A controversial proposal, which in the author's opinion would resolve a major challenge to Halakhic observance, is submitted for consideration by Rabbinic authorities. Discussions of Halakhic problems by Rabbi Silver have previously appeared in these pages.

THE PROHIBITION AGAINST INTEREST TODAY

The Pentateuch clearly prohibits one Jew from charging another Jew interest. This prohibition is explicitly stated in three of the five books. In Exodus¹ we read: "If thou lend money to any of my people . . . neither shall ye lay upon him interest." This is repeated and slightly amplified in Leviticus:² "Take no interest of him or increase . . . Thou shalt not give him money upon interest, nor give him thy victuals for increase." And in Deuteronomy,³ the prohibition against charging interest is widened and made all inclusive: "Thou shalt not lend upon interest to thy brother, interest of money, interest of victuals, interest of anything that is lent upon interest."

The Prophets and Hagiographa (Ketuvim) were no less insistent in restraining the impulse to lend at interest. Ezekiel⁴ exclaims:

... (he that) hath given forth upon interest and hath taken increase, shall he then live ...

The Psalms⁵ mention among the righteous "he that putteth not out his money for interest," and he that does so "shall not be moved to eternity." Proverbs⁶ enumerates among the evil ones "he that augmenteth his substance by interest and increase."

Our sages of the Mishnah and Talmud instead of circumventing or easing these restrictions in order to facilitate commerce and industry, strengthened the prohibition. Not only did they widen the law, but closed each and every existing loophole. They
prohibited not only the lender, but the debtor, the guarantor and the witnesses. Moreover, the prohibition was extended from an ordinary loan of four dinars for five, or one bushel of wheat for two to anything that remotely smacked of interest. For example, the borrower may not let the lender live on his premises for a reduced rental nor even greet him if it was not his usual practice to do so. The borrower was not permitted to give the lender any rights or privileges monetary or otherwise, in compensation for money or goods being left for any length of time in the hands of the borrower.

Although the charging of interest was strongly condemned by our sacred literature, conditions changed and it became impossible to comply with the prohibition. From about the 11th century onwards, the Tosafists and later sages instituted changes. With capitalism and the monetary base expanding and banking becoming prevalent throughout the world, our sages had to find new solutions and new forms of legislation to permit charging of interest. As a result the shetar iska, later known as hetter iska, came into being. Freely translated it grants a Jew permission to charge interest because the lender is considered a partner of the business for which the borrower uses the money.

It was recognized by the Talmudic sages that business partnerships are formed where one person contributes money and the other his labor, skill and experience on condition they divide the profits and losses. Technically the laws involving charging of interest were involved. The Mishnah ruled:

One may not say to a storekeeper, here are fruits, you sell them and we will split the profit equally.

The reason given for prohibiting this partnership is that it is a form of charging interest. As Rashi explains (following the reasoning in Baba Metzia 104b), the fruits given to the storekeeper are really two halves: one half is a loan for which the storekeeper is fully liable and the other half is a pikkadon (a deposit). For using that half which is the loan, the storekeeper
is working and selling the *pikkadon* part, which is still owned by the lender. Thus in effect the storekeeper is paying interest (his labor) on the half which is the *pikkadon*.

The Mishnah, however, permits this partnership provided the lender pays the storekeeper for his time. To further facilitate such partnerships, the Talmud ruled that a token payment is adequate compensation for the storekeeper’s time.

Another business venture the Talmud permitted notwithstanding the technical violation of the laws of interest was *Tarsha deRav Hama*. R. Hama sold goods at the higher price that was charged in a different location but the buyer did not pay for them until he had sold the goods. This transaction was considered a type of interest, since R. Hama received the higher price only because he had to wait for his money. It was permitted, however, because R. Hama incurred the risk of loss until the merchandise was sold, i.e., if the wares were stolen, the loss would have been R. Hama’s. A similar case is also recorded in *Baba Metzia* 72b. Again, in both cases the buyer, who is in effect the storekeeper or seller of the wares, must receive some token payment for his time.

On the basis of the above mentioned cases, the Maharam of Rothenberg developed a new method to overcome the obligations against charging of interest. Accordingly, he wrote that a Jew was allowed to lend a fellow Jew money for use in a business venture. When the original sum, let us say one thousand dollars had doubled, the entire two thousand dollars then became a loan that the borrower owed the lender. Henceforth all profit belonged to the borrower. However, until the two thousand dollar figure was reached the responsibility for the money was the lender’s, i.e., should the money be lost or stolen the borrower owed nothing, and the lender lost all. In addition the lender had to pay the borrower a nominal amount for his labor until the two thousand figure was reached.

It is not known whether the Maharam, any of his contemporaries or any of the *Rishonim* ever incorporated these ideas into a formal *shetar* (note of indebtedness). It was probably used on very rare occasions, for the usual method of legalizing charging of interest during this period was via a pawn and a non-Jewish
About one hundred years later the Terumat ha-Deshen (15th century) was asked how one can legally charge another Jew interest and safeguard the principal? Though not citing the above mentioned Maharam, his answer was similar. However, he insured the capital by inserting a clause that only the Rabbi and the Hazan can testify to a loss. Since they cannot know about this transaction and so are unable to testify, the capital was insured. But at the end of this responsum he writes that he is not sure whether all this is permitted and advises using a non-Jewish intermediary.

As economic and commercial interests became more complicated, pawns and non-Jewish intermediaries could not serve the purpose for legalizing interest between fellow Jews. From the end of the 16th century until today, the shetar iska has served this function. The basic form for this shetar was outlined by the Maharam of Rothenberg. But unresolved was the problem of losses. All was well if the borrower made a profit and paid back the principal and interest; but no provisions were made in the event the business showed no profit or even incurred a loss.

The Shene Luchot ha-Berit insisted that the shetar iska has the appearance of a true business venture: the lender risks a loss as well as derives a gain. He permits the borrower to be free of paying interest and even of repaying the capital by swearing that there was no profit or even a loss in the business venture that this money was used for. The Levush agrees with the Terumat ha-Deshen that as far as the principal is concerned, the lender may insist on specific witnesses to testify to a loss and this being virtually impossible, be assured of his capital. But as for the profit, the borrower may swear that there was no profit and he would thus be free of making any interest payment. Rabbi Joshua Falk, a leading scholar of the period, ruled that an oath was sufficient to release the borrower from paying any interest if there was no profit. However, to protect the capital, the lender could insert a clause in the shetar iska whereby the borrower
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would be restricted to a specific business or method. For example, he could only engage in the business of precious stones, or, if he was a moneylender or banker, he could lend only on secure collateral such as gold or silver. If the borrower violates these conditions he is liable for any loss sustained.\textsuperscript{22} He also proposed that the lender, in order to preserve his capital, may pay the borrower a small sum and have the borrower assume full responsibility for any loss.\textsuperscript{23}

Most of our sages dismissed the last suggestion of Rabbi Falk and adopted a position between the \textit{Terumat ha-Deshen} and the \textit{Shene Luchot ha-Berit}. Thus where there was no profit the borrower was permitted to extricate himself from paying interest by an oath. In case of loss of capital the testimony of any two valid witnesses was necessary to release the borrower of repayment of capital.\textsuperscript{24} This was printed as a model \textit{shetar} in \textit{Nachalat Shivah}, by Samuel ben David Moses ha-Levi.

The \textit{Chokmat Adam} offers two forms of a \textit{shetar iska}. One is similar to the one in \textit{Nachalat Shivah}. In a second he adopts the form of Rabbi Falk's first quoted idea, i.e., that the lender may restrict the business activities of the borrower and so ensure his capital.\textsuperscript{25} The \textit{Kitzur Shulhan Arukh}\textsuperscript{26} follows the \textit{Nachalat Shivah} and that is the form used today.

In the \textit{Kitzur Shulhan Arukh}\textsuperscript{27} we find the first use of the term \textit{hetter iska} in place of, or as a substitute for, the more technical \textit{shetar iska}. Every sage who discusses the subject, uses the term \textit{hetter} (legal permission) in connection with \textit{shetar iska}. But before the \textit{Kitzur Shulhan Arukh}, the term \textit{hetter iska}, which so aptly describes this instrument, was never used.

With the establishment of the State of Israel a new host of halakhic questions of an economic nature arose. The most important involve the halakhic status of interest (\textit{ribbit}) in connection with banking and whether buying or selling Israeli bonds violate any of the laws of interest. The Chief Rabbinate of Israel uses the \textit{hetter iska} to permit both activities.

All banks in Israel operate under a special \textit{hetter iska} issued
by the Chief Rabbinate. It is a signed document where the bank agrees not to operate, i.e., accept deposits or lend money, except under the laws of hetter iska. The bank agrees, following the usual form of an hetter iska, that all deposits and loans are to be viewed as a business venture whereby the bank is a fifty percent partner as to losses and gains. Instead of an oath as to the amount of these losses and gains, however, the borrower may give a stipulated amount of interest. This hetter iska is not incorporated into any loan agreement made with individual borrowers, but is displayed on the bank premises.

As to selling State of Israel bonds, we have a responsum of the Sephardic Chief Rabbi Ben Zion Uziel. At first Rabbi Uziel stated that buying Israeli bonds was not a matter of a loan but involved a true business partnership between the State of Israel and the bond purchasers. The State donates the land and some money and the bond purchasers provide for immigrants to settle and earn a living. Since these bonds provide the capital for capital investments, there is a return. The bond holders agree to accept certain stipulated percentages and the State of Israel agrees to insure these percentages and the capital. In addition, the bonds rise and fall in value in the market place. At the end of the responsum, however, Rabbi Uziel changes course and states that Israeli bonds are permitted to provide interest and are not in violation of the law because the Minister of Religion arranged that they be issued under a hetter iska, as is done for all banking in the country. He concludes that one should not contest the validity of this ruling and it is a mitzvah to buy Israeli bonds in order to fulfill the mitzvah of “settlement of the land.”

The shetar iska or hetter iska were not created to cope with modern economics, banking, home and commercial mortgages, installment buying, commercial paper, bonds, etc. Their use for these purposes raise many halakhic problems. According to some authorities loans made under hetter iska should not be for personal use, but only for business purposes. It is also dubious whether a hetter iska is valid just by one party agreeing to it (in this case the bank) and displaying it publicly. It should be a formal document drawn up between every depositor and borrower for each and every transaction. Lastly, this blanket hetter
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iska cannot be valid as the bank under no circumstances would allow the borrower to be free of interest payment and even of repayment of capital by an oath of the borrower that the business venture failed.

For the last century our sages have attempted to reconcile Halakhah and modern business. The Shoel u-Meshib was asked by Rabbi Ganzfried, author of the Kitzur Shulhan Arukh, whether savings banks or loan societies comprising both Jewish and non-Jewish employees and members are subject to the laws prohibiting charging of interest? The Shoel u-Meshib permitted these businesses for two reasons. Firstly, that Rashi allows charging of interest via an agent and secondly, because of the concept of bererah (literally choice, legally the selection retrospectively of one object rather than the other).

Rashi ruled, and so decided the Rema, that one may tell a fellow Jew to borrow money for him from a third Jew on interest, as the Torah prohibited only interest that passes directly from borrower to lender. And the Shoel u-Meshib continues, if one agrees with the many who dispute this ruling, the concept of bererah would permit the activities of a mutual savings bank; for through this concept we maintain that money lent out at interest to Jews, really belongs to the non-Jewish members.

After receiving this responsum Rabbi Ganzfried nevertheless decided that borrowing from such a savings bank is prohibited. And agreement with the Shoel u-Meshib would not resolve the question in Israel, for there everyone involved is Jewish.

The Maharam Shik was also asked the law concerning savings banks. He quotes the Shoel u-Meshib and refutes his reasoning. Even according to the sages who agree with Rashi, says the Maharam Shik, all admit that where the lender appoints the intermediary or where there is a note from the borrower to the lender, the hetter of Rashi does not apply. As for bererah, it cannot apply to loan societies as everyone wants to be part of this partnership. Therefore every penny is owned proportionately by every member including all the Jewish ones, and the laws prohibiting charg-
The Maharam attempts, in a lengthy responsum, to find a different *hetter* for this practice which was now widespread throughout the Jewish communities of Eastern Europe. He concludes that since the original money deposited by the partners in the savings bank or loan society has long been spent the money there now is therefore mortgaged to the partners. Consequently each and every penny of this bank is mortgaged to the non-Jews as well as to the Jewish partners. Under these circumstances charging interest is permitted. If, however, the entire group is Jewish, the Maharam Shik ruled that the laws prohibiting interest apply. Maharam's ruling would not resolve the questions facing Israel. Recently, Israeli Rabbis have written on the problem of *ribbit* and the modern economy, banking, bonds, installment buying, etc. Eschewing both the *hetter iska* and the ideas of the *Shoel u-Meshib* and Maharam Shik, Rabbi Lemberger strikes out in a different and original direction. He cites the *Talmud Gittin* 30a:

> Our Rabbis have thought: “If a man lends money to a priest or a Levite or a poor man, on condition that he may recoup himself from their dues, he may do so in the presumption that they are still alive. He may stipulate with them to get the benefit of a lower market price (i.e., if at the time when he sets aside the dues the price is lower than when he lent the money, he may give himself the benefit of the drop by appropriating a larger amount of produce) and this is not reckoned as taking interest . . .”

> “This is not reckoned as interest,” why so (asks the Talmud)? Since when he has nothing he does not give, when he has something (and gives less to the priest) this is not counted as interest.

Rashi, commenting on this passage, writes that if his fields are destroyed the lender has no one from whom to demand payment. On this basis Rabbi Lemberger claims where a group or company is organized so that one can demand payment only from the assets of the group and not from an individual member, one may legally borrow from such a group on interest. This case is based on the same principle as the case in the above Talmudic passage. Thus the laws of *ribbit* would not apply to banks and Israeli bonds.
since in the former the owners are not personally liable, and in
the latter, no one person is liable, only the assets of the State are
available.

Rabbi Lemberger, however, is bothered by the following case
cited by the Shulhan Arukh where one person lends another
twenty gold pieces and uses a shipload of goods as collateral. The
parties agree that if the ship comes in the lender will receive
twenty-four gold pieces. But if the ship sinks, the lender loses his
twenty gold pieces. The Shulhan Arukh nonetheless ruled it as
a case of ribbit although on its face the aspects are similar to
banks since the shipload of goods is the entire collateral as is the
bank's assets. Rabbi Lemberger distinguished the cases on the
basis of personal involvement which was not present in the example
cited in Talmud Gittin 30a. Everything stands and falls only on
the wheat. However, in the case of the boat, when the boat arrives
the borrower becomes personally liable for the twenty-four gold
pieces. The personal involvement precludes charging of interest.
Transactions involving Israeli banks and bonds do not have per-
sonal involvement.

There are some serious reservations to this thesis. Furthermore
Rabbi Lemberger's novel point would not resolve many of the
problems of modern commerce. Firstly, all interest transactions
between companies, partnerships, individuals and any other non-
corporate entities would still be prohibited. Secondly, any install-
ment purchases, as Rabbi Lemberger among others admits,
would be prohibited.

Rabbi Lemberger's central thesis was attacked and completely
rejected by Rabbi Wasserman who claims, with justification,
that there is definitely no corporate principle in Jewish law. This
principle is completely new and unknown to the sages of the Tal-
mud. The owners of a bank, under Jewish law, are just partners
with specific terms of partnership and so have a definite link and
moral responsibility for all loan activities. He cites cases from
the Talmud where the entire loan is secured only by specific col-
lateral and the Halakhah prohibiting ribbit still applies. As for
the case in Gittin 30a cited by Rabbi Lemberger, Rabbi Wass-
erman writes that it is only a sale of futures with an equal chance
of loss and gain which is permitted under Jewish law. According
to Rabbi Wasserman, all banking transactions are included in the prohibition of charging interest.

The diversity of Rabbinic opinion and complexity of modern economics prompted Justice Haim Cohen of the Israeli Supreme Court to write "prohibition on interest has lost all practical significance in business transactions." But as observant and traditional Jews we cannot accept such a view.

To solve the problems posed by the prohibition against interest I would like to suggest to the Rabbinic authorities to utilize the approach of the Rosh, who ruled that notes are not subject to the laws of ribbit, not even medeRabanan (Rabbinic prohibition). No Rishon disputes the Rosh on this point, while Tosafot, the Ran, Nimuke Yosef, Ritva, Rabbenu Jeroham and the Rashba agree with him. Among the Aharonim, there is disagreement. The Bet Yosef seems to question the Rosh's ruling, however, does not dispute it. The Taz disputes the Rosh and claims that notes are also subject to the laws of ribbit in line with the ruling of the Rashba. The Chatam Sofer agrees with the Taz. But the Panim Me'irot, Pilpela Harifta and the Chavot Da'at agree with the Rosh and rule that notes are not subject to any prohibition of ribbit.

Notes are in a special category, unique, as far as the laws of ribbit are concerned. The Jerusalem Talmud teaches,

Some things are interest but yet are permitted. For example, one is permitted to discount someone else's loan or note and does not need to fear (transgressing the law of) ribbit.

This law is quoted by every decisor.

Today all business and commerce transactions are conducted by notes. What we call money or cash is no more than a promissory note. Formerly, it was a note to pay the bearer in gold. Today it is merely, as someone aptly put it, "a promise to pay promises." The solution to our problem becomes apparent. There is no ribbit on any loan, bond, installment purchase or anything involving paper currency. Of course, if gold or silver coin is
loaned charging interest would be prohibited. However, the Chat-
tam Sofer\(^6\) ruled that while in some cases banknotes are con-
sidered as notes, in some instances they are deemed the same as
coin money. To determine whether banknotes would be consid-
ered coin money and therefore included in the prohibition, needs
further study.

But since the use of paper currency still involves halakhic prob-
lems, I would like to submit to the appropriate Rabbinic authori-
ties for their consideration a proposal which offers a rather simple
solution. Inasmuch as there is a general consensus that checks
are to be treated as notes,\(^6\) one might be able to borrow from a
bank by check and repay both principal and interest by check
without violating the laws of interest. Similarly, installment buy-
ing and payment of interest and bonds could be handled exclu-
sively by check payments and the entire problem of ribbit could
conceivably be avoided.

NOTES

5. Psalms 15:5.
8. Ibid.
10. Baba Metziah 75b.
11. Haym Soloveitchik, “Pawnbroking: A Study in Ribbit and of the Halakah
13. Ibid. 5:1.
15. Baba Metziah 65a.
16. Rosh, Baba Metziah, Chapter 5, No. 23; Mordecai, Baba Metziah, Chapter
5, No. 319; Teshuvaot Haggahot Maimoniyot to Mishpatim, No. 52.
17. See note 11.
18. Terumat ha-Deshen, No. 302.
19. *Tur Shulchan Arukh* and *Shulchan Arukh, Yoreh Deah*.
22. *Kontres Al Dine Ribbit*.
24. *Shulhan Arukh Yoreh Deah* 167, Shakh No. 1, Taz No. 1; *Tur Yoreh Deah* 167, Bayit Hadash.
25. *Hokhmat Adam* 143 Schema of Notes A & B.
27. 66:3.
28. The *shetar isha* described here is the one belonging to the Bank Leumi Le-Israel. It is the same one used for all Israeli banks.
29. This is the practice of the Bank Leumi Le-Israel and most Israeli banks.
30. Responsum of Rabbi Uziel, Sephardic Chief Rabbi of Israel.
35. The Beth Yosef, *Tur Yoreh Deah* 170 said that this was written by a mistaken pupil. *Levush Ateret Zahav* 170; Taz, *Shulchan Arukh Yoreh Deah* 170, No. 11.
37. *Sheeloth u-Teshuvot Maharam Shik, Yoreh Deah*, No. 158.
43. Rabbi M. Lemberger, “Interest and Banking,” *No’am*, 1960, pp. 251-257, interprets the cases cited by Rabbi Wasserman according to his view.
46. *Pilpela Harijta, Baba Metziah*, Chapter 5, No. 4.
47. *Baba Metziah* 61a, Tosafot, “If it is redundant in respect of money *Neshek*.”
48. *Ran, Ketubot* 46a. It is interesting to note that although the Ran lumped slaves, land and notes together as being free of a Biblical prohibition of *ribbit*, at the end of this discussion the Ran writes that only land and less than a *peruta* are subject to Rabbinic restriction of *ribbit*, removing slaves and notes from any prohibition at all.
49. *Nimuke Yosef, Baba Metziah* beginning of Chapter 5.
50. *Hiddushe ha-Ritba, Ketubot* 46a. However, the *Shittah Mekubetseth, Baba*
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Metzia'h 60b quotes the Ritba as saying the opposite. Our editions of the Ritba (Baba Metzia'h 61a) do not contain the passage cited by the Shittah.

51. Jeroham ben Meshullam, Sefer Mescherim, Path 8.
52. Hiddushe ha-Rashba, Baba Metzia'h 61a.
53. Beth Yosif, Tur Yoreh Deah 161.
54. Pilpela Harifta, Baba Metzia'h, Chapter 5, No. 4. The Beth Yosif's question is more in the nature of not understanding the Rosh's underlying reasoning than in disputing the ruling.
55. Taz, Shulchan Arukh Yoreh Deah 161:1.
56. This ruling of the Taz is very surprising as the Rashba agrees with the Rosh (see note 32). In the same passage the Taz also misquotes the Beth Yosif. The only explanation for both items is that the Taz had incomplete or faulty editions of the Rashba and Beth Yosif.
57. Teshuvot Chatam Sofer Yoreh Deah, No. 134.
58. The only proof offered by the Chatam Sofer for his stand is "the Taz has already shown that notes are subject to ribbit from the Torah according to all opinions" (see note 56).
59. Panim Me'erot, No. 74.
60. See note 54.
61. Havot Da'at, Shulchan Arukh Yoreh Deah 161.
62. Jerusalem Talmud Baba Metzia'h, Chapter 5, Halakha 1.
63. Rambam, Malvek ve-Loveh 5:14; Rif, Baba Metzia'h, Chapter 5; Rosh, Baba Metzia'h, Chapter 6; Tur Yoreh Deah 173; Shulchan Arukh Yoreh Deah 173:4.
64. Teshuvot Chatam Sofer Yoreh Deah, No. 134.