do not's":

"They violate: 'Thou shalt not give thy money to him upon usury'; 'Thou shalt not take from him usury nor increase'; 'thou shalt not be to him as a creditor'; 'ye shall not lay upon him usury'; 'thou shalt not put a stumbling-block before the blind ...'" 209 (Lev. 19:14).

3) In the Period of the Talmud

The Babylonian Amoraim accepted the broadened interpretation of the usury prohibition which made all the parties involved responsible for the taking of usury. They also discuss the number of "do not's" which each party to the usury transgresses. However, while the clear intention of the Tannaim is to blame everyone of the partners to usury

208 Ibid. Notice that in contrast, the Tannaim did not arrive at far-reaching decisions but disqualified only the usurer himself from acting as a witness or judge. (Mishna, Sanhedrin III, 3. Cf. also supra, p. 95, n. 206). In the Baraita (Sanhedrin 25b) the borrower is also disqualified but this is apparently a later addition (Cf. Infra, p. 116, n. 265).

209 Ibid. Pay attention to the fact that in connection with the borrower, there is no mention made of his transgressing the prohibition "Lo tashik," despite the above Midrash (Supra, p. 93). From this entire list of "do not's," the meaning is clear that exactly the same laws which applied to the lender applied to all the parties to the transaction apparently for the reason mentioned in Exodus Rabbah (Supra, p. 93).

for having transgressed five "do not's,"²¹⁰ the Amoraim see the matter differently:

"Abaye said: The lender infringes all [the five prohibitions]; the borrower: [infringes] 'thou shalt not tashik to thy brother'; 'to thy brother thou shalt not tashik'; 'thou shalt not put a stumbling-block before the blind'. The surety and the witnesses infringe only: 'he shall not lay upon him usury,'"²¹¹

The Babylonian Amoraim see the lender alone as guilty for transgressing five "do not's."²¹²

Since the Babylonian Amoraim had already decided that most of the Tannaitic prohibitions against usury were of rabbinic origin (rather than Biblical),²¹³ they incorporated the need and the commandment to support the orphans, and found a way which would sometimes allow the orphans' guardians to lend the money in their trust with usury:

²¹⁰ Cf. Supra, p. 96.

²¹¹ S.E. 75b.

The source for this interpretation of "Lo tashik" as a causative form, is apparently in a Midrash from the days of the Tannaim, however, it achieved halachic authority with R. Nahman, in the generation before Abaye. (Cf. supra, p. 93, n. 201 and p. 91, n. 198.

²¹² Accordingly, the notary is absolutely free from transgressing any injunction. In contrast, the Yerushalmi does not deal with the "do not's" (prohibitions) referring to each one of the transgressors. It seems, therefore, that contrary to the Savli, it accepted the Mishnaic remarks in its simple literal meaning.

²¹³ Supra, p. 49.

"Rabbah b. Shilah said in R. Hisdah's name - others state, Rabbah b. Joseph b. Rami said in R. Sheshet's name: money belonging to orphans may be lent on terms that are near to profit and far from loss." 214

And Rabbah and R. Ashi, independently broadened the dispensation being granted to the orphans. 215

Another category of people who were permitted the usual forms of usury were the scholars:

"Rav Judah also said in Samuel's name: scholars may borrow from each other on usury. Why? Fully knowing that usury is forbidden, they merely present gifts to each other." 216

The scholar has the ability to transform a transaction which the masses would consider to be usury into a matter of

214 B.M. 70a (and Rashi, ad. loc.). R. Anan attempted to broaden the leniency, but R. Nahman rejected it. Concerning this expression, see supra, n. 76.

215 Ibid.

216 B.M. 75a.

It means that lending upon usury is also permitted to scholars, since the other side of the transaction is a scholar too.

gift-giving, an act permitted to all.²¹⁷

On this subject, the Bavli presents a situation which shows even greater leniency regarding scholars:

"Samuel said to Abbuha b. Chi: 'Lend me a hundred peppercorns for a hundred and twenty. All this is well.'" ²¹⁸

We see that even if the borrower sets the usury ahead of time, the act is permissible to both parties because the usury is viewed as a gift. Nonetheless, if it is the lender who ahead of time sets the usury, it is viewed as fixed usury, which has not been freely given by the borrower and hence is forbidden.²¹⁹

The Bavli cites another Amora who wanted to go farther afield and permit usury-taking even by those other than scholars:

²¹⁷ and Maimonides explains why this can not be considered forbidden on the grounds of "because it looks like usury": "For it is well known that he only presented it to him as a present." (Yad, Malveh ve-Loveh, IV, 13). According to his approach, the matter was permitted because the borrower remits the usury, and therefore Maimonides decided against the opinions of some of the Geonim and stated that every borrower, not just the scholar, may remit his usury. However, many challenged Maimonides on this matter (see R. Abraham b. David and "Lehem Mishneh," ad. loc. Cf. also supra, p. 65 text and n. 128).

²¹⁸ B.M. 75a. (According to Rashi, ad. loc.).

²¹⁹ "Shita-Mekubetzet" (ad. loc.) in Ramach's name; "Magen Mishneh" (commenting on Maimonides, Yad, Malveh ve-Loveh, III, 13) section 9.

"Rav Judah said in Rava's name: One may lend to his sons and household on usury, in order to give them experience thereof."²²⁰

Despite the fact that the final objective of this act would be to strengthen one's guard against usury, Rava's view was rejected: "This, nevertheless, is incorrect, because he will come to cling thereto."²²¹

From the Bavli, we get the impression that there existed lenders who saw a way out for themselves to take usury from Jews by means of a Gentile middleman, and considered that in such a situation, the prohibition against usury would not fall on them. Of course, such a situation was forbidden by halacha, for Rava subjected these lenders to a curse and punishment (called: "Mi she'Para"):

"The Holy one, blessed be He, declared:
... It is I who will exact vengeance
from him who ascribes his money to a
Gentile and lends it to an Israelite on
usury!"²²²

²²⁰ B.M. 75a. Cf. Lashi, ad. loc.

²²¹ Ibid. Probably H. Freedman (in Concino edition, ad. loc.) is right by referring corruption to the father rather than to the children.

According to Lashi, ad. loc., the children would be corrupted because they would become accustomed to coveting money. But it is more likely this refers to the father because "atei" (in Aramaic language) is a singular form. Furthermore, according to Lashi, how will the children become accustomed to coveting money if it is they who are paying the usury, not receiving it?

²²² B.M. 61b. Compare with H. Cohn (in Encyclopedia Judaica, Vol. 16, p. 31) who certainly made a mistake by claiming that such a form of transaction was valid in the halacha.

On the question of which parties can be considered bound by the prohibition against usury, the halacha in the Land of Israel drew "ways out" of the Tannaitic prohibitions, although their "ways out" were not as broad as those found in the Bavli.

One of these loopholes can actually be traced to a Babylonian Amora:

"A Man may borrow from his wife or his children upon usury but [the only problem is] that he educates [or: trains,] them [to be involved] in [the transgression of the prohibition against] usury. Rav. said: for example, I who lend [upon usury] to Rabbah bar bar Hanna, and Rabba b. b. Hanna who lends [upon usury] to me." 223

The explanation is that had there been no fear that such an act would train them in the ways of usury-taking, a man would be permitted to take usury from members of his

223 Yerushalmi B.M. V, 5. Probably its origin is from the Tosefta B.M. V, 7 (Zuckerman, ed., p. 382). The correct name is: "Rabbah bar Hanna" (one "bar"). (See Ch. Albeck, Introduction to the Talmud, Babli and Yerushalmi [Heb. Dvir Co., Tel-Aviv, 1969] p. 177, n. 78).

family.²²⁴ On this subject, Rav stated that for Iabtah Bar Hanca and himself, such an act is permitted, apparently, because they are scholars,²²⁵ and this is in accordance with Babylonian halacha.

There exists another "way out" of the prohibition according to the law of the Land of Israel, similar to the Babylonian leniency shown in the matter of the orphans; this way out is, no doubt, original and apparently related to the difficult economic state that existed in the Land of Israel:

"R. Johanan said: Men may borrow upon usury for a company [celebrating] a religious act, or for the proclamation of the New Moon." 226

As there is no alternative, in order not to transgress a commandment it may be permissible to borrow²²⁷ even with usury:

224 According to "Pnei-Moshe" (to the Yerushalmi B.M. V, 5) and "Mishnat Bikurim" (to the Josefta B.M. V, 7). It appears that the Yerushalmi's reasoning for prohibiting the taking of usury from the wife and children "Lest he entices [or: trains] them [to be involved] in [the transgression of the prohibition against usury]," is more inclusive than the Bavli's reasoning "because he will come to cling thereto." (Sugya, p. 100 text and n. 221). This is because according to the Yerushalmi's reasoning, it would be forbidden to both lend and to borrow from one's own family because both these activities can train one for being involved in the transgression of the prohibition against usury, while the Bavli's reasoning refers to the lender alone. (Cf. "Hitzoch-Sneumel" to the Josefta B.M. V, 7).

225 There is no necessity for an additional reason (compare with "Pnei-Moshe" to the Yerushalmi, B.M. V, 5).

226 Yerushalmi, Mo'ed Katan, II, 3.

227 In this case, the halacha certainly meant to permit only borrowing but not lending upon usury.

From our examination of the question on whom does the prohibition against usury fall, we can summarize that the Torah narrowly defined the prohibition and limited it to the lender alone. Due to the special circumstances of their times, the Tannaim broadened the prohibition's power as a means of preventing usury and they placed the prohibition on the shoulders of all the parties involved in the act of usury. The Amoraim of both Babylonia and of the Land of Israel, found certain necessary dispensations, all within the framework of halacha, although the Babylonian dispensations were greater in number and more extensive.

C) Vis-a-Vis Whom Does the Prohibition Fall

1. In the Torah

There is no question that the prohibition against usury, in its original source, was only in effect vis-a-vis a fellow Jew.²²⁸

From its appearance in the Book of Exodus, one can interpret the prohibition as one falling vis-a-vis the poor borrower, who lives in economic distress, and who is in need of the loan for his sustenance (Exodus 22:24): "If thou lend money to any of my people, to the poor with thee" This

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Infra, p. 109ff.

can also be deduced from the context in which the prohibition appears.²²⁹

The Book of Leviticus presents us with a similar picture (Lev. 25:35-36): "And if thy brother be waxen poor, and his means fail with thee ... and thy brother shall live with thee."²³⁰ In this context, too, there appear similar cases of poverty.²³¹

On the other hand, the prohibition against usury in Deuteronomy relates to all of Israel, without any distinction made between a poor borrower and a rich one. (Deut. 23:20-21):

"Thou shalt not lend upon usury to thy brother (whoever is thy brother; rich or poor) ... but to thy brother, thou shalt not lend upon usury."²³²

²²⁹ See Exodus 22:20-26, which surround the prohibition against usury.

²³⁰ Cf. n. 232.

²³¹ E.g. verse 25, 39 (Ibid.). Cf. also Supra, p. 24ff and the same situation appears in the later Biblical books. (Read Supra, pp. 21-22) where in some of the texts the case is quite clearly stated. (See Ezekiel 18:7, 8, 17). Also emphasized in the later texts of the Bible is the issue of the borrower's poverty. (See Philo, Flavius Josephus, supra, p. 27).

²³² Similarly see "Keli Yakar" to Leviticus 25:36; H. Cohn (in: Encyclopedia Judaica, Vol. 16, p. 27) says: "The prohibition on taking interest in Exodus and Leviticus seems to be confined to the poor in straits and not to extend to money-lending in the normal course of business, but the Deuteronomic prohibition clearly applies to all moneylending, excluding only business dealings with foreigners."

We have already seen that the prohibition against usury is not just a matter of hessed (kindliness) but also an act of brotherhood.²³³ This can explain that the difference between the prohibition as it appears in Exodus and Leviticus and as it appears in Deuteronomy is simply one of emphasis. In the first two cases, the idea of hessed (kindliness) as part of the prohibition is stressed, while in the last case, the emphasis is on brotherhood, which in this instance, broadens the prohibition because even the rich man is considered to be a brother to the lender. It appears that in the first two instances, "The Torah spoke in the present tense"²³⁴ because the fact was that the borrower was poor,²³⁵ and that in the last case, the Torah came to teach us that the prohibition was not just vis-a-vis the poor.²³⁶

²³³ Supra, p. 28.

²³⁴ See the context of Exodus 22:24, which is filled with such examples. Cf. kashi: 22:17, 22:20, 22:30.

²³⁵ See supra, p. 24ff.

²³⁶ Cf. Infra, p. 106, n. 237; see Netama Lebowitz (New Studies in Exodus [Heb. world Zionist Org., Jerus. 1969] p. 279, n. 3) which based on Maimonides' use of language (Sefer ha-Mitzvot positive commandment 197) tries to prove that once a man is in need of a loan, even if he be rich, he is considered to be "poor." According to this reasoning, the apparent contradiction between Exodus and Leviticus and Deuteronomy is settled without difficulty because "your brother," in the Book of Deuteronomy, who is in need of a loan is as the same poor man who appears in Exodus and Leviticus. In any event, the conclusion one may make from these points is identical to our conclusion: According to Deuteronomy, the prohibition is in effect vis-a-vis everybody, even the rich. (Cf. also Seforno to Deut. 23:20).

2. During the period of the Mishna and the Talmud

In both the Tannaitic and Amoraitic periods there is no distinction made between a poor borrower and a rich one, and the prohibition against money is in force vis-a-vis both borrowers: "If a man lends [a penny] to his neighbour ... (every Jew who is his neighbour: rich or poor);²³⁷ "a man may not say to his neighbour ...";²³⁸ "a man must not lend a loan to his neighbour ...";²³⁹ "If a man lends [a penny] to his

²³⁷ S.M. V, 2. In contrast, a Mishna from the Tannaitic period does distinguish between the poor and the rich. (See Mechilta, Mishpatim, 19 [Horowitz-Labin, ed., p. 216]). However our argument is not contradicted by this Mishna for the following reasons: First, cf. Horowitz-Labin (Ibid., n. 1) that there exists a different version of the "Mishna" and you may be a creditor to others (i.e. Gentiles). Second, Mechilta, Massek'ot p. 100a (Mishpatim [encl. 22:14] [Lewinstein ed., p. 117] explains that the prohibition falls also vis-a-vis the rich man, and the reason why the word "poor" was mentioned in the passage is because the Holy One, blessed be He, punishes more strictly when the borrower is poor than when he is rich. Third, it is logical for the Mishna to be faithful to the text of Exodus because it is that text that the Mishna wishes to interpret, while this Mishna apparently did not concern itself at all with the text in Deuteronomy.

From these reasons, we can see how Eleazar Stein (erroneously he claimed that the prohibition only fell vis-a-vis the rich) can startle with the third century C.E. in: Encyclopaedia Judaica, Vol. I, p. 146).

In addition to our above arguments, we can argue that in Deuteronomy the poor man was not mentioned at all. (See also "Heli Yakar" and n. Cohn, supra p. 104, n. 232). In addition see Lionstam and Neufeld (infra, p. 108, n. 247) for in spite of their disagreement, they both admit that the prohibition vis-a-vis the rich man too is already found in the Torah.

²³⁸ S.M. V, 9.

²³⁹ Ibid.

neighbour upon usury ...²⁴⁰

When there is a distinction made it is only between Jew and Gentile: "Our Rabbis taught: If an Israelite lent [money] to [another] Israelite ...";²⁴¹ "One may not accept an 'Iron Flock' from an Israelite ..."²⁴² The Amoraim are quoted thus:

"Rava said: ... The holy one, blessed be He, declared: ... It is I who will exact vengeance from him who ascribes his money to a Gentile and lends it to an Israelite on usury." ²⁴³

We find similar statements in the Baraitot which the Amoraim quoted and accepted as being the halacha: "Our Rabbis taught: A woman may hire a fowl to her neighbour ...";²⁴⁴ "We learnt [in the Mishna]: If an Israelite lent [money] to [another] Israelite ..."²⁴⁵

We can conclude, therefore, that nowhere in the Mishnaic and Talmudic literature is there a distinction made

²⁴⁰ Tosefta, B.M. V, 9 (Zuckermann ed., p. 383).

²⁴¹ Yerushalmi B.M. V, 1.

²⁴² B.M. V, 10.

²⁴³ B.M. 61b. Cf. also R. Joseph b. Hinnyomi's remarks in R. Nahman's name. (B.M. 64b).

²⁴⁴ B.M. 68b.

²⁴⁵ Yerushalmi B.M. V, 1.

between taking usury from the rich or from the poor. This viewpoint can be seen, too, in all the Tannaitic and Amoraic prohibitions against usury in the various areas: in trade, in partnership agreements, in work contracts and in the normal sharing of work-loads.²⁴⁶ In matters of commerce and other transactions the party considered to be the borrower need not be poor; nonetheless, as we have already seen, the Tabbis of the Mishna and Talmud still invoked many prohibitions against usury even in all the above transactions.

In conclusion, we can say that both the Tannaitic and the Amoraic halacha which did not distinguish between a rich Jew and a poor Jew, but saw the prohibition as being in force vis-a-vis every Jew - this halacha is not the result of the development in law but rather is based in the Torah, itself.²⁴⁷ In this area there existed no need to broaden the

²⁴⁶ Cf. supra, p. 66ff.

²⁴⁷ So too does decide E. S. Lionstam (in: Ency. Biblica, Vol. 5, p. 930). "There is no basis for Neufeld's view which he derives from closely examining the language in which are couched the prohibitions against usury in the Book of the Covenant (i.e. Exodus) and in Leviticus which claims that these laws permit taking usury from the rich and which ascribes the definite prohibition against taking usury from every Jew to the Book of Deuteronomy which, according to his opinion, reflects the ideal of common brotherhood among all Jews which was realized during the theocratic regime of the Second Temple; [there is no basis for his view] because up till now we have not found one system of law in the world which distinguishes, in the matter of allowing or forbidding usury, between a loan given to a poor man and one given to a rich man. The problem of lending something to a rich man is foreign to the Torah and to the economic regime which is reflected in its laws." Cf. also supra, p. 106, n. 237.

prohibition's power, as we saw was the Tannaitic custom until now, because it was already very broad as it appeared originally in the Torah. The factor contributing to the law's broad encompassing quality, there was the belief that the intent behind the usury prohibition was to achieve a feeling of brotherhood, not just righteousness.

D) Taking Usury From Gentiles

1. Textual Sources In the Torah

We have already seen that the prohibition against usury was derived from two factors: righteousness and brotherhood.²⁴⁸ Most scholars and commentators have pointed out that the taking of usury, by itself, is not a burdensome act, nor theft, nor injustice in the strict, legal sense.²⁴⁹ In light of these comments, we can understand why the Torah did not prohibit the taking of usury from Gentiles.²⁵⁰

In Exodus (22:24) we read: "If thou lend money to any of my people ... ye shall not lay upon him usury."²⁵¹

²⁴⁸ Supra, p. 28.

²⁴⁹ See supra, p. 23.

²⁵⁰ On the other hand, see other attempts to reason the permission for taking usury from Gentiles, supra, p. 23, n. 1.

²⁵¹ (Emphasis mine). In several manuscripts of the Septuagint, the version is clearly "thy brother" and not "my people."

And in Leviticus (25:35-37) we read: "And if thy brother be waxen poor ... thou shalt not take from him usury."

In Deuteronomy (23:20-21) it says:

"Thou shalt not lend upon usury to thy brother ... Thou mayst lend upon usury to a stranger, but to thy brother thou shalt not lend upon usury ..."

Although the meaning of these quotations is that taking usury from a Gentile is not prohibited, the words "La-Nokri Tashik"²⁵² (Unto a stranger thou [mayst] lend upon usury) - does raise the question whether there is a commandment to take usury from a Gentile or whether one is simply allowed to, whether there is an obligation to take usury or whether one may if he so wishes.

2. In Textual Sources From Mishnaic Times

In one of the Tannaitic sources, there seems to appear definite support for the idea that the taking of usury from Gentiles is a commandment: "'La-Nokri [unto a stranger] tashik' - This is a positive command,"²⁵³ and Maimonides

²⁵² "tashik" (in Hebrew) may be interpreted either as a command or as a permission.

²⁵³ Sifre (on Deuteronomy), Ki-Tetze, 263 (Finkelstein, ed., p. 285). See also its interpretation to Deuteronomy 15:3. Cf. S. Stein (in: Encyclopedia Judaica, Vol. 12, p. 246) who ascribes it to the circumstances of that time. "... heavy oppression under Roman rule in the first part of the second century may have led to such an interpretation, particularly since R. Akiva was closely connected with the revolt of Bar Kokhba and with the editing of the Sifre."

understood this Biblical text and Midrash very clearly, and concurred that to take usury from a Gentile is a positive commandment.²⁵⁴

Apparently however, it is not simple to arrive at a conclusion based on the Biblical text or on the Sifre's language. Nachmanides questioned Maimonides and used what he claimed to be the characteristic approach of the Sifre to buttress his argument:

"And Rabbi Moses (Maimonides) made them into two actual commandments: to oppress the Gentile and to take usury from the Gentile. [Maimonides] erred in [his understanding of] the language written in the Sifre which consistently uses such language in many places: 'Of all clean winged things ye may eat (toke'lu) - that is a positive command', and in Sifre it is also written: This is the animal which you may eat (toke'lu) - that is a positive command, and the point is very clear." 255

254 Maimonides, Yad, Malveh ve Loveh, V, 1.

255 Nachmanides, in his commentary to Deut. 15:3. Nachmanides then claims that the meaning of the Sifre is that a prohibition ("Lav") which derives by implication from a positive command ("A'se") is treated (in the halacha) like a positive command. See also this opinion: Ibn Ezra (to Deut. 15:3); R. Abraham b. David (in his objections to Maimonides, op. cit., V, 1); Rashi (to Deut. 23:21). "Toke'lu" - may have two interpretations in Biblical Hebrew: (a) as a positive command ("A'se") or (b) as a permission - ("Reshut"). In addition to the controversy between Nachmanides and Maimonides, see "Kesef Mishneh" section "A" to Maimonides, op. cit., V, 1).

It seems to us that Nachmanides' opinion may get a logical support from the Biblical text. Deut. (23:20,21) says twice that taking usury from a fellow Jew is not permitted, rather than saying that it is not a commandment. Now, since the text in Deut. brought the law of usury in a contradictory form (on one hand: concerning a fellow Jew, on the other, concerning a Gentile) one can conclude that the law of usury concerning a Gentile is a permission and not a commandment.

Both the Tannaitic and the Amoraic sources agree, as we shall see, with the view of Nachmanides.

A very clear Mishna says:

"One [may] accept ("me'kablin") an 'Iron Flock' from Gentiles, and one [may] borrow ("lovin") from them, and lend ("malvin") to them upon usury." 256

Logic compels that just as "me'kablin" (accept) and "lovin" (borrow), are not commandments, so too "malvin" (lend) is not a commandment.

From several Baraitot, we can also conclude that the taking of usury from a Gentile is permissible but not more than that: "Our Rabbis taught: ... If a Gentile borrowed money from an Israelite upon usury" 257;

"Our rabbis taught: if a Gentile borrowed money upon usury from an Israelite and then he recorded them (the principal and the usury) against him as a loan" 258

During the entire period of the Mishna, the taking of usury from a Gentile was definitely permitted but was not considered to be a commandment.

256

S.N. V, 6.

Concerning the meaning of "Iron Flock," see supra, p. 76, n. 159.

257

B.M. 71b.

258

Yerushalmi B.M. V, 7; Bavli B.M. 72a.

3. In Textual Sources From Talmudic Times

During the period of the Talmud, a change took place in the law concerning the taking of usury from a Gentile. While the halacha of the Land of Israel remained consistent with the Tannaitic halacha, Babylonian halacha, as we shall see below, underwent a drastic change.

A) Textual Sources From the Land of Israel

Regarding the Mishna "And one may borrow from and lend to them (Gentiles) upon usury,"²⁵⁹ the Yerushalmi explains:

"Israelite [may] borrow from a Gentile and a Gentile [may borrow] from an Israelite and [another] Israelite may be his surety and he does not have to fear of usury." ²⁶⁰

The implication is that one may take usury from a Gentile but one is not commanded to do so; otherwise, why should the Talmud say "and he does not have to fear of usury?" On the contrary! This guarantor is actually a partner to the fulfillment of the commandment.

From another text of the Land of Israel, we also learn that taking usury from a Gentile is permissible but not

²⁵⁹ B.M. V, 6.

²⁶⁰ Yerushalmi B.M. V,7.

required:

"I am telling you, ~~don't~~ lend [money] to an Israelite upon usury, but to [other] nations (Gentiles) - lend [upon usury]! As it is written: 'La-Hokri tashik,' etc." 261

First of all, that which appears in the text (in Hebrew) in the imperative voice does not necessarily constitute a command. Second, in other manuscripts appear different versions of the issue: "You lend" (which is not in the imperative), or "It is permissible."²⁶²

The halacha which developed in the Land of Israel throughout Talmudic times remained unchanging. Taking usury from a Gentile was permitted, as the Tannaim had already decided, but was not seen as a commandment.

B) Babylonian Textual Sources

Up until Rava's generation, the Bavli continues to permit the taking of usury from Gentiles, as had been the practice in Mishnaic times.

261 Bereshit (Genesis) Rabba, section 55 (Theodor-Albeck, ed., p. 586).

262 See Theodor-Albeck, ed., op. cit.
In addition, by reading very carefully one will not find any evidence to this problem in Tanhuma Buber (Mishpatim, 8) although it mentions lending money to Gentiles several times. While reading it, one must take into consideration that lending money to a Jew (not upon usury) is a positive command. (See Mechilta Mishpatim, 19, s.v.: "If [thou lend] money." (Horowitz-Rabin, ed., p. 315)).

We find R. Nahman Bar Isaac, a contemporary of Rava's, explaining:

"Is it then written, 'Thou shalt not take usury from them'? 'From him' is written, [meaning] of an Israelite." 263

- that is to say that in Leviticus 25:36 where it says:
"Thou shalt not take from him neither usury nor increase"
- this sentence applies only to Jews, the implication being that one may take usury from a Gentile.

Rava himself also allowed the taking of usury from a Gentile:

"Our Rabbis taught: ... Similarly if a Gentile borrowed money on usury from an Israelite, and then recorded them (the principal and the usury) against him as a loan, and became a proselyte ... R. Jose ruled: if a Gentile borrowed money from an Israelite on usury, then in both cases (whether conversion preceded the settlement or the reverse) he may collect both the principal and the usury. Rava said in the name of R. Hisda in the name of R. Huna: The halacha is as R. Jose. Rava said: What is the reason of R. Jose? That it should not be said that he turned a proselyte for the sake of money." 264

The implication is that if the Gentile had not converted, Rabbi Jose would have admitted to the Rabbis that a Jew could take usury from a Gentile. This halacha, as we have

263 B.M. 71a..

264 B.M. 72a. (Emphasis mine).

seen, existed already two generations before Rava's time. ²⁶⁵

However during Rava's lifetime a halacha was decided which forbade the taking of usury from Gentiles despite Rava's opposition:

"He that increases his wealth by usury and increase, gathereth it for him that is gracious to the poor. (Prov. 22:9).
- Who is meant by 'for him that is gracious to the poor'? ... Rav Nahman observed: Una told me that [this verse]

²⁶⁵ As an additional Babylonian Amoraic source we can apparently look at the baraita below which deals with reinstating those disqualified from serving as witnesses or judges with their former status: "... a usurer: this includes both lender and borrower. And when are they judged to have repented? When they tear up their bills and undergo a complete reformation, that they will not lend [upon usury] even to a Gentile." (Sanhedrin 25b). It appears that the average person who is qualified to be a witness is allowed to take usury from a Gentile! (In any event, it is clear here that the taking of usury from Gentiles is not a commandment, otherwise how could there be a prohibition against taking usury from a Gentile if that act is a commandment?

It appears that the concluding line: "that they will not lend [upon usury] even to a Gentile," is a later addition similar to other additions in this baraita: first, in the Tosefta (Sanhedrin V, 2) and in the Yerushalmi (Sanhedrin III, 5) this line does not appear. Second, the language of this concluding line is Aramaic (as are the other concluding lines of each part of that baraita) unlike the rest of the Baraita which is in Hebrew.

Also the words "and borrower" are apparently an Amoraic addition because neither Rava nor the Talmud presents (in the Bavli Sanhedrin 25b) this Baraita as support for Rava's argument. R. Nahman and the Talmud also did not offer support for R. Nahman's argument from this Baraita. The appearance of this line only in the Bavli and not in the Yerushalmi or the Tosefta raises the hypothesis that this is a Babylonian Amoraic addition. In any event, it appears that the concluding line precedes R. Nahman's argument (infra, p.) for after R. Nahman's argument there is no need for such a concluding line because in any case taking usury from Gentiles is forbidden.

is needed to show that usury [taken] even from Gentiles [leads to loss of one's wealth]." 266

R. Nahman in the name of R. Huna radically changed the halacha which had been binding up until his generation,²⁶⁷ and forbade taking usury, even from Gentiles; he warned that a person who takes such usury will lose it (or: his wealth).

Rava was astonished and argued with R. Nahman, using the first explicit text which permits the taking of usury from Gentiles: "Rava objected to R. Nahman: 'to a stranger tashik': What is meant by 'tashik'? Surely like tishok?" In other words isn't the meaning of the verb "tashik" the same as "tishok" which means: to take usury from a Gentile? And R. Nahman answers: "no: 'tashik' [in Hithil], that is 'enable him to take usury from you'." 268 In other words, "pay him usury," meaning that there may be usury taken in business transactions

266 B.M. 70b. (Emphasis mine).

Indeed, as we see, this prohibition was originally said by R. Huna (R. Nahman's teacher). However, it was R. Nahman who gave the prohibition the publicity (R. Huna only said it privately to R. Nahman). Moreover, we have already found R. Huna's remarks (told by others) which contradict the prohibition here. (See supra, p. 115).

On the contrary see the interpretation which was given to this verse in the Land of Israel. (Tanhuma, Buber Mishpatim, 8).

267 Although R. Nahman's remarks were interpreted in a different way (B.M. 71a in the second version) nevertheless, the second version was not accepted into the halacha. (See R. Hiyya b. Rav Huna and Ravina, who discussed and supported the first version - supra, pp. 119-120; Maimonides, Yad, Malveh ve-Loveh, V, 2; Tur Shulhan Aruch, Yoreh-De'ah, Ribbit, 159:1).

268 B.M. 70b.

with Gentiles, provided that the Jew is the borrower.²⁶⁹

Rava persevered in his argument: "[What!] Cannot one do without?"²⁷⁰ Rashi explained: "Did the Torah come to command us to pay usury to Gentiles?"²⁷¹ But even Rava's attempt to logically contradict the words of R. Nahman was rejected by R. Nahman. Rava persists, and argues again, this time using a clear Mishna: "He [further] raised an objection: 'One may borrow from and lend money to them [Gentiles] upon usury'."²⁷² This time R. Nahman has no retort.

There is no doubt that R. Nahman knew the halacha which prevailed before his time. Therefore the situation warranted it, that if he wanted to turn the world around and forbid that which had been permissible, R. Nahman needed a good and compelling argument, so much so that he was prepared to oppose very clear evidence which negated his own

²⁶⁹ However, concerning the question of borrowing upon usury from Gentiles, the halacha was static: The Torah did not prohibit it, the Mishna clearly permitted it (Supra, p. 112), Baraitot (supra, p. 112) and R. Nahman prohibited only lending them but not borrowing from them upon usury.

²⁷⁰ B.M. 70b.

²⁷¹ Rashi, ad. loc.

²⁷² B.M. V, 6.

opinion.²⁷³

It appears that necessity for forbidding the taking of usury from a Gentile was so great that; despite the fact that R. Nahman could not find a rebuttal to Rava's argument, a solution was to come in following generations. Here is the solution of an Amora who lived in the generation after R.

Nahman:

"R. Hiyya, the son of R. Huna said: This [permission] is granted only [up to] the [minimum] requirements of a livelihood." ²⁷⁴

Apparently since it was impossible to nullify the explicit words of the Mishna, R. Hiyya b. R. Huna took a different but acceptable tact: the limiting of the Mishna's allowance for usury to a specific case; one may take usury from a Gentile only if one needs the profit for the sustenance, or support, or vital needs of the Jew - but for other reasons, usury is forbidden.²⁷⁵

²⁷³ R. Nahman was known as a daring and powerful leader. (See J. H. Weiss, Dor Dor ve-Dorshav ("Every Generation With Its Preachers") [Wilna, Romm Pub., 1904] Vol. II, pp. 158-160; Ch. Albeck, Introduction to the Talmud Babli and Yerushalmi, pp. 299-300; M. D. Yudilowitz, Hayei ha-Yehudim bi-Zeman ha-Talmud ("The Life of the Jews During the Talmudic Period") Neharde'a Book [Makor Pub., Jerus., 1971] pp. 37-38; 42-45). That is probably a result of the fact that R. Nahman was close to the Exilarch (Ch. Albeck, op. cit., p. 300); M. Beer, The Babylonian Exilarchate [Heb. Dvir Pub., Tel-Aviv, 1970] p. 75) which gave him a great deal of authority (M. Beer, op. cit., p. 93).

²⁷⁴ B.M. 70b-71a.

²⁷⁵ Compare with R. Nahman's remarks (Sanhedrin 26b) who states that even accepting Tzedakah (righteousness) from Gentiles is forbidden unless it is a vital for the Jew.

From the viewpoint of R. Hiyya, the son of R. Huna, who decided that taking usury from a Gentile for the sake of sustaining the Jew was permissible - from this viewpoint, we can see an attempt to protect the economic interests of those in Babylonia who were of limited means.²⁷⁶ His point of view expressed his concern for the poor, and maybe also for the scholars,²⁷⁷ however, it does not explain the necessity for generally forbidding the taking of usury from Gentiles, an act which had been permissible up to R. Nahman's times. It seems that the solution to this question can be found in a different interpretation to the Mishna, presented by Ravina as an answer to the controversy between Rava and R. Nahman:

"Ravina said: Here (in the Mishna) the reference is to Rabbinical scholars. For why did the Rabbis enact this precautionary measure? Lest he learn of his (the Gentile's) ways, but being a scholar he will certainly not learn of his ways." ²⁷⁸

²⁷⁶ Yet, as a result of the ruling of R. Hiyya b. de-Rav Huna, the Rabbinical scholars too received a benefit, since they had devoted the majority of their time to study, and sometimes even suffered the shame of hunger (see for example: Abaye in Eruvin 68a; Shabbat 33a; Gittin 60b; and the views of Rava on the study of Torah: Shabbat 10a; Eruvin 22a). It is most likely, therefore, that the reason that R. Hiyya b. de-Rav Huna decided in such a manner was due to the influence of the teaching and outlook of Abaye and Rava, for he was their student (see A. Hyman, Toldot Tannaim ve-Amoraim ("The Life History of the Tannaim and Amoraim") [3 Vols., Kiriah ne'emanah, Jerusalem, 1964] Vol. II, article: "R. Hiyya b. de-Rav Huna" p. 444).

²⁷⁷ One can also see the care for Rabbinical scholars in Ravina's remarks, infra, n. 278.

²⁷⁸ B.M. 71a. (Emphasis mine).

Ravina testifies that the "Rabbis" (E. Rava, E. Tahman, and his court) knew that in the Torah the taking of usury from a Gentile was permissible,²⁷⁰ but they themselves forbade such a practice out of a fear that through business dealings with the Gentiles, the Jews might begin to imitate the Gentile and change their own way of life. However, for a certain small segment of the population (rabbinical scholars) the taking of usury was permissible because there was no fear regarding this segment "lest he learn of his ways."²⁸⁰

Ravina invoked a religious argument ("lest he learn") to support the economic restriction placed on the Jews of Babylonia (the prohibition against the taking of usury from Gentiles).²⁸¹

²⁷⁰ Rav Tahman's different interpretation of the verb "tachik" (Sura, p. 117) is therefore a mere evasion of Rav's question.

²⁸⁰ Indeed the halacha accepted an integration of both E. Rava's (p. 117) and Ravina's opinions. (Cf. Halmonides and Sanhedran Aruch which was mentioned Sura, p. 117 n. 267.)

²⁸¹ At first glance this appears to be difficult: Out of a fear "lest he learn of his (the Gentile's) ways", why did not the Babylonian Rabbis forbid the lending to Gentiles even without the taking of usury? After all, in this way they would be able to increase the distance between Jew and Gentile even more! Apparently this would have been too extreme a step, because the Rabbis knew that the community would not be able to obey such a law, particularly during a time when many people had business relations and friendships with the Gentiles. Moreover, prohibiting the taking of usury from Gentiles already significantly reduced the contact with the Gentile because no Jew would wish to make loans if there was no profit in such an act, and then obviously a loan to a Gentile without usury is also prevented.

From all that has been said, we can see that the halacha, that developed in the Land of Israel, followed the halachic pattern existing since the times of the Torah, and it stood for permitting the taking of usury from Gentiles.

In contrast, the Babylonian Halacha, by the first generations of Amoraim, broke with this halachic pattern when it forbade the taking of usury from Gentiles. In addition, we have found by investigating both halachot, that of the Land of Israel and that of Babylonia, that there is no basis to the claim that taking usury from Gentiles is a commandment.

The Babylonian halacha was probably correct when, out of a fear "lest he learn of his ways," it decided to forbid even that which was basically permissible. However, the problem with which we should concern ourselves here is, why in the Land of Israel, during the same time or a bit earlier, there existed no fear of "lest he learn of his ways?" Why did this fear exist only in Babylonia and not in the Land of Israel? It appears that the halachic differences in this matter are the result, once again, of the different socio-economic contexts of the two scholarly centers of that period.

C. The Background to Halachic Differences Between Babylonia and the Land of Israel

We have already seen that trade and commerce comprised an important and significant part of the economic life

of the Babylonian Jews.²⁸² In these fields, the Jews had frequent dealings with the Gentiles, thereby affecting the social lives of the Jews: good relations were formed between the two groups.²⁸³

These close relationships with the Gentiles began to worry the Rabbis of Babylonia who feared that from this close contact, the Jews would begin to imitate the Gentiles, thereby destroying their own way of life. The Talmud defines this fear as "lest he learn of his ways."²⁸⁴ For this reason, Samuel's father decided by the beginning of the Amoraic period to forbid partnerships with Gentiles,²⁸⁵ and he together with Levi forbade the eating of a certain food ("shtita") which had been prepared by Gentiles.²⁸⁶

On the other hand, there is evidence that matters such as eating, commerce and friendship with Gentiles, which

²⁸² Supra, pp. 16-19.

²⁸³ See e.g. that sellers (Gentiles) of tents and oil came over to the houses of Jews. (Nedarim 91b).

²⁸⁴ E.g. Ravina's remarks, supra, p. 120.

²⁸⁵ Sanhedrin, 63b.

It appears that the fear presented there, that a clash between Jew and Gentile would cause the Jew to have to appear in the Gentile's courthouse and swear in the name of their Gods - this fear too, is related to the fear that the Jewish way of life would be corrupted.

²⁸⁶ Avodah-Zarah 38b. (Although the official reason mentioned there is different).

the Rabbis had prohibited for the general public were practiced by the Rabbis themselves. Samuel, for example, drank water in the house of an Aramaean,²⁸⁷ and Rav drank water of the house of a widow.²⁸⁸ Similarly we find that R. Nahman drank water heated by a Gentile despite R. Ami's disapproval.²⁸⁹ We find that Samuel's good friend, Avlet, was a Gentile,²⁹⁰ that R. Huna traded with Gentiles,²⁹¹ and that L. Nahman allowed his students (who were rabbinical scholars) to buy bread from Gentile soldiers.²⁹² Relations with non-Jews were so close that we even find converts to Judaism mentioned in the sources,²⁹³ and one of these converts studied with Samuel.²⁹⁴

The existence of converts is testimony to the close

²⁸⁷ Avodat-Zarah 30a. (But, according to the second version he did not drink). The reasons concerning hygiene which are mentioned there, are also connected with "lest he learn of his (the Gentile's) ways."

²⁸⁸ According to both versions mentioned there. Ibid.

²⁸⁹ Shabbat 51a.

²⁹⁰ Shabbat 120a, 156b; Avodah-Zarah 30a.

²⁹¹ Baba Batra 54b.

²⁹² Pesachim 30a. (But Rabenu Hananel [ad. loc.] brings a different version).

²⁹³ Eruvin 25a. (The discussion about fences in a proselyte's estate and also the story: "A certain woman ..."); Kiddushin 76b.

²⁹⁴ Midrash Kohelet (Ecclesiastes) Likkub VII, 8.

relations which the Gentiles had with the Jews before the conversions took place. It is apparent that practices which were basically permissible were denied the masses for a reason which was not applicable to the scholars, and hence such practices were allowed the scholars.

We have additional documentation which can demonstrate how great was the Babylonian Amoraean fear that the Jews there would be corrupted and that they would destroy their way of life: In the early years in Babylonia, the Jews were not yet concentrated in large settlements but were absorbed into the towns of their Gentile neighbors. Because of this, knowledge of the Torah was not widespread among the Jews, not even what was forbidden or permissible.²⁹⁵ These communities were in need, therefore, "of public leadership, of a guiding and teaching spirit, of religious, social, ethical, and community guidance."²⁹⁶

As part of the first generation of Babylonian Amoraim, Rav, head of the Academy at Sura, thoroughly recognized the situation and was overcome with fear for the future of the Jewish people in exile,²⁹⁷ amongst its Gentile neighbors who were idol worshippers liable to influence the Jews

²⁹⁵ A. M. Naftal, Ha-Halmud ve-Yotzray ("The Talmud and Its Creators") (Yavneh, Tel-Aviv, 1970) Part II, Amoraic Generation, p. 114, quoting Rav Sherira Gaon. Cf. also Hulin 110a; Yerushalmi Avodah Zarah, II. 8.

²⁹⁶ Ibid.

²⁹⁷ See his (Rav's) remarks, Infra, p. 126.

by their style of life and culture ("lest he learn of his ways"). A harsh vision and fear for the fate of the Jewish community, because of absorption and assimilation, we see in Rav's words: "I have misgivings about that verse: 'And ye shall perish among the nations'. (Lev. 26:33)."²⁹⁸ And in a different place: "The Torah is destined to be forgotten in Israel."²⁹⁹

These statements can strengthen our assumption that the prohibition against taking usury from Gentiles was part of a policy of preventing close contact with non-Jews in the different realms of life.³⁰⁰

The situation in the Land of Israel, during this period, was entirely different. The economic distress under Rome's rule,³⁰¹ and the harassment of the Jews by the Gentiles, despite the commercial ties between the two groups,

²⁹⁸ Makot 24a.

²⁹⁹ Shabbat 138b.

³⁰⁰ It has already been seen (supra, p. 120) that a Talmudic source (Ravina) gives evidence of the connection between the fear of "lest he learn of his (Gentile's) ways" and the decision to forbid the taking of usury from Gentiles. See also Eliezer Bashan (in: Ency. Judaica, Vol. 15, p. 521): "It seems Sura's earlier inhabitants were unfamiliar with Jewish laws." Since the fear of assimilation in Sura, was very actual, it is possible that forbidding of taking usury from Gentiles, originally said by Rav Huna, is not coincidental: he was Rav's student; and both of them were Rabbinical leaders in Sura.

³⁰¹ Supra, pp. 11-12.

created a condition quite the opposite of that in Babylonia. There were neither the friendly relationships as had been in Babylonia, nor the fear of assimilation. Great was the hatred for the Romans and Gentiles,³⁰² and therefore it was difficult for a Jew to be drawn to the ways of the Gentiles whom he saw as his enemy.³⁰³ Hence the fear "lest he learn of his ways" was not instrumental in changing the halacha of taking usury from Gentiles.³⁰⁴

³⁰² Alon, Toldot, op. cit., Vol. I, n. 325; Avi-Yonah, op. cit., pp. 110-114.

³⁰³ However, in the Land of Israel, too, the Rabbis fought against idolatry, especially against superstitions and false beliefs. (S. Lieberman, Greek and Hellenism in Jewish Palestine [Heb. Bialik Institute, Jerus., 1962] pp. 70; 73-86; 236-244) except that there the Rabbis' fear was of the opinions that the Jew would hear on the street or in discussions but was not a fear of close relations and friendship with the Gentile.

³⁰⁴ It is worth mentioning that there is a text which seemingly refutes the claim of a difference between the Bavli and Yerushalmi halachot in the matter of taking usury from a Gentile. R. Shimplai, a second generation Amora from the Land of Israel, makes statements which seem to imply that it was preferable not to take usury, even from a Gentile: "R. Shimplai when preaching said: Six hundred and thirteen precepts were communicated to Moses ... David came and reduced them to eleven [principles] as it is written: 'A Psalm of David (Psalm 15) ...'" (Makot 23b-24a; Tanhuma, Buber, end of Shoftim). After a discussion on the details of the verses, with a commentary presented for each one of them, the text continues: "'He that putteth not out his money upon usury' - even usury taken from Gentiles."

However, there are many rejections of this claim. First of all, it is not entirely clear whether the concluding lines of the above text were actually said by R. Shimplai or whether they were tacked on later by anonymous Amoraim of the Bavli.

Concerning different versions of the Amora's (who said the above remarks) name, C.F. B. Z. Bacher, Aggadot Amoraei Eretz Yisrael ("The Legends of the Amoraim From the Land of Israel") (Dvir Pub., Tel-Aviv, 1925) Vol. I, pp. 322-323, notes 1-2. See also in the Talmud (op. cit.) that Rav Himmuna's remarks were brought into (in the middle) R. Shimplai's remarks.

Second, R. Shimplai's statements were said within the framework of interpretive homiletics whose purpose was to commend and to praise those who do not lend their money upon usury to Gentiles.

Third, R. Shimplai's remarks never received any support in any halachic text in the Land of Israel. On the contrary: an opposite opinion was found (supra p. 114, n. 261 Rabbi Abin's statements) by an Amora of the Land of Israel. Although R. Shimplai's remarks appear in Tanhuma (see above) which is a Midrash of the Land of Israel, that is not a proof, since Tanhuma could take those remarks from the Bavli (Tanhuma has a great deal of post-Talmudic material too).

Fourth, R. Shimplai originated from the Babylonian town of Nahardaia (Pesahim 62b; Yerushalmi, Pesahim V, 3) and not from the Land of Israel. Perhaps his remarks were a result of his being influenced by the special circumstances in Babylonia (see supra, pp. 125-126). It is also possible that his statement, originally referred to the Babylonian Jews (his remarks appear only in the Bavli).

So far-fetched and unrealistic was the fear "lest he learn of his ways" in the Land of Israel that, because of the economic distress, a policy in opposition to the Babylonian one began to circulate:

"It appears that because of the impoverishment and weakening of Judaism in the Land of Israel, the dependency on the Gentiles increased. The decisive factor toward befriending the neighbouring Gentiles, that is the practical reality, caused a broadening of an ideology which either demanded or justified a joint participation in life and practices with the Gentile neighbours in the social and economic spheres." 305

As a result, the halacha in the Land of Israel took steps to normalize Jewish-Gentile relations, with the basic concern being the peace and welfare of the Jews in the land. And, indeed, the expression "for the sake of peaceful relations" constantly recurs in the texts³⁰⁶ as a supportive argument for the preparation for this cooperative socio-economic life. Alon also conjectures that it was this thinking which brought Rabbi Judah Nesiah, (the grandson of Rabbi Judah the Prince), to allow the use of Gentile oil,³⁰⁷ and R. Shimi to try and

³⁰⁵ G. Alon, Toldot, op. cit., Vol. II, p. 50. (See also pp. 342-349). (Emphasis mine).

³⁰⁶ See Tosefta, Gittin V, 4; Yerushalmi: Gittin V, 9: Sheviit IV, 3.

³⁰⁷ Alon, op. cit., p. 157.

urge him to even allow Gentile bread.³⁰⁸ One could even assume that had the taking of usury from Gentiles been forbidden in the Land of Israel, the income of part of the community would have been eliminated, thereby increasing by a certain measure the hardships of sustenance during that period.

We can conclude, therefore, that the different development of the laws concerning the taking of usury from Gentiles was the result of the different socio-economic backgrounds of the two centers - in Babylonia and in the

Land of Israel.³⁰⁹

³⁰⁹ Another attempt at explaining the different halachot in the two centers by invoking the socio-economic background was made by J. Rosenthal (in: Talpiot, 5th year, 1951-2, p. 4⁶¹): The good economic and political condition of Babylonian Jewry during that period, contributed to the positive attitude that the Jewish community had to the Persian government. In Babylonia, the prohibition against taking usury from Gentiles could be seen, therefore, as a result of this positive attitude. In contrast, in the Land of Israel, the relationship of the Jews to the Gentiles and Romans was most negative. The Yerushalmi was arranged in Caesarea (S. Lieberman, Talmud of Caesarea, p. 9). In Caesarea, an important financial center, the Gentiles greatly oppressed the Jews. Therefore, the Rabbis of Caesarea had no reason to prohibit the taking of usury from the Gentiles. While this hypothesis is logical, it is not sufficiently grounded in fact. We have already gathered from Ravina, the only evidence available that the prohibition against the taking of usury from Gentiles was connected with the fear "lest he learn of his ways," and we have seen how well-grounded this fear then was. Furthermore, the policy of preventing contact with the Gentile, which we have already dealt with, does not fall into line with a policy of "positive attitudes" towards the government. Moreover, even Rosenthal admits that the positive attitude is only in relation to the government while here, we are dealing with a halacha pertaining to individual Gentiles and not only to a government. We have also seen (supra, p. 129) in Alon's statements that despite the hatred for the Romans and Gentiles, the situation required a sympathetic outlook on the Gentiles. Why then, according to Rosenthal, who explained all the halachic differences in terms of the attitudes of the Jews to the Gentiles in the two centers - [why then] did not the Amoraim in the Land of Israel choose to prohibit the taking of usury from Gentiles, as a result of this sympathetic outlook as for example: "For the sake of peaceful relations?"

E) The Attitude of the Legislator to the Prohibition and to Those Who Transgress It. 310

1. In the Torah

When the Torah presents the prohibition against usury, it appears to be appealing more to the lender's emotion than to his reason. We learn this from the context in which the prohibition appears in the Book of Exodus.³¹¹ In the Book of Leviticus, too, the persuasive argument is couched in emotional tones: Immediately after the prohibition, there appears the expression [Lev. 25:36] "and thou shalt fear thy God" - an expression which traditionally comes to teach:

³¹⁰ The term "legislator" was chosen as a way out of religious-theological questions, and as a short general term for the different legislators who are found in the different periods, discussed in this research.

³¹¹ Cf. the verses before (Exodus 22:20-23) and after (22:25-26) the prohibition appears. (Compare for example with 22:1-5).

"With matters addressed to the heart, the Torah uses the expression: 'Thou shalt fear thy God'." 312

The fact that the legislator needed several persuasive means, shows the approach of the legislator to the prohibition and to those who transgressed it: he understood that the prohibition was not an obvious matter but a debatable point. Therefore, apparently, the legislator is seen as requesting one to carry out the act of hessed more than the legislator is actually demanding it.

The fact, too that the exodus from Egypt is mentioned in connection with the prohibition³¹³ strengthens this assumption:

"Egypt is mentioned in connection with a large number of laws, most of them of a

312 Sifra, be-bar, VI, 2 (Weiss, ed., p. 109b); Kiddushin 32b. Cf. also Rashi (Lev. 25:36) who explained: "Since the mind of man is inclined after usury and it is difficult to remove himself from it, and he decides its legitimacy for himself because of his money which is idle with him, it was necessary to state 'and thou shalt fear thy God'." (Trans. by A. Ben Isaiah-S. Sharfman, The Pentateuch and Rashi's Commentary [S. S. & R. Pub. Com. Inc., N.Y., 1949] Leviticus 25:36).

Tosafot brings another reason (Sanhedrin 24b, s.v.: "And these are ineligible"): The lender decides its legitimacy for himself simply because the borrower had agreed to pay the usury, and therefore it does not look like a prohibition for him.

The legislator also used other means to enforce the prohibition: the promise of a reward. Inheriting the land of Canaan (Lev. 25:38), blessing all that he puts his hands on (Deut. 23:21). See Nachmanides' remarks concerning this blessing (supra, p. 25), and Rashi to Numbers 15:41.

313 Leviticus 25:38.

social character, in favour of slaves and the poor, either as a particularly cogent reason why the law should be faithfully observed, or even as a reason why a law has been laid down.... Once that event was construed as in accordance, on a higher plane, with the legislation concerning redemption, it must have been a tremendously strong argument. For instance, we know that at some early stage of Mediterranean civilization, usury was not practiced. When usury appeared, it was soon fought." 314

To conclude, let us quote from another scholar:

"Despite the numerous warnings against the taking of usury, there does not exist, in the Bible, even one law which clearly nullifies the legal authority of a loan contract obliging the borrower to pay usury. • This opens the door to speculation that originally the prohibition against usury had solely ethical and religious authority." 315

2. During Mishnaic Times

We have already seen that, during the time of the Mishna, the transgression of taking usury became widespread among part of the population,³¹⁶ and the Rabbis were compelled to fight against this phenomenon.³¹⁷ They realized

³¹⁴ D. Daube, Studies in Biblical Law (Ktav Pub. House, N.Y., 1969) p. 52. (Emphasis mine).

³¹⁵ E. S. Lionstamm (in: Ency. Biblica, Vol. V) p. 930.

³¹⁶ Supra, pp. 8-11.

³¹⁷ Supra, pp. 9, 19, 40ff, 92.

that persuasion by appealing to the emotion, the attempt to arouse the lender's sense of compassion, and even promises of reward to the lender - all these means were insufficient to halt the plague of usury. It was to be expected, therefore, that the steps taken by the Rabbis would be different from the Torah's. The Tannaim did not ask; rather they demanded, commanded, threatened, blamed, startled, scared and stirred up public opinion against usurers.³¹⁸

Thus do we find harsh warnings by the Tannaim, such as are not to be found in the Torah:

"In this connection the sages said: he who lends upon usury transgresses five prohibitions ... and just as the lender and the borrower transgress five prohibitions so also does the guarantor and the witnesses and the notary." ³¹⁹

For its own purposes a different source from the same time uses the juxtaposition of Biblical sentences and presents a particularly harsh warning:

³¹⁸ However the later Biblical books took the same steps as the Torah, a fact which proves that these books had a similar approach and attitude to the prohibition and the transgression thereof. (Read supra, pp. 21-22). Yet Ezekiel 18:13 appears to follow the Tannaitic method. (He says: "He shall not live"), but there is no proof that he is referring to those who only transgress the prohibition against usury, for he lists in that chapter many kinds of transgressions and he who is guilty of all the transgressions, Ezekiel warns: "He shall not live." It explicitly is written there: "He hath done all these abominations, he shall be put to death." (Emphasis mine).

³¹⁹ Mechilta, Mishpatim, 19. s.v.: "Ye shall not lay." (Horowitz-Rabin ed., p. 316) Mishna, B.M. V, 11.

"I am the Lord thy God who brought you forth out of the land of Egypt' [Lev. 25:38] - on condition that you will accept the commandment of usury, I brought you forth out of the land of Egypt. That whoever recognizes the commandment of usury - recognizes the exodus from Egypt, and whoever denies the commandment of usury is considered like denying the exodus from Egypt." 320.

Further on, the source reads:

"And thou shalt not give him thy food for increase [Lev. 25:37] I am the Lord' [Lev. 25:38] - from this originates what the scholars said: Whosoever takes upon himself the yoke (obligation) of the [prohibition against] usury - [he] takes upon himself (acknowledges) his dependence on divine government; and whosoever throws off the yoke of [the prohibition against] usury - [he] does not acknowledge his dependence on divine government." 321

It is not just that he transgresses five "do not's," an act that everyone is warned against, but rather he is considered as heretically denying the exodus from Egypt, and even worse - as casting off the yoke of Heaven. Similarly, R. Jose, of

320 Sifra, be-Har V, 3 (Weiss ed., p. 109b).

Compare with Rava's interpretation (*infra*, pp. 145-146) and with Daube's (*supra*, pp. 133-134). Another possibility for the reason of the exodus from Egypt being mentioned in Leviticus is because the "Ger" (in that case resident alien) was mentioned in the previous verse (25:36). In any case, the various possibilities which explain the mentioning of the exodus from Egypt just strengthen our claim that there was no necessity to interpret it as the Tannaim did, i.e., they had a purpose (which was already mentioned, *supra*, p. 135) by interpreting it in a certain (severe) way.

321 Sifra, *op. cit.*

the same period, raises the commandment to prohibit usury to the heights of importance:

"Come and see the blindness of usurers. If a man calls his neighbour wicked, he cherishes a deep-seated animosity against him; whilst they bring witnesses, a notary, pen and ink, and record and attest, 'So-and-so has denied the God of Israel'." 322

A larger proportion of the threats and warnings are used by the Tannaim to induce fear with the promise of dire punishment:

"R. Simeon said: Those who lend on usury lose more than they gain. Moreover, they impute wisdom to Moses, our Teacher, and to his Torah, and say, 'Had Moses our Teacher known that there is profit in this thing (usury) he would not have prohibited it'." 323

And R. Simeon also threatens that the usurers will lose all their possessions:

"He who has money and lends it without usury, of him Scripture writes: 'He that putteth not out his money upon usury nor takes a bribe against the innocent; he that doeth these things shall never be

322 Bavli, B.M. 71a; Tosefta, B.M. VI, 6 (Zuckermann ed., p. 385); Yerushalmi B.M. V, 13 (in a different version).

323 Bavli, B.M. 75b; Tosefta, op. cit., Yerushalmi, op. cit., (in a different version).

moved' [Prov. 15:5]. Thus you learn that he who does lend on usury, his wealth dissolves." 324

In a different place:

"Our Rabbis taught ... and on account of four things is the property of householders given into the hands of the government: ... and on account of those who lend money upon usury." 325

The attitude of R. Meir, a contemporary of R. Jose and R. Simeon, was even harsher:

"He who lends upon usury, saying to the scribe: 'Come and write', and to the witnesses: 'come and sign,' has no share in Him who decreed against taking interest." 326

In another place, the Tannaim view usury as a sin

324 Bavli, B.M. 71a; Tosefta, op. cit.; Yerushalmi, op. cit.

This is an illustrative example of the difference between the approach of the Torah and Bible and that of the Tannaim; the sentence itself promises only a reward ("He that doeth these things shall never be moved") but the Tannaim stressed a converse interpretation: He who doesn't do these things - will be moved.

325 Sukkah 29a.

Taking into consideration that in the Mishnaic period usurers were among the prosperous people of the Jewish society (Cf. supra, pp. 10-11), it is possible that those remarks were brought in order to warn the lenders in a different way than that of R. Simeon's (supra, n. 323): they will lose their own properties. However, it is also possible that the Tannaim tried to raise the public opinion against the lenders by those remarks.

326 Mechilta (supra, p. 135, n. 319).

for which there is no pardon:

"Our Rabbis taught: Concerning those who hoard fruit, lend money upon usury, reduce the measures and raise prices ... it is written in Scripture: 'The Lord hath sworn by the bride of Jacob: Surely I will never forget any of their works'." 327

The punishment for usurers is not restricted to their life on earth; their rights to world-to-come are also forfeited:

"Usury is very severe, because he who lends upon usury has no share in the world to come, for it says [Ezek. 18:13]: 'He hath given forth [his money] upon usury, and hath taken increase; he shall live, he shall not live'; 'he shall live' - life on earth; 'he shall not live' - in the world to come." 328

Other means used by the Rabbis of the Mishna were the imposition of social sanctions, the forfeiting of privileges, and the attempt at arousing public opinion against the usurers:

"And these are ineligible [to be witnesses or judges]: a gambler with dice, a usurer

327 Baba - Batra 90b.

328 Mechilta de-Rabbi Simeon b. Jochai, Mishpatim (to Exodus XXII, 24).

In this interpretation the verse is read without a question mark. (Compare with Ezekiel 18:23, supra, p. 21). Indeed, this is not necessarily the right interpretation and is not the simple literal meaning of that verse. (Cf. supra, p. 135, n. 318). Also compare with R. Johanan's remarks, infra, p. 147 (interpreted by Rava).

a pigeon-trainer, and traders [in the produce] of the Sabbatical year." 329

On the same subject, we have additional evidence of the Rabbis' approach to these delinquent usurers: they include the usurers together with many other offenders known by society for being indecent people: together with robbers,³³⁰ idlers who supported themselves by games of chance,³³¹ merchants who traded in commerce during the Sabbatical year,³³² and with those who publicly promised (to give charity) but did not fulfill their promise.³³³ As the Tannaim declare, usurers are wicked and one may not undertake a cooperative venture with them:

"Do not accept the wicked as witness'; [Exodus 23:1] [this means] Do not accept a despoiler as witness, e.g. robbers and usurers." 334

³²⁹ Sanhedrin, III, 3. Cf. also supra, p. 138, n. 325. This Mishna also originated during R. Simeon's and R. Judah's period. (Cf. supra, p. 9, n. 15.

³³⁰ Sanhedrin 27a; Tosefta, Sheviit VIII, 12; Baraita, Bavli, Baba-Kama, 94b.

³³¹ Supra, n. 329..

³³² Supra, n. 329.

³³³ Sukah 29a (supra, p. 138).

³³⁴ Sanhedrin 27a.

It is possible that R. Meir's remarks (supra, p. 138) have a similar purpose (social excommunication): "[The lender on usury] has no share in Him who decreed against taking usury", which also means that he has no share with the "chosen people."

However, all the steps taken that we have seen until now are no more than attempts to prevent the lender from taking usury. In the final analysis, these steps leave the lender to do as he pleases, as there exists no practical hindrance to usury by the halacha. Apparently, therefore, the Rabbis of the Mishna decided to legally remove the right of the lender to demand usury from the borrower, despite the fact that the lender already agreed to this in a written document:

"If a bond contains usury written therein ... The Sages maintain: He may exact the principal but not the usury." 335

In contrast, R. Meir demands concrete and higher financial sanctions: not only should profit (usury) be denied the lender, but the right to retrieve the principal ought to be forfeited:

"... he (the noteholder) is penalized and can collect neither the principal nor the usury; this is R. Meir's view." 336

335 Baraita, Bavli, B.M. 72a; Tosefta B.M. V, 9 (Zuckerman ed., p. 383); Yerushalmi B.M. V, 1. (Emphasis mine).

336 Ibid. Concerning the same matter, see also the Rabbis' and R. Simeon b. Gamliel's difference of opinion (Tosefta, op. cit.). Yet, we should point out that there is one solitary text which served as a positive motivation for observing the prohibition but nevertheless, the text serves as a warning to those who transgress the prohibition (since punishment is stressed in the continuation - See supra, p. 133, n. 324. It seems that here too, in order to create a source of positive motivation the Rabbis did not refrain from giving a distorted meaning to the text in the Bible, for a reward was promised only to "he that doeth these things" - that is, who fulfills all the commandments mentioned there in the chapter, and not just the prohibition against usury. (Cf. also supra, p. 135, n. 318).

We can conclude that, as a result of the socio-economic reality, the Rabbis of the Mishna decided that it was necessary to increase the importance of the law of usury, to make the prohibition more severe, and to develop an attitude to the prohibition and to its transgressors which is strong, demanding, threatening and very strict.

3. During Talmudic Times

We have already seen that while the Tannaim viewed all the usury prohibitions as emanating from the Torah,³³⁷ the Amoraim restricted the number of cases of the prohibition which they were prepared to say emanated from the Torah, and established that most of the Tannaitic prohibitions were Rabbinic in origin.³³⁸ However, it is not in our ability to decide with any certainty whether the Amoraic approach to the prohibition was for the sake of lightening the prohibition's strength,³³⁹ because it is entirely possible that their more lenient approach was the direct result of a more developed, investigative approach within all halachic areas, not just regarding usury.³⁴⁰ The concepts "Biblical origin"

³³⁷ Supra, pp. 48-50.

³³⁸ Supra, p. 49.

³³⁹ That is one of the hypotheses which B. De-Vries brings (op. cit., p. 95).

³⁴⁰ De-Vries, op. cit., p. 94.

and "Rabbinic origin" were more developed by the Amoraim than by the Tannaim.³⁴¹

In another case we find the Amoraim acting less strict than the Tannaim when they remove several of the prohibitions placed upon those participating in an act of usury. From the simple, literal meaning of the Tannaim, we understand that all the participants in the act of usury are guilty of transgressing five "do not's": "And just as the lender and the borrower transgress five injunctions, so also do the guarantor and the witnesses and the notary."³⁴² I.e., each of them transgresses five injunctions! Similarly in this Mishna:

"The following transgress negative injunctions: the lender, the borrower, the surety, and the witnesses: the sages add, the notary too. They violate (i.e. everyone of them violates each of the following injunctions):

'Thou shalt not give thy money to him upon usury';

'Thou shalt not take from him usury nor increase';

'Thou shalt not be to him as a creditor';

'Ye shall not lay upon him usury';

'Thou shalt not put a stumbling-block before the blind, but shalt fear thy God: I am the Lord.'" ³⁴³ (Lev. 19:14).

In contrast, the Amoraim limit the number of

³⁴¹ De-Vries, op. cit., p. 94.

³⁴² Supra, p. 95, n. 207.

³⁴³ Ibid.

prohibitions:

"Abaye said: The lender infringes all [the five prohibitions]; the borrower: [infringes]: 'Thou shalt not lend upon usury to thy brother'; 'to thy brother thou shalt not lend upon usury'; 'thou shalt not put a stumbling-block before the blind'; The surety and the witnesses infringe only: 'Ye shall not lay upon him usury.'" 344

However, it seems that aside from these reductions in the degree of the prohibitions, the Amoraim viewed the prohibition and its transgressors with the same severity and strictness as had the Tannaim: they quoted the words of the Tannaim, as mentioned above, discussed them, supported them, and did not disassociate themselves from one word.³⁴⁵ Moreover, a tale brought by the Talmud teaches us that the Amoraim even accepted the punishments set by the Tannaim for those who disobeyed the prohibition against usury: "Rav Hama used to hire out a zuz for a peshita (a small coin) per day.

344

B.M. 75b. (See also Rava's remarks, B.M. 60b).

However, also in this case, one ought to be careful not to be sure that the Amoraim had the clear purpose of limiting the Tannaitic prohibitions, for it is possible that their actions were the result of a deep and detailed investigation into halacha. At any rate, what is clear is that as a result of Abaye's opinion here, there came to be a lessening of the severities of the prohibition.

345

Cf. the Baraitot which the Babylonian Amoraim quoted (supra, p. 137, text and notes 322, 323; p. 138 text and notes 324, 325, 327; p. 140 text and notes 330, 333, 334; p. 141 text and notes 335, 336). Rava even compared them to shedders of blood (infra, p. 147).

[As a result] his money evaporated,³⁴⁶ and Rashi commented:
 "[R. Hama's] money was lost, as we say further on (B.M. 71a)
 for he who takes usury loses his possessions."³⁴⁷

In another place, the Amoraim discuss and support
 the opinion of R. Simeon b. Elazar:

"But do we not see [people] who do not
 lend on usury, yet their wealth dis-
 solves?"³⁴⁸

And R. Elazar answers:

"The latter sink [into poverty] but re-
 ascend, whereas the former (lenders upon
 usury) sink but do not re-ascend."³⁴⁹

Like the Rabbis of the Mishna, Rava had his own way
 of expressing the severity of the prohibition against usury:

"Rava said: Why did the Divine Law men-
 tion the exodus from Egypt in connection
 with usury? ... The Holy One, blessed be
 He declared: 'It is I who distinguished
 in Egypt between the first born and one
 who was not a first born; even so, it is

³⁴⁶ B.M. 69b. "Instead of calling it lending, he hired
 out money, as one hires any other commodity." (Freedman in:
 Soncino edition, ad. loc.).

³⁴⁷ Rashi (ad. loc.) Rav Hama, as explained further in
 the Talmud (op. cit.) made a mistake as a result of a mis-
 understanding.

³⁴⁸ B.M. 71a.

³⁴⁹ Ibid. Cf. also R. Nahman's remark, B.M. 70b, supra,
 pp. 116-117.

I who will exact vengeance from him who ascribes his money to a Gentile and lends it to an Israelite on usury." 350

However, in one matter, the Amoraim were actually more strict in their approach than their teachers, the Tannaim. They learnt that threats alone are not sufficient. Even the practical sanctions established by the Rabbis, and even R. Meir's fines,³⁵¹ were not effective enough for them. While R. Meir and the Rabbis disagree upon placing sanctions on the lender before he takes the usury, the Amoraim are deciding upon sanctions with the usury already in the lender's hands:

"R. Eleazar said: Direct usury can be reclaimed in court, but not indirect usury. R. Johanan ruled: Even direct usury cannot be reclaimed in court." 352

³⁵⁰ B.M. 61b. See also Rava's, R. Isaac's and R. Abba's (b. Ahava) remarks which show a very severe attitude towards the transgression of the prohibition against usury (infra, p. 147).

Compare with other interpretations to this question, supra, p. 136, n. 320 and p. 134, n. 314.

³⁵¹ Supra, p. 141.

³⁵² B.M. 61b.
The Bavli accepted R. Eleazar's opinion in the halacha (see B.M. 65b; 67a).
The interpretations given in the Bavli to R. Johanan's opinion (infra, p. 147) present it as a very strict and severe approach since crimes involving capital punishment were more severe than monetary laws. On the contrary, see the interpretation given, concerning his opinion, in the Yerushalmi, and its historic factors, infra, pp. 149-151.

The Amoraim attempted to reason R. Johanan's opinion:

"R. Isaac said: What is R. Johanan's reason? The Writ saith: 'Hath given forth upon usury and hath taken increase; shall he live? He shall not live he hath done all these abominations': For it (this transgression) death is prescribed, but not return [of the money]. R. Adda b. Ahaba said: Scripture saith: 'Thou shalt not take from him usury nor increase and thou shalt fear thy God': fear is prescribed, but not return. Rava said: It follows from the essential meaning of the verse 'he shall be put to death his blood shall be upon him', thus those who lend upon usury are compared to shedders of blood: just as those who shed blood can make no restitution, so those who lend upon usury can make no restitution." 353

Rava even broadens the sanctions that the Tannaim placed on usurers, and disqualifies the borrower too, from acting as a witness.³⁵⁴ It seems that this decision is a result of the economic reality of his times. During the economic difficulties of the end of Mishnaic period³⁵⁵ the borrower would borrow out of deprivation and poverty, therefore the Tannaim probably saw no need to disqualify the borrower, since he had no choice but agreeing to pay usury.³⁵⁶ On the other hand, during the Amoraic period in Babylonia,

353 B.M. 61b.

354 Sanhedrin 25a. Cf. also the Baraita, supra, p. 116, n. 265.

355 See supra, pp. 6-7.

356 The situation during the Mishnaic and the Biblical periods, were therefore, from this point of view, identical.

there were many who borrowed for purposes of investment and profit,³⁵⁷ and therefore it was appropriate to disqualify the borrower too, even if such a decision was in contradiction to an explicit Mishna. Rava, accordingly, being a Babylonian Amora, saw a need to disqualify the borrower and did not concern himself with the Talmud's refutation of his words: "But have we not learnt: A lender [only] (malveh) on usury [is disqualified?]"³⁵⁸ when he replied: "[It means] a loan (milvah) on usury [disqualifies the parties to the transaction]"³⁵⁹ which is no more than mere evasion.³⁶⁰

The approach of the Talmudic halacha, as was developed in the Land of Israel, fits in as does its Babylonian counterpart, with the approach of the Rabbis of the Mishna: The Yerushalmi too quotes the words of R. Jose³⁶¹ and R. Simeon.³⁶² In addition, the Yerushalmi deals with the question of actual sanctions against usurers but R. Johanan's statements were interpreted differently from what appears in

³⁵⁷ See H. Kellenbenz, supra, pp. 19-20.

³⁵⁸ Mishna, Sanhedrin, III, 3.

³⁵⁹ Ibid.

³⁶⁰ It is, otherwise, difficult to accept Rava's remarks, since the Mishna lists the kinds of people (who are disqualified) and not the acts of transgression which they perform.

³⁶¹ Supra, p. 137, n. 322.

³⁶² Supra, p. 137 (The Yerushalmi's version is: "R. Simeon b. Elazar").

the Bavli:

"R. Yanai said: That is [a kind of] usury that can be reclaimed in court. A question was asked in front of R. Johanan: How is it (is it possible?) that usury could be reclaimed in court? He said to them: If it does, we won't leave anything to the wealthiest men of the Land of Israel." 363

As we shall see below, R. Johanan's opinion is apparently tied in with the socio-economic reality of his time. 364

E. L. Globus attempts to clarify R. Johanan's reasoning by using other material:

"Our Rabbis taught: 'If robbers or usurers [repent and of their own free will] are prepared to restore [the misappropriated articles], it is not right to accept [them] from them, and he who does accept [them] from them does not obtain the approval of the Sages. R. Johanan said: 'It was in the days of Rabbi [Judah the Prince] that this teaching was enunciated, as taught: It once happened with a certain man who was desirous of making restitution, that his wife said to him: Heica (good for nothing!) [if you] are going to make restitution, even the girdle [you are wearing] would not remain yours, and he thus refrained altogether from making repentance. It was at that time that it was declared that if robbers or usurers are prepared to make restitution it is not right to accept from them' ..." 365

363 Yerushalmi, B.M. V, 1.

364 Cf. supra, pp. 11-12.

365 Josefta, Sheviit VIII, 12; Bavli, Baba Kama, 94b. (Emphasis mine). Compare with another Baraita which was probably established before the directive was enacted by Rabbi. (B.M. 62a).

Globus hypothesizes:

"Perhaps there is a connection between the Mishna of Rabbi Judah and R. Johanan's viewpoint in regard to returning usury. Perhaps R. Johanan ruled out the returning of the usury in order to pave the way for those desiring to repent." 366

In contrast, Alon explains R. Johanan's words in economic terms:

"The rich people of the Land acquired a large part of their wealth by taking usury, and the implementation of the law (requiring the returning of the usury) was intended to undermine the economic structure of society." 367

Either way, R. Johanan's opinion is tied to the economic or social reality of his time.

It is worth noting the fact that the very approach which asks for the returning of usury was first brought forth in the Land of Israel and the participants to this argument were the Rabbis of the Land, exclusively: R. Eliezer, R. Johanan, and R. Yanai. The halacha was then transmitted to Babylonia. This fact serves as evidence that life under the conditions and circumstances of the Land of Israel made the Rabbis feel that it was necessary to strengthen the

³⁶⁶ E. L. Globus (in: Ha-Mishpat, 2nd year, [1927]) p. 40, n. 3.

³⁶⁷ G. Alon, Toldot., Vol. II, p. 156.

preventative steps against usury, and to take a stronger and more practical stand against those who transgress the halacha, thereby encumbering the economic life of the community...

VI SUMMARY

The prohibition against usury had a varied development during the different times and in the different places covered in this paper.

The Tannaim, the Rabbis of the Mishna, incomparably broadened the attitudes and halachot connected with the prohibition against usury. The Amoraim, the Rabbis of the Talmud, were divided in their approach: The Rabbis in the Land of Israel, living under socio-economic conditions similar to those of Mishnaic times, almost consistently followed the approach of their teachers, the Tannaim. In contrast, the Rabbis in Babylonia, living under different socio-economic conditions, restricted the prohibition within its various realms quite noticeably.

The main factor causing the Rabbis of the Mishna to broaden the prohibition was, in the final analysis, the economic factor. The economic distress of that period increased the cases of violations of the prohibition, and the Rabbis saw the need to protect the interests of the community and to prevent these violations through increased strictness, by enlarging the definition of usury, and by including more areas within the scope of the prohibition's power.

A situation was created whereby the Rabbis in Babylonia could not bear up under the pressures of these

restrictions which were everywhere in the commercial and economic world. In order to prevent a partial paralysis of the economy, they found several loopholes within the halacha, but only in such cases where they saw an urgent need for such loopholes.

Only in one case, the taking of usury from Gentiles, did the Babylonian Rabbis deviate from their pattern, but this was because of a different reason connected with their role of being national leaders.

In another case, on the question of vis-a-vis whom does the prohibition fall, there was no broadening on the part of the Tannaim since the prohibition was already sufficiently broad as it appeared in its first source - the Torah.

From a broad perspective, we have built for us throughout this paper, an image that the concept: "He shall live by them" (the Halachot) - but he shall not die because of them³⁶⁸ and the saying: "The Torah has consideration for the money of Israel,"³⁶⁹ comprise a dynamic and dominant factor in the development of the prohibition against usury.

³⁶⁸ Yoma, 85b.

³⁶⁹ Yoma, 39a; Rosh ha-Shanah, 27a.

GLOSSARY*

- Amora:** (Amoraim pl.). Title given to the Jewish scholars in the Land of Israel and Babylon¹ in the third to sixth centuries. The Amoraim were responsible for the Talmud.
- B.M.:** Tractate Baba-Metzia.
- Baraita:** (Baraitot pl.). A Tannaitic statement which is not found in the Mishna.
- Bavli:** Babylonian: abbreviation for the Babylonian Talmud.
- Halacha:** (Halachot pl.). An accepted decision in Rabbinical law. It also refers to those parts of the Talmud concerned with legal matters.
- Hessed:** An act of kindness (grace); sometimes: charity.
- Midrash:** (Midrashim pl.). A method of interpreting Scripture to elucidate legal points (Midrash halacha) or to bring out morals through stories or homiletics (Midrash Aggadah).
- Mishna:** (Mishnayot pl.). A Tannaitic codification of Jewish Oral Law; also a subdivision of tractates of the Mishna.

* (a) The glossary is mostly taken from that of Encyclopedia Judaica.

(b) If a term has more than one meaning or interpretation, this glossary will bring only that which is relevant to our dissertation.

- Talmud: (Talmudim pl.). "Teaching"; compendium of discussions on the Mishna by generations of Rabbinical scholars and jurists in many academies over a period of several centuries (third to sixth centuries); code of oral study and verbal communication.
- Tanna: (Tannaim pl.). Rabbinical teacher of the Mishnaic period (first to third centuries).
- Torah: The Pentateuch (written law).
- Tosefta: A collection of the teachings and traditions of the Tannaim. This collection is clearly related to the Mishna.
- Tzedakah: Righteousness, religious act or charity.
- Yerushalmi: Of Jerusalem; abbreviation for the Jerusalem Talmud.

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