

Can a Heter Iska Have The Power of a Loan Document?

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Question: We know that once a borrower repays a loan, he should take the contract so that he cannot be charged again. What if he got back the promissory note on the loan, but the lender still has the *heter iska*? Could that be used against the borrower?

Answer: This question brings to light some important things one needs to know about loan contracts and some common mistakes he should try to avoid.

When one goes to a Dayan to draft a promissory note, it is very important to inform the Dayan of any other documents that may exist. If he fails to mention that other documents exist, it could lead to major problems and confusion. For example, it could lead to a situation like the one described in the question, where the borrower takes possession of the promissory note, but a *heter iska* still exists that could be used to his detriment. If the Dayan was informed that a separate document exists as a *heter iska* for this loan, he would formulate the promissory note in such a way as to make mention of that document and reference it in a way that ensures that it won't be misused.

Furthermore, when a *heter iska* is being drafted, it is important to let the Dayan know if no other promissory note exists and this will be the only documentation of the loan. A *heter iska* is not normally used to document a loan, as it usually only serves as a means to allow "interest" to be taken in a halachically permitted manner. If a lender wants to use the *heter iska* as the proof of the loan, it is important for the Dayan to know this, in order to ensure that it is drafted properly.

Some businessmen are often very rushed for time, and make huge transactions with only a *heter iska*, assuming it will be enough proof to collect. This could cause big problems later on, as a *heter iska* usually does not have *ne'emanus* written in it. This would in turn give the borrower the ability to claim he paid the loan and render the document worthless. For this and other reasons, the importance of informing the Dayan if the *heter iska* is going to be used as the sole documentation of the loan cannot be stressed enough, so that he can write it up in an effective manner.