

Is Bankruptcy Valid as Minhag Hamakom?

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Question: Previously we discussed whether bankruptcy laws are valid because of the rule of *dina d'malchusa dina*. What about the concept of *minhag hamakom*? Does that rule validate bankruptcy law according to halacha?

Answer: Unlike the question of whether *dina d'malchusa dina* applies to bankruptcy, which is only discussed by more contemporary Poskim, the question of *minhag hamakom* was discussed about 500 years ago by the Sefardic *chochomim*. These *chochomim* did use *minhag hamakom* to incorporate bankruptcy into halacha. However, they were speaking mostly in terms of delaying payments, and not flat out discharging a loan. Regarding the type of bankruptcy laws that we have today, where a borrower who cannot pay has his loan forgiven completely, some Poskim say that it did become the common custom for such laws to be recognized, which makes them valid according to halacha. Others disagree and say that *minhag hamakom* is only halachically valid if the custom is just and fair, and they feel bankruptcy is not.

Question: Is there a difference between personal and business loans? What about other debts, such as if someone damages someone else's property?

Answer: Some contemporary Poskim suggest that there may be a difference between a loan given by a commercial loan business and a loan given by a private person. When a bank or commercial loan operation gives a loan, it is understood that it will be working with societal laws such as bankruptcy; therefore, all such laws would apply. When a private person gives his friend a loan, however, it is a much less formal agreement that may not be expected to follow business regulations and may not be subject to bankruptcy laws.

Regarding other obligations, it definitely could be argued that even if *minhag hamakom* makes bankruptcy on loans halachically valid, that is only if there was an agreement in place between the lender and borrower, which is understood to be subject to the prevalent business norms. In cases of damages, however, there was no formal agreement between the damager and the injured party. Rather, it just so happened that one person damaged the other and now owes him money; therefore, it would seem that there is no basis to follow any common customs that would invalidate the debt.