

# **THE PRUZBUL DOCUMENT 5782**

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# The Laws of Shemittas Kesafim and Pruzbul

Rabbi M Donnebaum

*How wonderful it would be for one to receive a call from his bank or creditor announcing the fantastic news that his outstanding loan has been cancelled. Yes, wonderful for the one receiving the news, but not so cheerful for the one placing the call. Surprisingly, one of the mitzvos pertaining to the Shemitta year is just that. The Torah states in Parshas Re'eh<sup>1</sup>; "At the end of seven years, observe Shemitta. And this is the rule of Shemitta, every creditor who is owed by his friend shall restrain his hand, he shall not demand it of his friend."*

This is the mitzva of Shemittas Kesafim - the prohibition concerning the collection of debts that become due before the end<sup>2</sup> of the Shemitta year. Although working the land, the primary restriction of Shemitta only applies in Eretz Yisrael<sup>3</sup>, the prohibition against collecting one's debts applies in all countries. When the majority of Jews lived in Eretz Yisrael and the laws of Yovel (Jubilee year) were in effect, the prohibition of collecting debts was applicable according to biblical law<sup>4</sup>. Nowadays, since the majority of Jews

1 Dev. 15:1-2

2 See below, Time of cancellation, for a discussion concerning this point.

3 There is a dispute among the poskim (authorities) if the biblical prohibition remains in effect, even today, or if it is rabbinical. See Chazon Ish Sheviis no. 3.

4 See Tosafos Gittin 36a, s.v. B'zman, for a discussion of this issue. See also Biur Halacha (Derech Emuna from Harav Chaim Kanievsky Shlita), Hilchos Shemitta v'Yovel 9:2 s.v. Ein).

live outside of Eretz Yisrael<sup>5</sup>, and the laws of Yovel do not apply, the biblical prohibition of collecting debts is also suspended. However, the Rabbis decreed that the laws of Shemittas Kesafim should continue to apply in all countries<sup>6</sup>.

## REASONS FOR SHEMITTAS KESAFIM.

As strange as the mitzva of relinquishing one's loans may seem, there are important lessons in regard to this commandment. The Sefer HaChinuch<sup>7</sup> explains that the first useful benefit to be gained is the characteristic of generosity. There is none so generous as he who gives without hope of receiving anything in return. So too, relinquishing a loan with no benefit or gain in mind imbues a person with this noble character trait.

The second lesson mentioned in the Chinuch relates to the mitzva of bitachon - trust in Hashem. Anyone who, upon

5 Chazon Ish Y.D. 64:2 explains that these days, even if the majority of Jews were to reside in Eretz Yisrael, the biblical prohibition still would not take effect. Only when the majority of Jews return to their tribal plots in Eretz Yisrael will the Yovel laws once again become biblical in nature (see Erachin 32b). As noticed in Rishonim, the tribal division of Eretz Yisrael was abolished at the time of the destruction of the Beis HaMikdash. Yovel can therefore not take effect before the coming of Mashiach.

6 See Sefer Yereim mitzvah 164 and Bach Choshen Mishpat 67:5, contrary to the view of Terumos Hadeshen 304, who is of the opinion that only countries close to Eretz Yisrael (as we find regarding the laws of terumos and ma'asros) were included in the decree. The Sages' authority to nullify a loan that is still owed from a biblical standpoint is discussed in Gittin 36b.

7 Mitzva 477



command, relinquishes all outstanding debts, is continuously strengthening his level of trust in Hashem. The creditor displays trust that any losses incurred will be fully reimbursed to his allocated and pre-determined wealth. The knowledge of G-d as the source of all livelihood and provider of all one's needs is confirmed, and substantiated when releasing a debtor from his debts.

The Chinuch continues that the mitzva of Shemittas kesafim is also a 'barrier' to keep away from robbery and any desire to own the possessions of one's neighbour, via a kal v'chomer. If the Torah decrees that one should leave a loan in his neighbour's hand concerning money that is rightfully owed to him, then certainly he may not obtain his neighbour's belongings, in any way, without his neighbour's consent<sup>8</sup>.



## ORIGIN OF PRUZBUL

The Mishna<sup>9</sup> states "A pruzbul (i.e. loan on which the borrower has written a pruzbul document) does not relinquish (the loan and may be collected after Shemitta). This is one of the things that Hillel the Elder instituted. He saw that people refrained from lending money to one another as Shemitta approached, for fear that they would not be repaid on time. They thereby transgressed that which is written in the Torah<sup>10</sup> 'take heed lest there be an evil thought in your heart, etc.' (saying 'The seventh year the year of

relinquishment draws near and your eye will be mean towards your poor brother and you will not give him the loan that he seeks). Hillel therefore instituted pruzbul. And this is the essence of a pruzbul: "I submit before you, XYZ the judges, in such and such a place, that every debt owed to me by "Mr. A" may be collected whenever I wish. The judges or witnesses sign below."

As stated in the above Mishna, the reason for the institution of pruzbul was the reluctance to offer loans for fear of the Shemitta cancellation, thereby transgressing a commandment in the Torah. Hillel therefore recommended that people execute a contract for formally transferring their loans to Beis Din. The contract that Hillel devised to expedite this process is known as pruzbul.

Pruzbul is a hybrid word composed of 'pruz' - protective enactment, and 'bul' - wealthy<sup>11</sup>. Rav Chisda<sup>12</sup> explains that the original form was really pruz-bulei-butei, that is a protective document for the wealthy and the poor. The rich benefited in that they were able to safeguard their loans and therefore would not transgress the prohibition of withholding a loan, and the poor benefited in that it enabled them to obtain loans. Nevertheless, the suffix 'butei' is not commonly used because the main thrust of the enactment was to protect the creditors<sup>13</sup>.

## The Gemara<sup>14</sup> questions Hillel's enactment

11 Rashi Gittin 36b Rav Sheviis 10:3. However, see Rashbam Bava Basra 65b

12 Gittin 36b

13 Shenos Eliyahu, Sheviis 10:3. See conclusion of article for another explanation

14 Gittin 36b

8 For another reason for this mitzva, see conclusion of article.

9 Sheviis 10:3,4

10 Dev. 15:9



based on the general rule that the Rabbis have no power to actively abrogate a Torah law. Here the Torah commands the creditor not to collect his loan following the Shemitta year. How could Hillel decree that he may? The Gemara<sup>15</sup> answers that Hillel instituted pruzbul to be effective only with regard to Shemitta nowadays (following the view articulated by Rabbi), which is of rabbinic origin. Thus Hillel's institution of pruzbul abrogated not the biblical law of debt cancellation, but the rabbinic counterpart of that law which was certainly in his power to do.

### HOW A PRUZBUL WORKS

It is apparent from the text of the pruzbul referred to in the Mishna mentioned earlier, that the creditor effectively submits his debts to the Beis Din for collection, thereby avoiding the Shemitta prohibition. The previous Mishna<sup>16</sup> concludes, "and one who hands his documents to the court does not have his loan cancelled." This exemption is based on the verse "But from that which you have by your brother, you should relinquish your hand."<sup>17</sup>

### Three Opinions

Sifri<sup>18</sup> and Yerushalmi<sup>19</sup> explain the verse as an indication that a debt that is no longer in one's hand, i.e. it has been handed over to Beis Din for collection, is not subject to cancellation. Most Rishonim are of the opinion that this is a scriptural exemption, providing the

15 According to Rashi ibid, Rava there gives another answer to this question; see Tosafos 36a s.v. Mi.

16 Sheviis 10:2. See Pruzbul document included at the end of this article.

17 Devarim 15:3

18 Parshas Re'eh (noted in Torah Temima ibid.

19 Sheviis 10:1

promissory notes are actually handed over to the Beis Din. Merely handing over the debts verbally is only a rabbinic institution, as will be discussed.

Other Rishonim<sup>20</sup> believe that this is not a scriptural exemption, even when the documents are handed over to the Beis Din. Rather, the basis for the ruling of the Mishna that exempts one who hands in

his document to the court, is

derived from the power

of Beis Din to declare

the property of a person

ownerless - via the well-

known maxim principle

"hefker Beis Din hefker"

- "whatever is declared

ownerless by the Beis Din

is ownerless. The allusion

to this rule noted earlier

from the Yerushalmi and

Sifri is merely an *asmachta*

- a hint - and is insufficient

to serve as the basis for the

law. A third opinion is found

in Tosafos<sup>21</sup> who holds that the *drasha* is

a scriptural exemption and includes even

when the documents are not handed

over to the Beis Din.

The working of a pruzbul is dependent

on the above dispute. When utilising a

pruzbul, no loan documents are handed

over to the Beis Din. Therefore, according

to the first opinion, Hillel's institution of

pruzbul cannot be based on the ruling of

the Mishna or on the scriptural exemption

of the handing over of one's debt to

the Beis Din. Evidently, the pruzbul is a

new enactment based on *hefker Beis*

*Din hefker* - that whatever the Beis Din

20 Rashi Gittin 36a 37a s.v. Dtafsi (see Tos. 36a s.v. Mi) and Ramban Gittin 36a.

21 Gittin 36a s.v. Mi.



declares ownerless, is ownerless. The second opinion goes a step further, and learns that the Mishna's rule that one who may hand over his documents to the court is also derived from the *drasha* quoted in the Yerushalmi and Sifri, based on *hefker Beis Din hefker*, which is all part and parcel of Hillel's pruzbul institution. However the third opinion goes to the other extreme, and learns that the pruzbul fully qualifies as a scriptural exemption of handing over one's debts to the Beis Din mentioned in the Mishna. According to this opinion, Hillel instituted merely the custom to use this option of handing over the debts on a regular basis. The mechanics of the pruzbul are of biblical origin, as explained.

#### TIME TO WRITE A PRUZBUL

The Torah states<sup>22</sup> "At the end of the seven years you shall make a relinquishment etc." The simple meaning of this verse implies that the cancellation of debts due to the Shemitta year takes place at the end of the seventh year, that is the last moment of the last day of the seventh year<sup>23</sup>. Since a pruzbul may be written any time before the nullification takes place, therefore a pruzbul may be written any time before the end of the Shemitta year. However, the pruzbul is only valid for loans that predate it, but not for loans extended after the execution of the pruzbul<sup>24</sup>.

For example, if someone writes a pruzbul three months prior to the end

22 Dev. 15:1

23 The Gra in Shenos Eliyahu (Sheviis 10:8) remarks that we find the Torah too gives the name Shemitta to the beginning of the eighth year. In regard to the law of Hakhel, the Torah states (Dev. 37:10) "At the end of the seven years, on the occasion of the Shemitta a year etc" and it is clear from the verse and the Mishna in Sota 7:8 the reference here is to the Succos festival immediately following the Shemitta year.

24 See footnote 33.

of the Shemitta year (Rosh Chodesh Tammuz) he may only collect payment of loans extended before those three months, but he may not collect any loan extended during those three months<sup>25</sup>, unless another pruzbul was written. It is therefore customary to write the pruzbul during the last few days before Rosh Hashana, so as to include all loans.

### PRUZBUL 'TIMEZONES'

For those who have the custom of writing the pruzbul on erev Rosh Hashono, care should be taken to write the pruzbul prior to the onset of Rosh Hashana at the place where any debtor may be. For example, a Jew in America who loaned money to a resident of Australia, should execute his pruzbul prior to Rosh Hashana in Australia. See Minchas Shlomo 47:2.

However, some communities have the custom of writing a pruzbul prior to the Shemitta year, in addition<sup>26</sup> to the pruzbul written before the end of the Shemitta year, as previously mentioned. This custom is based on the opinion of the Rosh<sup>27</sup> who

25 Concerning loans extended within thirty days before Rosh Hashana, see Dvar Avraham 1:32. Yechave Daas 4:62. If the principle of "stam halva'a shloshim yom" qualifies the loan as being due only after Shemitta, hence not being effected by the passing of Shemitta.

26 It must be emphasized that those who follow this custom, must be careful to write a second pruzbul before the end of the Shemitta year, to enable collection of debts during the Shemitta year.

27 Gittin 4:20. The Rosh asserts that there are two facets to the law of relinquishment of debt. The first is nullification of debt, i.e. the debt legally ceases to exist. This facet of law takes effect at the end of the Shemitta year as stated explicitly in the verse quoted above. Thus, the debt is technically owed throughout the Shemitta year. The second factor that prevents the collection of debts during the She-



holds that the laws of Shemittas Kesafim, that is the prohibition of collecting debts, apply from the beginning of the Shemitta year. Although Shulchan Aruch<sup>28</sup> clearly rejects this opinion, as do virtually all poskim<sup>29</sup>, there are still some poskim<sup>30</sup> who recommend writing a pruzbul twice, hence the origin to the custom of writing a pruzbul before the Shemitta year begins and again before it ends<sup>31</sup>.

Shemitta year is the separate prohibition upon the creditor, not to press the debtor for payment. This prohibition is based on the verse (Dev. 15:2) "he may not press his fellow man...for He has proclaimed a Shemitta." Since this verse does not state 'at the end of the Shemitta year' as previous verses to the contrary therefore as soon as Shemitta is proclaimed, he may not press his fellow man. The Rosh therefore says that this prohibition applies throughout the Shemitta year. Thus, according to the view of the Rosh, one may not press for payment from the beginning of the Shemitta year. However, if the debtor voluntarily offers to repay the debt, the creditor may accept it without declaring 'I relinquish (the debt)' as is required with regard to a loan which was nullified by the passing of the entire Shemitta year (see Sheviis ch.10), since the debt was not yet nullified as this takes place at the end of the Shemitta year. Accordingly, the Rosh (4:18) accepts a reading in the Tosefta (8:11) that requires the pruzbul to be made prior to the Shemitta year. Consequently, activating a pruzbul is prohibited during Shemitta. (Beis Yosef C.M. 67 points out that the Rosh had an erroneous version of the Tosefta).

28 C.M. 67:30.

29 Radvaz 5:2238; Panim Meiros 2:174; Yehuda Yaleh 3:179; Kitzur Shulchan Aruch 180:13; Yechaveh Daas 4:62; Rav Pe'alim in Yesod Yeshurin1:11.

31 Shulchan Aruch Harav Hil Halva'a 36; Urim v'Tumim 67:26. This was the custom of Rav Shmuel Salant, the Steipler Gaon, Rav Elyashiv and others. Rav SH Z Auerbach did not follow this custom.

31 As explained, if one were to lend money after writing a pruzbul, the loan would be cancelled by Shemitta. Therefore, even where has written a pruzbul before Rosh Hashono of the Shemitta year, according to the Rosh one should write another pruzbul prior to Rosh Hashono of the year following the Shemitta year to include loans extended after the writing of the 'first' pruzbul which will become nullified at the last moment of the Shemitta year.

Alternatively, one should set the due date after the passing

Kim Li

The previous discussion, gives rise to an interesting question. In all money matters, the muchzak (the one with the money or property in their possession) is presumed to be the de facto owner. As the well known axiom and rule, "Hamotzi mechavero olov haraya" (the burden of proof is on the one who wants to take from another). When Beis Din

evokes a halachic majority that points to the muchzak losing his claim, the muchzak may rely on a minority opinion to maintain ownership, with the words "Kim li!"<sup>32</sup>. Kim li means that "I hold claim that the other opinions are correct, and until you can prove that they are entirely incorrect - olov haraya - I will hold onto the funds. This phrase has been adapted as a general rule of the current owner's advantage and may be used by the claimant even without comprehensive knowledge of the opinion he is presenting—and the erudite members of the Beis Din can even present it for him!

### The question now arises, may the debtor

of Shemitta. Any loan that becomes due only after Shemitta is not cancelled by Shemitta. Rabbi Y.S.Elyashiv zt"l, quoted in Tzion Halacha (Rabbi Chaim Kanievsky Shlita) Hil. Shemitta v'Yovel 9:97 adds that the lender may even add that if they require funds they may as for the money prior to the due date. Since the borrower is not **obligated** to repay the loan prior to the 'official' due date, this loan will not be nullified by Shemitta.

32 The concept of kim li has legal precedent going back to original halachic sources, but it gained popularity in recent generations, to the point that we find many more contemporary cases of kim li than historic ones. Many K'lalim (principles) of kim li are therefore found specifically in halachic works of Acharonim (latter-day authorities), authored as the need arose for compendiums on the topic.





refuse to repay the loan during the shmitta year<sup>33</sup> in the absence of the pre-shmitta pruzbul, claiming that he holds like Achronim who support the opinion of the Rosh?

It seems to the writer that one cannot present the kim li claim with regard to this dispute. There are clear parameters and limitations of kim li cited in the Poskim. One limitation is that kim li can only be utilized where there is no clear accepted psak. Concerning the pruzbul issue, even the Achronim who encourage one to write an pruzbul prior to Shmittah as well, agree that this is only a preference and that me'ikar hadin we follow the ruling of the Shulchan Oruch that one pruzbul at the end of teh shemittah year is sufficient.

### Opinion of the Gra

It is interesting to note that the Gra is also of the opinion that a pruzbul should be performed prior to the shemitta year, for an entirely different reason.

There is a well known machlokes Rishonim as to the precise shemittah year count. Our count follows the ruling of the Rema (CM 67:1) who states that the year 5334 is a shemittah year. Hence 64 shemittah cycles later, the year 5782 is a shemittah year as well. Some Rishonim (see A"Z 9) however, learn that 5733 was the shemittah year and therefore the year prior to every 'accepted' shemittah year is the 'real' shemittah year. Accordingly, the Gaon wrote a pruzbul prior to the 'accepted' shemittah out of concern that that year was teh real shemittah year.

<sup>33</sup> Even if the Kim Li claim with regard to pruzbul was valid, this would only allow the borrower to *delay* payment since according to the Rosh one cannot request payment during the shemittah year. However once shemittah passes and a pruzbul was written prior to the end of the shemittah year, the loan can be collected.

### TYPE OF DEBTS AFFECTED BY SHEMITTA

The laws of Shemittas Kesafim apply not only to monetary loans, but include any borrowing of consumables e.g.: household items such as flour and eggs, where the item itself will not be returned, but will be replaced by another similar one<sup>34</sup>.

However, credit offered for purchases or services rendered (e.g. at a supermarket or bakery) where the owner charges his customers' accounts, is not affected by the passing of the Shemitta year<sup>35</sup>.

Some Rishonim<sup>36</sup> associate the above exemption with loans that are not due until the passing of Shemitta. Shemitta does not affect a loan that becomes due only after

<sup>34</sup> Melechesh Shlomo Sheviis 10:2, Chaim Shaal 2:38:13, Ben Ish Chai Ki Savo 1:26

<sup>35</sup> Sheviis 10:1

<sup>36</sup> Rambam in Peirush Hamishnayos Sheviis 10:1. See Kesef Mishna Hil. Shemitta v'Yovel 9:11 and Sma C.M. 67:26.

Other Rishonim (Tosafos and Ran Kesubos 55a, based on a Sifri Par. Re'eh) disagree and explain the reason for the above exemption differently, saying that the laws of Shemitta apply to a debt only, not to a purchase. When the customer pays his account, he is paying for a purchase rather than a debt. Only once the merchant has formally established the payment as debt before Shemitta passes, does the debt receive the status of a loan, and consequently is affected by the passing of Shemitta. The basic concept underlying the distinction between loans and monies owed for merchandise or wages is that in stating the laws of Shemitta cancellation, the Torah uses the term 'Bal Mashei' (creditor); a term that specifically connotes one who has made a loan. A shopkeeper who has not yet collected his payment for merchandise (or an artisan for services rendered) is not considered to have made a loan. It is only when the debt is converted into a loan for later payment, that the debt is viewed as being an outlay of money and a loan of sorts (Shenos Eliyahu Sheviis ibid).

A simple difference between these opinions would be in the case of selling merchandise, for example furniture or homewares, where payment is usually made at the time of the sale, and no date is set for payment. According to the latter view, Shemitta would not cancel the outstanding money, since it originates from a sale, not a loan. However, according to the former view, the debt would be cancelled since the money is due immediately, Derech Emuna Shemitta v'Yovel 9:57 quoting Beis Yosef and Achronim.



Shemitta. This is based on the verse<sup>37</sup> 'he shall not demand it of his friend,' which implies that the creditor could otherwise have demanded payment<sup>38</sup>. Similarly, payments for accounts are not due until billed. Only once a considerable amount has accumulated, or on a monthly basis, does the creditor total the amount owing, and then the obligation is formally established as a debt<sup>39</sup>.

### CHEQUE PAYMENTS

As noted, the prohibition to collect debts does not apply until the last moment of the Shemitta year has passed and Rosh Hashana of the following year begun. Any loan that was repaid before Rosh Hashana is evidently not cancelled by Shemitta. However, if payment was made by cheque (and funds have not yet cleared to the account of the creditor before Rosh Hashana), it is possible that the loan may not be considered paid, even when there are sufficient funds in the debtor's account. Consequently, the loan will be cancelled at the last moment of the Shemitta year. This may vary from country to country<sup>40</sup>.



### PRE-REQUISITE FOR WRITING A PRUZBUL MAKE UP OF BEIS DIN

The Rishonim are in disagreement to the make up of the Beis Din necessary for the execution of a pruzbul. Some Rishonim<sup>41</sup> are of the opinion that the Beis Din must consist of people who are familiar with the laws of Shemitta and pruzbul, and who serve as an official Beis Din of the community. Others<sup>42</sup> maintain that a simple Beis Din of three people is sufficient.

The Shulchan Aruch<sup>43</sup> accepts the first opinion, while the Rema<sup>44</sup> states that nowadays one may rely on the second opinion. Consequently Ashkenazic custom is to follow the lenient opinion. Some Achronim<sup>45</sup> however, stipulate

law (where it is a crime to stop payment on a cheque) may be viewed differently. This discussion is also relevant to hilchos ribbis (collecting interest), if cashing cheques at a discount would be a violation of ribbis. This issue is elaborated on in The Laws of Ribbis chapter 12, paragraph 32, and appendix 3. With regard to Australia, we would first have to ascertain the legalities in cheque payment before any conclusion concerning Shemitta can be drawn, which is beyond the scope of this article. It has been suggested that receiving a cheque should be exempt from the Shemitta cancellation, since there is no need for the creditor to collect anything from the debtor, and would be classified similarly to one who lends upon collateral.

Evidently, when writing a pruzbul, the above discussion is not relevant and the loans are not affected in any way.

41 Rambam Hilchos Shmitta V'Yovel 9:17 (according to Rema, see Kesef Mishna ibid). Rabbeinu Tam quoted in Tosfos Gittin 36b s.v. Dalimei. See Beis Yosef & Bach C.M. 67 for an elaboration concerning the view of the Rambam and Rabbeinu Tam.

42 Rosh, Ritva Gittin 36b.

43 Choshen Mishpat 67:18.

44 Ibid. See Biur Hagra No. 31 who connects this dispute to the one cited in Shulchan Aruch 67:20.

45 Kitzur Shulchan Aruch 180:15. Shulchan Aruch Harav Hilchos Halvaa No. 35 requires only "Anashim K'sheirim." The custom of the Chazon Ish was to use the

37 Dev. 15:2

38 See Makkos 3a-b concerning someone extending a ten-year loan, where the debt may be collected at the end of the ten years. With regard to the following Shemitta (after the ten years have passed) see Shemittas Kesafim Kehilchoso p24.

39 There is a disagreement amongst the Poskim, if the debtor must be notified via a bill or the like to be classified as a loan, or even merely totaling the sum owed can turn the debt into a loan. See C.M. 67:14. Another opinion considers it a loan when a payment date is assigned to the debt (Rosh Gittin 4:18, Rema ibid.).

40 This depends on intrinsic details concerning banking regulations with regard to cheques. In the U.S.A. a cheque contains merely instructions to the bank to release funds to the person nominated in the cheque. It does not represent a transfer of funds. Israeli law, based on British



that the three individuals be bnei Torah - people who study Torah regularly.

#### WHO SHOULD PERFORM

Although Shemittas Kesafim is time-bound, women are obligated in this mitzva<sup>46</sup>. With regard to the writing of a pruzbul, a married woman is included in her husband's pruzbul. If she lent her own money, where her husband has no legal right of ownership, she must write her own pruzbul<sup>47</sup>.

One is encouraged to perform a Pruzbul even if one does not specifically remember having provided any loans.

#### OWNERSHIP OF REAL ESTATE

A pruzbul is not effective unless the borrower<sup>48</sup> possesses land. The Rishonim dispute the reason for this. Rashi's<sup>49</sup> opinion is as follows: as a general rule, the Rabbis legislated their enactments only for usual and regular circumstances. Since it is unusual for people to lend money if the loan is not secured by real property, the rabbinical enactment of pruzbul does not apply. The Rashbam, however, explains that the reason for this limitation is based on the ruling of another Mishna<sup>50</sup>. The Torah formulates the law that loans are cancelled during the Shemitta year by commanding the lender not to press the borrower for repayment, as the passuk states "this is

the matter of the Shemitta...he shall<sup>51</sup> not press his fellow or his brother for he has proclaimed a Shemitta for Hashem."<sup>52</sup> Therefore, if a lender took an object as a collateral, in which case he does not press the borrower for repayment, the loan is not cancelled, even according to biblical law. When the Sages instituted the law of pruzbul, they did not wish to even appear to be annulling a law of the Torah. Insofar as land is always available for repayment of the loan, it bears some resemblance to a collateral, and thus serves to soften the impression that the Rabbis are annulling a law of the Torah. Therefore, they ruled that a pruzbul is ineffective unless the borrower owns land from which the loan may be collected.

As to precisely when the borrower must possess land - at the time of writing the pruzbul or end of Shemitta year - depends on the dispute mentioned<sup>53</sup>. According to Rashi's reasoning, having land at the time of writing the pruzbul document is the requirement in order to be considered a 'regular loan.' However, according to the Rashbam, it would depend on the time of cancellation of the loan - the end of the Shemitta year.

Owning land merely upon the receipt of the loan does not qualify to enable the writing at a pruzbul according to any opinion<sup>54</sup>.

#### PRESENCE OF BEIS DIN

The Yerushalmi<sup>55</sup> states that a pruzbul is valid "even if they are in Rome." There is a dispute among the Rishonim to the

official Beis Din of the community.

46 Chinuch Mitzva 477. For an elaboration concerning this issue, see Biur Halacha Hil. Shemitta v'Yovel 9:1 s.v. Mitzvas Asei.

47 Shemittas Kesafim K'hilchasa p110.

48 The Ba'al HaTerumos Sha'ar 45 writes that the lender must also own land but none of the poskim have quoted this l'halacha.

49 Gittin 37a. Also quoted in Rashbam Bava Basra 66a.

50 Bava Basra 66a.

51 One who lends on a collateral does not have his loan cancelled, Sheviis 10:2.

52 Devarim 15:2

53 See Ran Gittin 36-37

54 See Shemittas Kesafim Kehilchasa p103.

55 Sheviis 10:3



exact meaning of this statement. Some<sup>56</sup> understand it to mean that even if the 'Beis Din' is in Rome, creditors in Eretz Yisrael may transfer their debts to the Beis Din, that is in the presence of two witnesses. Other Rishonim<sup>57</sup> understand the words of the Yerushalmi differently. "Even if they are in Rome" is referring rather to the promissory notes that the creditors in Eretz Yisroel may give those loans to Beis Din using a pruzbul. Accordingly, we have no basis to allow the use of a pruzbul without the presence of a Beis Din.

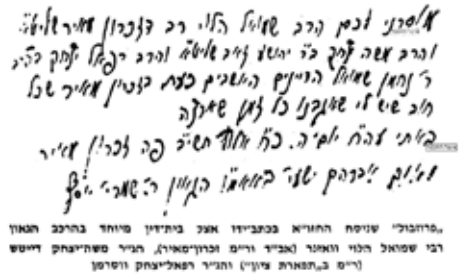
Shulchan Aruch<sup>58</sup> brings both opinions, apparently favouring the former opinion, permitting the use of a pruzbul between two witnesses, not in the presence of Beis Din. This is also the ruling of some Achronim<sup>59</sup>.

Shaliach

Some poskim<sup>60</sup> mention an option of

56 Mordechai Gittin No. 379, see Pnei Moshe Yerushalmi ibid.  
57 Rambam to Gittin 36b, Rashba Teshuvos 2:313.  
58 C.M. 67:21.  
59 Aruch Hashulchan 67:10; Teshuvos Chasam Sofer Teshuvos HaRashba C.M. No. 50; Yechaveh Daas 4:63.  
60 Birkei Yosef 434:5, Yechaveh Daas 4:64.

appointing an agent to execute the pruzbul on one's behalf. Although shlichus generally works in many instances, Poskim deliberate if it works with 'mili', 'words', where the agent is merely making an announcement on behalf of the sender. Whether the declaration to the Beis Din is considered may depend on the essence and mechanics of a pruzbul (noted above)<sup>61</sup>.



Sending a Letter

Another option would be to write a signed letter or note to the Beis Din, transferring all debts to them<sup>62</sup>. The Beis Din would then

61 An elaboration on this issue is beyond the scope of this article. See Mishmeres Sheviis from Rav M M Karp 3:17  
62 Pischei Teshuva C.M. 67: 3 quoting Teshuvos

## PRUZBUL DURING LOCKDOWN

This year *habo oleinu l'toive*, 5782, is a Shemittah year. According to the opinion of the Shulchan Oruch, the cancellation of debts takes place at the **end** of the shemittah year. Accordingly, the pruzbul process is performed at the end of the year 5782, on Erev Rosh Hashono 5783. However, as noted in the article, there are some communities and individuals who follow the opinions that one should perform two pruzbuls, one prior to the shemittah year and the other at the end of the shemittah year. According to this custom, a pruzbul should be performed prior to this Rosh Hashono as well. Although customarily the pruzbul declaration and process is performed in the presence of a Beis Din, at times this is not possible. The written and signed declaration can be sent to the Beis Din either by mail, email or through a dedicated on-line facility.



write a pruzbul on their behalf. The Chazon Ish utilised this method.

## CONCLUSION

In conclusion, we will mention one other aspect for the mitzva of Shemitta, which teaches us a most significant lesson that pertains to our everyday lives.

To understand any concept in the Torah at its most fundamental level, one must look at the first place that particular subject is mentioned in the Torah. The first reference to Bnei Yisrael's affluence is when they depart from Egypt. They were commanded to ask their Egyptian neighbours for utensils of silver and gold, in fulfillment of Hashem's promise to Avraham Avinu many years earlier - that his descendants would leave Mitzrayim with great wealth.

However the Torah uses an interesting terminology in regard to this mitzva - '*vayishalu* - and they should borrow' these vessels from their Egyptian neighbours. Essentially, the Jewish people had no intention of returning these vessels to

Chasam Sofer C.M.113.

the Egyptians. Therefore the correct terminology should have been 'and they should take.'

The Chidushei HaRim<sup>63</sup> explains that the term borrow used here is not being used with regard to the Egyptians. As far as they were concerned, the gold and silver was being taken permanently, as payment for all the years of bondage<sup>64</sup>. Borrow is being used with regard to Hashem. At this very first time when klal Yisrael were obtaining an abundance of wealth and riches, the Torah is stressing that the money does not belong to them. It is borrowed from Hashem.

This is the message of the mitzva of Shemitta<sup>65</sup>. The observance of Shemitta, during which we allow our land to lie fallow for an entire year, and relinquish all debts and money owing to ourselves, emphasizes that Hashem is the ultimate owner of the land and of all our wealth<sup>66</sup>.

63 Parshas Bo 11:2

64 See Sanhedrin 91a

65 This is also the message of Yovel. During the Yovel year, in addition to real estate returning to its original owner, Jewish slaves go free. We lack sufficient ownership to be able to give away or sell our land forever, and do not own our slaves entirely.

66 Rabbi E. Shlezinger in his Sefer Beis Av (parshas Behar) adds the following point. Interestingly, the laws in relation to cheating a fellow Jew in a transaction (ona'a) are

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In His infinite goodness, He grants each individual his fortune, and has commanded its yield and distribution in the way He sees fit.

Accordingly, we may add a deeper meaning to the term 'pruzbul,' and why the suffix 'butei' regarding the poor was taught between the parshiyos of Shemitta and Yovel. As emphasized, both Shemitta and Yovel stress that Hashem is the true owner of everything we possess and control. For one who perceives these lessons in their entirety, dishonesty becomes unimaginable. Obviously, one who cheats has not understood the message of Shemitta and Yovel correctly.

omitted. Although when writing a pruzbul one is trying to avoid the cancellation of his loans due to the Shemitta year, Chazal are reminding him not to forget the message of Shemittas Kesafim. Remembering the mitzva of Shemitta is a pruz, a takana (an enactment) and in situation for the bulei (wealthy) a reminder that affluence is only a loan, and to constantly focus on our real goal in life.

**The creditor should say in front of Beis Din:**

הן שנה זו היא שנת השביעית ויש לי חובות בשטר ובעל פה על אחרים ומוסרני לכם הרב  
 והרב \_\_\_\_\_ והרב \_\_\_\_\_ שכל חוב שיש לי  
 שאגבנו כל זמן שארצה

*Alternatively:*

"This Year is the *Shemittah* year, and I have documented and non-documented debts that I am owed, and I submit to you Rabbi \_\_\_\_\_ Rabbi \_\_\_\_\_ and Rabbi \_\_\_\_\_ that every debt due to me, that I shall be allowed to collect them whenever I wish"

**שטר פרוזבול**

במותב תלתא כחדא הוינא ואתא לקדמנא ר' \_\_\_\_\_ בן ר' \_\_\_\_\_ ואמר לנו  
 "מוסרני לכם הרב \_\_\_\_\_ והרב \_\_\_\_\_ והרב \_\_\_\_\_  
 שכל חוב שיש לי שאגבנו כל זמן שארצה" ויפינו כוחו שיכול לגבות כל חובותיו על ידי פרוזבול זה  
 כתקנת חז"ל, ועל זה באנו על החתום ב \_\_\_\_\_ בשבת \_\_\_\_\_ יום לחודש אלול, שנת חמשת אלפים  
 שבע מאות ושבעים וארבע לבריאת העולם למנין שאנו מונין כאן עיר מעלבארן הכל שריר וקים  
 נאום \_\_\_\_\_ דיין  
 נאום \_\_\_\_\_ דיין  
 נאום \_\_\_\_\_ דיין



**Torah Anytime**



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