

Filing for Bankruptcy According to Halacha

Case: *I lent someone from my shul a large sum of money, using all the proper kinyanim and documentation according to Halacha. A short while later he declared bankruptcy and paid me literally pennies on the dollar. As far as I know, there's no such thing as bankruptcy in Halacha, and I want him to pay me the entire sum when he can. Can I force him to pay me in full?*

Question: Is bankruptcy an acceptable way of absolving debt owed to a Jewish lender?

Answer: Theoretically you are correct that outstanding loans are not absolved merely because the borrower does not have the funds to pay. But here, there are several angles to look at. First, by accepting those pennies it may be perceived as a form of *pshara*, an accepted compromise and *mechila* on the rest. On the other hand, a forced compromise such as this can usually be contested.

Secondly, according to some Rishonim the rule of *dina d'malchusa* applies to all laws intended for the betterment of commerce and society in general; and bankruptcy laws seem to fall under that category.

Thirdly, now that the right of Bankruptcy had been well established, it may fall under the category of "minhag" common custom that is binding under monetary law. Because all commerce is done under the assumption of common terms and uses, anything that is fairly well known and accepted is considered to be an automatic *tnai* [condition] in the transaction. [See Minchas Yitzchak 3:134, Igros Moshe Ch"m 2:62]