

Is a Forced Settlement of 50 cents on the Dollar Valid?

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Question: I did a lot of business with someone and that person now owes me \$100k. When I came to collect, he told me that he is only offering fifty cents on the dollar. He said that if I don't accept that, he won't pay anything at all. Is he a *gazlan*?

Answer: Typically, the halacha is that a peshara (compromise) is like a sale in that a forced compromise is valid, just like a forced sale. However, that is only true if both sides agree to compromise because the actual ownership is in doubt. In this case, everyone admits that one party owes the other the full amount, but one side is forced to accept a compromise because the other informed him that he won't receive anything otherwise. This would be considered a gift, rather than a compromise, and a forced gift is not valid.

However, the Maharashdam is of the opinion that even a settlement like this is considered a *mechira*, rather than a *matanah*, because the claimant is receiving a benefit from it. He says that if this were not the case, no settlement will ever be enforceable. Even in his case, where a man who was in debtor's prison for owing money agreed to settle with his own debtor in order to get at least some money from him, he rules that the settlement is valid. As long as the threat of non-payment is serious, the settlement cannot be invalidated even by issuing a Modaah.

Although most acharonim rule against the Maharshdam, the question remains if the debtor can say "*kim li*" in order to allow a settlement to stand.

Another consideration would be if the creditor signed a *shtar mechillah*. Without a Modaah it might be difficult to overturn such a *shtar*. However, there a Modaah might help because he can use it to demonstrate that he only agreed to the settlement under duress.