

## Pruzbul Article 1

### The Laws of *Shemitas Kesafim* and *Pruzbul*- Part 1

#### Type of Bais Din and When One Cannot Appear in Person

#### **BACKGROUND**

The entire *Siman* 67 in *Choshen Mishpat* deals with the Halachos of *Shemitas Kesofim* i.e. the prohibition of the *malveh*, the lender, not to collect loans past the seventh year, known as *Shemita*, of the seven year cycle and Hillel's establishment of the *Pruzbul*, which permits post *Shemita* loan collection. In *Simon* 67:1 the *Mechaber* states that Biblically, *Shemitas Kesofim* is only mandated when *Klal Yisroel* is commanded to keep *Yovel* i.e. the special laws of the 50<sup>th</sup> Jubilee year. Since *Yovel* is only practiced when the majority of Jews reside in *Eretz Yisroel* it is not practiced today and thus neither is *Shemitas Kesofim*. However, Rabbinically, *Shemitas Kesofim* is mandated even in our times. The *Rema* quotes an opinion that in our times *Shemitas Kesofim* is not adhered to even on a Rabbinic level. The consensus of *Poskim* is that while there is no Biblical obligation to adhere to *Shemitas Kesofim* in our times, nevertheless, it is mandatory from the rabbis.

It is for this reason that our custom is that a *Pruzbul* is written before Rosh Hashana of the eighth year i.e. before the end of *Shemita* to allow for the collection of loans post *Shemita*. There is a minority view that a *Pruzbul* should be written before the start of *Shemita* i.e. before the beginning of the seventh year and thus some have this *minhag* as well.

According to the Torah if one actually delivers his loans with their documentation to Bais Din for Bais Din to collect them, then *Shemita* does not prevent those loans from being collected [by Bais Din.] Hillel instituted that merely notifying Bais Din of one's outstanding loans and intent to deliver them to Bais Din by way of the *Pruzbul*, enables their collection post *Shemita*.

#### **WHAT KIND OF BAIS DIN IS ACCEPTABLE?**

The *Mechaber* in *Simon* 67:18 states that a *Pruzbul* can only be written in front of an esteemed Bais Din which consists of three expert judges who are knowledgeable in Halacha, know clearly the laws of *shemita* and were accepted by the *Tzibur*, by the community, to be judges over them. The *Mechaber* is based on the opinion of *Sefer HaTerumos* who says that this Halacha conforms with Shmuel's opinion in the Gemora that a Bais Din has to be like that of Rav Ami and Rav Asi who were *gedolei hador* and thus had the power to extract money from one party and give it to another party.

The *Sefer HaTerumos* applied the law to a Bais Din that was accepted by the community, since such a Bais din also has the power to extract money from one party and give it to another party (see CM *siman* 2). It follows, that both a Bais Din that was accepted by the community and a Bais Din that contains a *gadol hador* are equally valid, according to this opinion, as both are a Bais Din that have the power to extract money from one party and give it to another party.

The *Rema* brings an opinion which says that any Bais Din can write a

*Pruzbul*. The *Rema* continues and states that “in my opinion we can rely on this leniency since, as mentioned, *Shemitas Kesofim* in our times is only Rabbinic and not Biblical”. The *Rema*’s opinion is predicated on those *rishonim* who say that we do not abide with Shmuel’s ruling that a Bais Din must be like the Bais Din of Rav Ami and Rav Asi.

*Shach* (67:5) refers to the *Mabit* (Volume 1 Siman 81) that one must go to the most worthy Bais Din in a city to write a *Pruzbul* and otherwise the *Pruzbul* is not valid. However, not in keeping with the *Mabit*, the *Kitzur Shulchan Aruch* (KSA), the *Shulchan Aruch HaRav* and Rav Chaim Kanievsky, Shlita in his *Derech Emunah* (DE) state that any Bais Din suffices as long as they consist of *Bnei Torah* (KSA), and such is the present custom (DE). It should be noted that the custom of the *Chazon Ish* Zt”l was to go for a *Pruzbul* to the most esteemed Bais Din of the *Badatz Yerusholayim* under Rav Dushinsky Zt”l, as did Rav Elyashiv Zt”l. Rav Shlomo Zalman Ohrbach Zt”l was not *makpid* on a Bais Din *Choshuv*. The *sefer Teshuva M’Ahava* states that the custom in Prague was to take three *hedyotos* – three plain people.

Based on the above it would seem that *Sephardim* need to follow the *psak* of the *Mechaber* and go only to a Bais Din accepted by the whole community or a Bais din that contains a *gadol hador*. Such a Bais Din is extremely rare and hard to find. In most cities in the world the local Bais Din is only accepted by the litigants to adjudicate the *Din Torah* that they are approaching Bais Din to resolve, through signing a document to that effect. Most Batei Din are not accepted by the whole community. In our times perhaps a Bais Din under the jurisdiction of a *Godol HaDor* such as Rav NissimKarelitz, *Shlita* or Rav Naftali Nussbaum Shlit”a would be considered as accepted by the whole community and containing a *gadol hador*. *Sephardim*, it would seem, would have to travel to Rav Karelitz’s Bais Din, or the like, to write a *Pruzbul*. Is there perhaps a solution to this issue so that all *Sephardim* do not have to travel far distances to write a *Pruzbul*?

### **DOES THE PRUZBUL HAVE TO BE WRITTEN STANDING IN FRONT OF BAIS DIN?**

The *Mechaber* (67:19) describes the procedure for writing the *Pruzbul*. The lender appears in front of Bais Din and declares to Bais Din that he would like to be able to collect all his debts following *Shemita* whenever he so desires. Upon hearing this declaration the Bais Din signs the *Pruzbul* indicating that the lender has made this declaration. Thus according to the *Mechaber* the *Pruzbul* procedure consists of 1. Appearing in front of Bais Din and making a declaration and 2. Having a written confirmation of this declaration signed by the Bais Din. The *Mechaber* goes on to say that if the lender and the borrower are both *Talmidei Chachomim* it is only necessary to appear in front of Bais Din and make a declaration. Putting this declaration in writing is not required. The *Rema* adds that according to some opinions even if the *malveh* and *loveh* are two plain Jews a verbal declaration can be made in front of Bais Din without the necessity of putting this declaration in writing.

The *Mechaber* (67:21) adds a further leniency based on a minority opinion. The lender can declare in front of two or three witnesses that he is giving over his debts to a specified Bais Din for collection after *Shemita*. The *Pischei Teshuva* quotes the *Chasam Sofer* as saying that according to this opinion even a non learned *malveh* would not have to appear in front of Bais Din. The important factor is that a Bais Din or witnesses have knowledge of the declaration that the lender declared that he is either giving over his debts to that very Bais Din or to another specified Bais Din for collection after *Shemita*. Chasam Sofer adds, that with this process it is necessary that Bais Din puts the declaration in writing. .

In summary, based on the above, maintaining the right to collect one's outstanding debts by way of a *Pruzbul* can be accomplished in one of three ways. 1. Declaring in front of Bais Din and having Bais Din sign the *Pruzbul* indicating in writing that the verbal declaration had been made in front of them. 2. Declaring in front of Bais Din without having a written confirmation of the declaration as a special dispensation for *Talmidei Chachomim* according to the *Mechaber* and for anyone according to the *Rema*. 3. Not appearing in front of Bais Din but creating a form of testimony of the declaration, either by verbalizing the declaration in front of 2 or 3 witnesses who can testify that he made a declaration that he delivers his debts by means of *Pruzbul* to a distant Bais Din or with a letter to a Bais Din that he declares that he delivers his debts by means of *Pruzbul* to that Bais din or a distant Bais Din. s

*Ashkenazic Poskim* are of the opinion that according to the *Rema* declaration of the *Pruzbul* can be made either verbally in front of Bais Din or in writing without appearing in Bais Din. There are, however, some *Ashkenazi Poskim* who are of the opinion that according to the *Rema* appearing in front of Bais Din is a necessity.

Can *Sephardim* rely on the minority opinion brought by the *Mechaber* that it is not necessary to appear in front of a Bais Din for the *Pruzbul*? Is it sufficient for the lender to make a declaration of the *Pruzbul* either through witnesses or in writing signed by the lender? This would be a solution to the issue raised above of requiring *Sephardim* to travel to a Bais Din accepted by the whole community. A signed letter sent to a Bais Din or a declaration in front of 2 or 3 witnesses who can testify that he made a declaration that he delivers his debts by means of *Pruzbul* to a distant Bais Din that contains a *gadol hador* would be sufficient.

Chacham Ovadia Yosef *zatzal* in his *Yabia Omer* (Volume 3:6), as well as *Ohr L'Tzion* in *Hilchos Shemitas Kesofim*, rule leniently. They rule that *Sephardim* can rely on this mentioned leniency.. *In Part 2 of this article we will learn how this ruling has been implemented by Sephardim or by Ashkenazim* who would like to be *machmir* and use a Bais Din *Chashuv* or one universally accepted.

Suite of *Pruzbul* Forms

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