

Bais HaVaad on the Parsha, Parshas Vayikra

Dead Debt

March 21, 2024

Excerpted and adapted from a *shiur* by Dayan Yitzhak Grossman

https://baishavaad.org/wp-content/uploads/2024/03/VAY72_01_Vayikra_Bankruptcy_in_Halacha.mp3

He shall return the stolen item that he stole or the proceeds of his fraud or the pledge that was left with him.

Vayikra 5:23

If one Jew owes money to another, and a secular court discharges the borrower's debts in a bankruptcy, *poskim* debate whether halacha accepts this or the debtor's failing to pay would be considered *gzeilah*.^[1]

Some *poskim*, including R' Moshe Feinstein, hold that bankruptcy is valid, due to the principle of *dina demalchusa dina* (the law of the government is the law). R' Moshe Heinemann agrees but says it applies only to a restructuring of the loan, not to a discharge. The Chelkas Yaakov maintains that *dina demalchusa dina* is not applicable here at all.

The Maharshach allows bankruptcy on the basis of minhag: If local business custom allows debtors not to repay after a bankruptcy, then halacha accepts this, as is the case in many aspects of business halacha.^[2] The Chikrei Leiv rejects this argument.

Many Hungarian *poskim*, including the Minchas Yitzchak and Mishneh Halachos, maintain that bankruptcy has no halachic validity. They say the debtor must repay his business debts, even years later, and failure to do so constitutes *gzeilah*.

[1] For more on this topic, see Rabbi Dr. Shlomo (Steven) Resnicoff, *Bankruptcy—A Viable Halachic Option?* at <https://www.jlaw.com/Articles/bankruptcy.html>.

[2] Some understand his opinion as applying only to debt restructuring, while others understand it to include complete discharge of debt.