

Ribbis and the Heter Iska

HETER ISKA I

The mitzvah to lend is achieved when one lends without charging interest. If one's business lends with interest he must ensure to structure a valid *heter iska*. Assuming the *heter iska* was executed in a proper fashion, he does not transgress an *issur* of ribbis. However, the Chofetz Chaim gives two reasons why it is preferable to lend without using the *heter iska* to permit charging interest:

Many don't fully comprehend the intricacies of the *heter iska*. The *heter* is not merely a prayer. It is a intricate deal structure. Merely signing the *heter* is not sufficient. One must fully understand the entire concept in order for it to be effective.

When one charges interest he is giving up on the mitzvos involved with lending and minimizes the perpetuation of *chesed* that the *Ribbono Shel Olam* commands us to infuse into this world.

Most *halachic* authorities maintain that lending with a properly executed *heter iska* is clearly permissible, even *lechatchilah*, as a first choice.

The concept of an *iska* agreement is to establish the interest payments as "investment" payments where profits may be taken, as opposed to simple interest payments. The difference between a loan and an investment lies in the responsibility for the monies in case of loss. In a loan, the borrower is responsible to repay the money in the event of a loss, while a manager of an investment would be absolved from responsibility.

Additionally, an investment, by its halachic definition, involves an element of risk and does not guarantee any profits. Therefore, if the party that advances the funds would be willing to be responsible in cases of loss, he would then be able to collect from profits generated by the loan funds.

Under a *heter iska* agreement, the lender would be able to receive profits from his investment, but would be responsible for loss as well. In the typical event where the lender would not be willing to undertake such a responsibility, he may stipulate that the managing partner must verify through two witnesses as to whether or not there were indeed losses. He then stipulates that all claims regarding profit amounts must be verified under oath in *beis din*. However, the investor offers to waive his right to require an oath from the managing partner if he pays a presumed profit (i.e., 5 percent of the entire money) regardless of the investment's success.

Since Jews today are very reluctant to swear, the potential risk to the investing partner is negligible and he would therefore be willing to accept such an agreement. On the other hand, since the managing partner has an option to swear and not pay the presumed profits,

these profits are not considered guaranteed. This contract allows the transaction to be considered an investment, while the investor is comfortable that his money won't be lost.