

Heter Iska-Abridged Halachos

Learn these before making a *heter iska* (joint venture)

Since prohibitions of ribbis (interest payments that are forbidden by Jewish law) are extremely common, it is appropriate for everyone to sign a heter iska contract (after one knows the halachos, which are explained below). Also, in every contract or agreement, one should write that the agreement is bound by the terms of the Bris Pinchas heter iska contract. In this way, each contract will be considered as a separate heter iska agreement, which is valid according to all opinions.

I. The wording of the heter iska contract

1. The wording of this Bris Pinchas heter iska contract resolves all problems for any form of prohibited ribbis that may occur for men and women in everyday life. This includes interest or service charges on loans, buying merchandise and paying a lower price up-front, or paying a higher price in installments, buying and selling real estate, paying salaries and wages, cashing a check for profit, lending out foreign currency and collecting payment at a higher exchange rate, and many other possibilities.

II. Understanding the heter iska

1. If one person owes another person money or merchandise, whether through a loan or any form of business transaction, and repays more than the amount received—whether in the form of money, merchandise, or services, and whether before, during, or after the time of repayment—he is likely to transgress the serious prohibition of ribbis. However, if a person receives a deposit from another person (which means the investor remains responsible for the deposit), then it is permitted to return more than the amount received. The heter iska, in essence, changes the transaction between two parties from a loan to a deposit.

2. The heter iska sets up an agreement between two parties as follows: Part of the money is not given as a loan, but rather as an investment with which the recipient acts only as an agent. Therefore, any profits from this part of the money rightfully belong to the investor. Also, if this money is lost, the investor loses his investment. Also, if there are no profits, the investor has no claim against the recipient.

3. To secure the investment—the principal and the profits—the parties involved agree that the recipient of the money will not be believed if he claims the money was lost, unless he proves so by suitable and trustworthy witnesses. Also, the recipient will not be believed if he claims there were no profits unless he attests to this fact by solemn oath. The parties involved also agree that if the recipient pays a certain agreed amount to the investor, he will be exempt from making an oath and from proving that there were no other profits. Furthermore, any profits in excess of this amount will belong to the recipient.

4. To summarize: The investor (lender) receives no profits whatsoever on the portion of the money that is considered a loan; he receives profits only from the portion of the money which is considered as his own investment and therefore remains rightfully his. As long as the recipient (borrower) refuses to make an oath that there were no profits, the investor will receive profits—even if there were none. As long as the recipient fails to bring witnesses that the principal investment was lost, he will repay the amount in full—even if it truly was lost.

5. It is imperative that the investor (lender) and recipient (borrower or business partner) thoroughly understand the principles mentioned above.

III. Instructions for using the attached heter iska contract

1. Print your name (and, if applicable, the name of your business) at the top of the document. At the bottom, write your signature and the date of signature. Witnesses are not necessary. It is advisable to hang this document on the wall of your home, office, or store in a place where everyone can easily see it.

2. It is advisable for one's wife to sign the heter iska contract. Regarding a business, it is advisable that all business partners should sign.

3. In addition, regarding every transaction a person makes (whether a loan, sale, purchase, rental, sales agency, wages, salaries, or any other debts or fees between oneself and anyone else) one should write on the contract (or receipt, bill of sale, etc.), "Bound by the terms of the Bris Pinchas heter iska."

4. Regarding an oral business agreement, it is sufficient to say, "This transaction is bound by the terms of the Bris Pinchas heter iska."

5. One may also include the entire wording of the Bris Pinchas heter iska document as part of any other contract, and both parties can sign upon it.

IV. If the recipient does not use the money for business purposes

1. The investor is permitted to receive profits because he invests his money, as a deposit, with the recipient. Therefore, the recipient

must have some slight business involvement that could generate profits. However, if the recipient does not use the actual deposit money for business, but instead uses it for his own needs (or to pay his debts), the investor may still receive profits. This is permitted because, in such a case, the heter iska stipulates that the recipient gives a share of his other property to the investor. Then, the investor receives profits from this other property.

2. In such a case when the recipient uses the money for his own needs, the recipient must own some property that could possibly generate profits. For example, real estate such as land or a home (which, at least part, is not mortgaged), investments in stocks, a savings account, or movables such as jewelry which could be sold, or a car which could be rented out.
3. Two points must be verified: (1) This property owned by the recipient is equal in value to the entire amount received from the investor. (2) It is reasonable to expect that profits generated by this property—either from renting it out, using it, or from an increase in its value—could amount to the profits which the recipient must pay to the investor.
4. If the recipient does not intend to use the money for business purposes, and if he also does not own property that fulfills the conditions mentioned above regarding its value or its likelihood to generate profits (or the property is fully mortgaged), one should be stringent and not rely on the heter iska.
5. Regarding public institutions that rely on the heter iska to take loans for the sake of the institution. The managers of such institutions must verify that the institution owns property that fulfills the conditions mentioned above.

V. Various details regarding how to make a heter iska

1. If someone already received ribbis payments, a heter iska cannot take effect retroactively. Under most circumstances, the lender must return all the money which was prohibited for him to receive. However, the borrower may agree to say, "I consider it as if you returned the money to me," and then the lender may keep it. (However, it is forbidden at the outset to rely on this declaration because of the serious prohibitions involved, and sometimes there is a Torah prohibition involved for which this declaration does not help.)
2. Money that was already given as a loan may be transformed into an iska, provided that

the borrower owns property which fulfills the conditions mentioned above. This can be accomplished through a kinyan suder (i.e., the borrower lifts up a handkerchief or any other item belonging to the lender or his representative and, through this, the lender acquires a share in the borrower's property).

3. A kinyan suder also helps for an agreement that was already made and did not involve an exchange of money (or item of monetary value). For example: You agreed to build a small succah for your friend on condition that, afterwards, he will build a large succah for you. If you now want to use the heter iska to avoid any possibility of ribbis, then your friend must transfer ownership of some of his property to you through a kinyan suder.
4. Regarding a company or an organization, the official company charter should state that all transactions are bound by the heter iska contract (attached).
5. One should be careful not to make other agreements that undermine the heter iska.

VI. With whom one should not make a heter iska

1. One should be careful not to make a heter iska with someone whose entire business is forbidden by the Torah, such as lending money on interest without a heter iska, or running a business on Shabbos, etc. Since part of the money is not a loan but rather a deposit, the investor is a full partner in whatever the recipient does with that money.
2. The details for making a heter iska with a minor, or with an adult who is financially dependent on his father, are complicated. Therefore, in such a case, one should consult a local Orthodox Rabbi.

VII. The mitzvah to lend money

1. The Torah commands us to lend money, free of interest and any other fees, to whoever needs. Therefore, even though it is perfectly acceptable to use the heter iska, and even if one does so to help a friend start a business (which is a greater mitzvah than giving charity or loans), one has not yet fulfilled the mitzvah of lending money; one is still obligated to lend money, free of charge, to whoever needs. Furthermore, if a person only lends money through the heter iska, if he never gives a loan free of charge, then he neglects to fulfill a positive mitzvah and also transgresses a negative mitzvah.

(This heter iska contract, and summary of halachos, are taken from the sefer "Ribbis, Halacha L'maisah, Bris Pinchas)