

What Was the Original Heter Iska?

Rav Yosef Dovid Josilowsky, Dayan at the Bais HaVaad

Case: Reuven is giving a hard money loan to a Jewish lender and knows that he needs a *heter iska*. He found a *shtar* online that says, “This investment is subject to the *heter iska* outlined by Rav Mendel, as detailed in Sefer Nachalas Shiva, Chapter 40.”

Question: Can he use this document as his *heter iska*?

Answer: It is very important for someone using a *heter iska* to understand what the *heter* does and how it works in order to be able to know if it is applicable to his particular circumstances.

Rav Mendel’s version of *heter iska* was used for many years. The way it worked was that the investor gave the money as a full investment until it reached a certain amount of profit, at which point it reverted into being a loan. For example, the investor gives his partner \$100, with the agreement that the partner works for him until the money invested reaches a value of \$200. At that point, it would convert to a loan that the partner has to pay back in full, with no more interest being charged on the \$200.

The Vilna Gaon and others had a problem with this framework, which is why it is not widely used today. They note that after the investment reaches \$200, the borrower is still working for the business. If he still has to repay the money, which is now a loan, it turns out that he is working for free. In many cases, this may be a problem of *ribbis*.

Today, one common practice is for the *heter iska* to be written in a way that all the money is given completely in the form of an investment, and it remains an investment without ever reverting to being a loan. In order to lessen the investor’s liability, a clause that requires the partner to swear about any losses is put into the *heter iska*.

Since every case is different and there can be many variables, it is important to make sure that the *heter iska* is written correctly for that particular transaction and all sides understand how the *heter* is arranged.