



# HEMDAT YAMIM

Parashat Hashavua

Ki Tetzei, 14 Elul 5782

Harav Shaul Israeli zt"l  
Founder and President

## Is there a Way to Permit *Ribbit* (Usury)?

Harav Yosef Carmel

Among our *parasha's* many *mitzvot* is the serious prohibition of taking interest on loans (Devarim 23:20-21), which applies not only to the lender but to all who are involved in the transaction.

The Torah relates to loans as an act of *chesed* and demands of all who can to lend to those in need, as part of a Jewish life, which is based on charity and justice. True, it is permitted and even recommended for the lender to receive guarantees to ensure repayment of the loan. Someone who lends to someone who is capable of providing guarantors and a lien on property and does not do so, puts his money in a precarious situation.

There is another possibility, which can be a great idea to help someone who needs money but has financial opportunity. He can invest in the latter's business venture. However, he runs the risk of losing money in the process. Therefore, the greatest *chesed* is to lend money to one who does not have a livelihood so that he can open a business to support his family. To adapt the famous saying: Give a man a fish, feed him for a day; help start a fishing business, you can help him for a lifetime. The Rambam also put the act of lending money to someone so that he will not need hand-outs at the top of his ladder of *chesed* (Matnot Ani'im 10:7).

For many reasons, some stemming from very difficult financial times, the Rabbis allowed using a *heter iska* (a document that turns what might have been a loan into a permitted hybrid between a loan and an investment). We find this already in the writings of the Terumat Hadeshen (I:302), one of Europe's most influential *poskim* some 600 years ago. However, there are two major conditions for using a *heter iska*: 1. The *heter iska* works for a loan done for an investment when the endeavor has the potential to earn profits. Using a *heter iska* for a loan to finance standard family upkeep is halachically highly suspect. 2. The "interest" the "borrower" pays to exempt himself from an oath about the success of the investment must be realistic, i.e., it is plausible that the investment could have gone well enough to justify it. If it is in excess of the realistic amount, the *iska* agreement is invalid, the money given/taken is in violation of the prohibition of *ribbit*, and *beit din* can deny the lender's claim to the money.

We have had cases in the *batei din* of Eretz Hemdah-Gazit in which we have disqualified *heter iska* on these grounds. We mention that the Knesset passed legislation limiting the rate of interest in any loan. We praise that step, which protects the weak from the powerful, which is correct in a Jewish state. (We would have been happier if the law had been more in line with Halacha in other ways.)

Let us pray that the number of those in need of *tzedaka* will decrease and the number of people happy to help those in need will increase. May they be blessed with the Torah's blessing for generous people: "... so that Hashem will bless you in all that you do in the Land where you are going to inherit it," and the great psalmist's blessing, "Goodness and grace shall pursue me all the days of my life, and I will live in the house of Hashem for many long years."

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**Those who fell in wars for our homeland. May Hashem avenge their blood!**



**Eretz Hemdah**  
Deans: Harav Yosef Carmel, Harav Moshe Ehrenreich  
2 Bruriya St. corner of Rav Chiya St.  
POB 8178 Jerusalem 91080  
Tel: 972-2-5371485 Fax: 972-2-5379626  
amutah number 580120780

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# Ask the Rabbi

by Rav Daniel Mann

## Fulfilling Parashat Zachor on Ki Teitzei

**Question:** I heard a *chumra* that during a leap year, with 13 months between readings of *Parashat Zachor*, one should have in mind to fulfill the *mitzva* of *zechirat Amalek* during the reading of those *p'sukim* in *Ki Teitzei*. Should I do that (*shuls* do not usually announce it)?

**Answer:** The 13 month “concern” occurs the year **before** a leap year. Between *Parashat Zachor* 5782 (a leap year) and that of 5783, there will be 12 months + 2 days.

The main reasons to reject this *chumra* are that it is first raised around 200 years ago and it is still not widely followed, but analysis is both interesting and of limited use. The Torah does not give clear instructions on the timing of the *mitzva* of *zechirat Amalek*, but *Chazal* understood it is to be a yearly *mitzva*. The Torah was not concerned when other yearly *mitzvot* (e.g., the *mitzvot* of the *Seder*) have a 13 month gap between them, so why should *Zachor* be different?

The Chatam Sofer (Shut Even Haezer I:119) theorizes that the idea behind a yearly schedule is that the Torah commands us not to forget what Amalek did, and there is precedence of forgetting after more than a year. His *talmid*, the Maharam Shick (on Sefer Hamitzvot 605), brings sources that forgetting happens after 12 months and reports that the Chatam Sofer would have in mind during *Ki Teitzei*'s reading to fulfill the *mitzva* in the years it was “necessary” (**theoretically** including this year due to the 2 days). Others (see Mo'adim U'zmanim II:166) point out that the Chatam Sofer writes that we can learn the laws of *zechirat Amalek* from those of *batei arei choma*, which are also connected to forgetting, and yet a year is the cut-off point even in a leap year (Arachin 31a). He explains that forgetting is impacted by the Jewish year cycle more than 12 months. Therefore, the leap year is not a problem for *Zachor*.

There are also reasons to reject the assumptions behind the Chatam Sofer's question. For one, who says that we need to read *Parashat Zachor* (*mitzva* #603) to not forget Amalek (#605)? The *gemara* (Megilla 18a) says that *zechira* must be done orally from a written text, whereas forgetting depends on the heart. So as long as a person has given thought to the story of Amalek within the critical time period, even without intention for the *mitzva*, he will not forget, and he can do the active, oral *mitzva* at the prescribed time. Many (including the Mo'adim U'zmanim) disagree with the Chatam Sofer's *chiddush* that concern of forgetting defines precisely the oral *mitzva* of *Zachor*. Also, since it is very possible that having *Zachor* done from a *sefer Torah* with a *minyan* is only a Rabbinic *mitzva* (see Minchat Chinuch #603), it is questionable whether it requires *kavana* (see Mishna Berura 60:10).

If one wants to have *kavana* during the *Ki Teitzei* reading, is that enough? The Har Tzvi (OC I:58) leaves as a question whether the *ba'al korei* must have *kavana* to be *motzi* one for **this mitzva** or whether it is enough he is reading on behalf of everyone in the *shul*. The Pri Megadim (EA 692:1) says that in order for *Shehecheyanu* recited at *Megilla* reading to cover all of Purim's *mitzvot*, the *Megilla* reader should have the *beracha*'s broad use in mind, but there may be counter implications in other sources (see Har Tzvi *ibid.*; Magen Avraham 685). Perhaps also, since the *mitzva* is performed only as part of a community (see *ibid.*), the *minyan*, not just individuals, needs the appropriate *kavana*. Possibly, the *Ki Teitzei* reading cannot help. Divrei Yoel (OC I, 33) says the *mitzva* can only be performed around the time of Purim.

In practice, while there could be value in people having in mind for *Zachor* on *Ki Teitzei*, there is nothing compelling enough to create a new *minhag* because of leap years. If someone missed *Parashat Zachor* and faces the prospect of going two years, it pays for him to have intention for it. Therefore, it behooves a *ba'al korei* (he loses nothing) to have that in mind. Only a *shul* that likes to incorporate *chumrot* – in a wise manner – should consider instituting announcing that people should have such *kavana*.

### “Behind the Scenes” Zoom shiur

Eretz Hemdah is offering the readership to join in [Rabbi Mann's weekly Zoom sessions](#), analyzing with him the sources and thought process behind past and future responses. Email us at [info@erezhemdah.org](mailto:info@erezhemdah.org) to sign up (free) or for more information on joining the group.

**Do not hesitate to ask any question about Jewish life, Jewish tradition or Jewish law.**



# Igrot HaRe'aya - Letters of Rav Kook

## Advice for a Father whose Son is No Longer Religious - #113

**Date and Place:** 11 Adar I, 5668 (1908), Yafo

**Recipient:** Rabbi Dov Ber Milstein

**Body:** Some weeks and even months passed since I received your cherished letter. Believe me, my dear friend, that I have been very late in responding because your words of pain caused me great distress as well, and I was shocked and did not know what to answer. After time, I realized that silence is not nice, especially because I do not believe we should give up hope at all. For a Jew, "When I sit in darkness, Hashem is light for me" (Micha 7:8).

I must tell you that if your sons were at least connected to the Jewish nation in their philosophy, e.g., if they were Zionists, it would be easier to help them return to the strong path of Hashem. That is because there is a major connection between Jewish nationalism and the root of sanctity of belief in Hashem and keeping Torah and *mitzvot*.

Even though they have strayed further than that, there is still no reason to give up hope at all. In the final analysis, the light of Hashem, which was shared with the world thousands of years ago, is so impactful that nowadays we do not have the type of heresy that makes people helpless, as there once was. However, nowadays, even the worst philosophies stand on the basis of seeking rectitude and justice, values which are the way of Hashem, which Avraham Avinu commanded his children and household to follow (see Bereishit 18:19). The generation's mistake is that they do not realize that to reach these desired values, the Jewish People must respect the Torah and cling to belief in Hashem, which is the light and life of the world.

Therefore, for people [like your sons] who have failed in this regard, you must approach them as follows. Tell them that the foundation of their goals is desirable, but they must not go about it like a blind man hoping to find his way by chance, following philosophies of the masses.

Because every new idea comes into the world with flaws and impurities, people must be careful to remove the impurities. Jews espousing new philosophies must not distance themselves from Judaism, so that Hashem's eternal light will shine light on them. Then they can stand on their natural base with complete souls, with their spiritual strength intact. Then their internal cognizance can set out their path, and every inclination will have its proper measure. One must not be obsessively connected to the time's new ideas, accepting them with all of their shortcomings.

I humbly believe that such words will soften their hearts slightly. If you are wise about treating them with love and mercy, you may raise them many levels from the lowest spiritual abyss. That which is not accomplished at once will have an effect over time. Time will unveil their blindness, as they will see the falsehood of the new philosophies. In the process, they will not totally disregard their good side, namely, the desire to pursue general rectitude and justice.

My friend, we must fulfill the words of the *navi* (Yeshayahu 29:4) about the future days – the voice will come from the earth mysteriously. We must significantly suppress our holy feelings so we can speak to our children in the way they need, while believing fully that Hashem's light dwells on every Jew and that all of his spiritual stumbles are only great unintentional mistakes. They are like mistakes one makes while attempting to fulfill *mitzvot*, as they think they are doing that which is morally necessary, which Hashem, who loves kindness and justice, desires.

Definitely do not disown your sons, but draw them close as best you can. In the end they will certainly repent. If they only start the process, their children will complete the good they did, and Hashem's mercy is great in every generation.

I have not yet published Ein Ayah due to lack of funds. May Hashem help us serve Him, bring close those who are far away, and bring liberation to Zion.

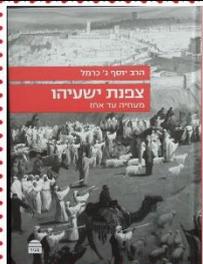
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**Yerachmiel ben Zlotta Rivka**

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### Tzofnat Yeshayahu- Rabbi Yosef Carmel

The Prophet Yeshayahu performed in one of the most stormy and dramatic periods of the Israeli nation's life, a period of anticipation for the Messiah that was broken by a terrible earthquake, and also caused a spiritual and political upheaval. The light at the end of the tunnel shone again only in the days of Chizkiyah.

"Tzofnat Yeshayahu – from Uziya to Ahaz" introduces us to three kings who stood at this crossroad in our nation's history: Uziya, a king who sought God but was stricken with leprosy because of his sin; Yotam, the most righteous king in the history of our people; And Ahaz, the king who knew God but did not believe in His providence.

In his commentary on the prophecies of Yeshayahu, Rabbi Yosef Carmel, Head of the Eretz Hemdah-Gazit rabbinical court and a disciple of Rabbi Shaul Israeli zt"l, clings to the words of Hazal, our sages, and to the commentaries of the Rishonim, the great Jewish scholars of the middle ages, and offers a fascinating way to study Tanach. This reading attempts to explain the Divine Plan in this difficult period and to clarify fundamental issues in faith. Tzofnat Yeshayahu reveals to the reader the meaning of the prophecies in the context of the prophet's generation and their relevance to our generation.

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# P'ninat Mishpat

## New Evidence on Possible Partnership

(based on ruling 79009-appeal of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** Twenty years ago, the plaintiff (=pl) gave his brother (=def) half the sales price of the apartment def bought. Def has returned money that exceeds that amount. Pl claims that he had bought half the apartment, and def's payments were for rent on pl's half. Def claims that pl had lent him the money with fixed interest payments and no *heter iska*, and Halacha requires that pl return the interest taken. Def points out that the apartment is in his name alone in the Tabu with no *he'arot azhara* (rights in the property) for pl. Pl responds that this was done to not compromise def's ability to receive a mortgage. Pl also produced an unsigned document that contains indications that he had bought half of the apartment.

**Original Ruling:** Pl did not provide enough proof he had acquired partial ownership. The document is not only unsigned, but it is also undated, does not state the property's details, contains pl's handwritten additions, and is full of significant contradictions. Under circumstances of doubt, def does not have to continue paying, since he has already covered the loan's principal, after which *ribbit* should not be given if it is a loan. On the other hand, def is not entitled to receive return of possible *ribbit* given because of the possibility that pl is correct and because the long time after the payment without asking for a return indicates *mechilla* of any *ribbit* given. Because it is possible, but not certain, that def bindingly admitted to owing 50,000 NIS, *beit din* ruled by compromise that pl will receive 16,000 NIS.

**Appeal Claims:** After the ruling, pl presented evidence that he had not presented during deliberations. 1) A WhatsApp message that def admitted to owing pl 350,000 NIS. Def counters that: most of that money was toward principal payments, which have been made; pl provided only part of the message; an admission out of *beit din* is not binding; def's wife (who is a part owner) did not make any admissions; it was an offer beyond the letter of the law in order to try to preserve family relationships. 2) The transcript of a phone conversation in which pl admitted there was a written agreement which discusses the apartment being split between the sides if def did not return the money within 5 years, that the monthly payments were rent and not interest, and that they had decided to adopt a third brother's idea, which was for a partnership. Def pointed to inconsistencies in the way the transcript was presented and that the referenced agreement lacked clarity.

**Appeal Ruling:** The Shulchan Aruch (Choshen Mishpat 20:1) rules that evidence that was available before the ruling cannot be brought after the ruling. Pl did not claim lack of prior access to this evidence. Even if we accepted the evidence at face value, it does not consist of full-proof corroborations of the totality of pl's claims. Because the WhatsApp message was done in the context of negotiations, it is not taken as a formal admission. Def is correct that the document to which the phone conversation refers does not conclusively indicate a full partnership.

Therefore, pl has not proved that *beit din's* ruling was a mistake, and the ruling stands.

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