

A summary of

RIBBIS

AND REAL ESTATE COMMON FINANCING SHAILOS

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BASIC PRINCIPLES OF RIBBIS

WITH REGARD TO INSTITUTIONS AND INVESTMENTS

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The laws of Ribbis are very complex, and their application to modern-day scenarios are dependent on the specific facts of any given transaction. The following is a brief overview of some of the basic principles of Ribbis that are relevant to typical investing scenarios. This overview is an introduction only, and should not be used to derive any definitive conclusions.

LOAN VS. INVESTMENT - The principles of Ribbis are very different if the transaction is halachically characterized a loan as opposed to an investment. To determine whether a transaction is a loan, one has to determine whether there has been a transfer of ownership of the funds. In a loan, the ownership of monies advanced is transferred to the borrower. The lender may have a security interest in the assets purchased with the loan, but the assets themselves are the property of the buyer. As such, any earnings generated by these funds are the borrower's, and if paid to the lender, are *Ribbis*.

In contrast, the assets of an investment continue to be owned by the investor. While the recipient manages these assets, it is on behalf of the Investor. As such, there are no prohibitions of *Ribbis* with respect to any profits generated.

GUARANTEES - Monies whose returns are guaranteed by the recipient are considered a loan¹. Although the monies are being invested, the guarantee creates a halachic loan. Even if the guarantee is only for the return of the principal and there is no guarantee on any interest payments, it is subject to the laws of *Ribbis*².

¹Yo'd 177/1, 176/1

²See Ta'z and Chavas Da'as 167/1

Ribbis applies regardless of the reason for the guarantee. Even if it is done for charitable reasons³ or in consideration for other investments⁴, it is subject to the laws of *ribbis*.

CURRENCIES, COMMODITIES

There is a basic halachic difference between lending currencies and lending commodities.

Ribbis on currencies applies to the *amount* of money repaid on the loan, regardless of its value. For example, one who repays a \$100,000 loan ten years later with \$120,000 will violate *ribbis* even if the purchasing power of the dollar has decreased⁵.

In contrast, when dealing with commodities, *ribbis* may apply if either a greater amount is repaid, or a greater value is repaid⁶. Under certain circumstances, one may not loan commodities, i.e. stocks, for repayment of equal amount at a later date. If the commodity appreciates, the additional value is considered *ribbis*⁷.

HETER ISKA- The purpose of the *Heter Iska* is to assure that the monies remain an investment with a minimal risk to the investor. A *Heter Iska* cannot guarantee the return of either the principal or profits of the investment⁸.

There are different *Heter Iska* forms, each of which are designed for the specific needs of a particular industry or transaction. The parties must comprehend the fundamentals of the arrangement, and should sign the document before advancing the funds⁹.

³ See Yo"d 160/14, and, Gilyon Me'harsh'a and see Birkei Yosef 161/14, Shulchan Ha'rav 59

⁴ Rem'a 160/9, see Divrei Sofrim 59

⁵ Yo"d 160/26

⁶ Yo"d 162/1

⁷ Yo"d 162/1

⁸ See Contemporary Halakhic Problems Volume II, chapter XIX an excellent review on this subject by Rabbi J.D. Bleich.

⁹ See Bris Yehuda 40/35

It is advisable to consult halachic advice when executing a *Heter Iska*. In particular, one should ensure that conflicting legal documents should not override the *Heter Iska*.

CORPORATIONS - According to most opinions, Halachah does not acknowledge the status of a legal entity independent of a real person¹⁰. As such, the shareholders are the *halachic* owners of a company or LLC. Therefore, the laws of Ribbis apply if the shareholders are Jewish. Other methods, such as executing a *heter iska*, are necessary for such corporations.

However, it is the opinion of the *Igros Moshe*¹¹ that the prohibition of *Ribbis* will not apply if the *borrower* is a corporation or LLC, **provided** that there is no one personally guaranteeing the loan. Even according to this opinion, a corporation cannot extend a loan with interest to an individual.

Owning a minimal share of a public traded company that does not give the owner any influence on the management of the company is not subject to the laws of *Ribbis*¹².

10 See Me'hare Halevi 4/54,, Meharsham 1/20, Har Zvi Yo"d 126, Bris Yehuda 7/24

11 Yo"d 2/62 and see Meharshag 1/3, Bris Yehuda 7/24,25

12 See Igros Moshe EVHE 7