

Pruzbul 5776 and the Laws of *Shemitas Kesofim* - Part 2
Women, Messengers and Other Pruzbul Matters

How Does One Write a *Pruzbul* in the Best Way Possible?

In Part 1 of this article we learned that in order to properly write a *Pruzbul* in our times we are faced with two main issues that the *Poskim* grapple with.

1. Does the *Malveh* have to actually appear in front of *Bais Din* to affect a *Pruzbul*?
2. Is it required, as the *Mechaber* brings in the name of the *Sefer HaTerumos*, to appear in front of an esteemed *Bais Din* – one that either contains a gadol hador or was accepted by the community, which have the power to take money from one litigant and give it to the other one.

On a practical level most Ashkenazim appear in front of a *Bais Din* of *Bnei Torah* and do not seek the *Bais Din Choshuv* – the esteemed *Bais Din*.

What can Sefardim, who wish to follow the *Mechaber* and the *Sefer HaTerumos* opinion, do? It involves great difficulty to travel to a *Bais Din* that is either accepted by the entire community or contains a gadol hador. Is there some alternative? What can an Ashkenazy, who wishes to fulfill the *Pruzbul*, involving the *Mitzva D'Rabbanan* of *Shemitas Kesofim* which comes once in seven years, in the best way possible, do?

Rav Elyashiv Zt'l and Ybc'l Rav Moshe Shternbuch *Shlita* suggest that a *Pruzbul* be made on condition. The lender should declare verbally in front of a local *Bais Din* he is giving over his loans to a distant *Bais Din Choshuv*. Alternatively, a signed letter indicating this, can be sent as well to a local *Bais Din*. When the local *Bais Din* is made aware of this verbal or written declaration they document this declaration. The *malveh* should then make a conditional declaration. He should state that if it is not necessary to actually appear in front of *Bais Din* then I already made a *pruzbul* with the distant esteemed *Bais Din*. If the Halacha turns out to be that it is necessary to appear in front of *Bais Din*, then I am now appearing in front of the local *Bais Din* for that purpose. In this manner the best possible way of performing the *Pruzbul* is accomplished without actually having to travel to the distant *Bais Din Choshuv*.

The above mentioned different methods of creating a *Pruzbul* will also explain the different texts that are found in various forms of current *Pruzbul*s.

May Relatives to Each Other or to the *Malveh* Sit on the *Pruzbul Bais Din*?

According to the opinions that a *Bais Din Choshuv* that is universally accepted for money matters is required, this would necessitate a kosher, learned *Bais Din* where the *Dayanim* cannot be related to one another, and even to the lender or borrower according to some opinions. However, according to the opinions that all that is required is a *Bais Din* of *Bnei Torah*, it is subject to a great machlokes haposkim if the judges can be

related to one another or the lender and borrower. The same applies to whether the *Pruzbul Bais Din* could meet at night. Among other factors, we would take into consideration whether this needs to be a *Bais Din Choshuv* which does not regularly convene at night or a *Bnei Torah Bais Din* which could meet at night since the *Bnei Torah Bais Din* does not have the full stature of a functioning *Bais Din*.

Should a Woman Write a *Pruzbul*?

Women are also subject to the laws of shemitas kesofim. It follows, that a single, widowed or divorced woman that has outstanding loans should write a *Pruzbul*. The *sefer Dinei HaSheviis HaSholem* 31:21 quotes Rav Shlomo Zalman Auerbach Zt'l as saying that a wife who has outstanding loans owed to her by the bank and has an independent bank account or CD where solely her signature is required, should write a *Pruzbul*. Based on the laws of Even Haezer, it is recommended that all married woman who are primary breadwinners, especially if they were breadwinners at the time of marriage and have debts owed to them should write a *Pruzbul*. The wife's husband or someone else can be her *Shliach* to appear in front of *Bais Din* on her behalf. There are *Pruzbul*s which contain a *nusach* text specifically for a husband acting on behalf of his wife.

Miscellaneous *Pruzbul* Issues

Many people think that they have not made loans and therefore have no need to write a *Pruzbul*. However, this is often not the case. If someone, for example, has money in a Jewish bank, although a *Heter Iska* will take care of the issue of *Ribis*, nevertheless, the person is still loaning money to the bank and therefore requires a *Pruzbul*. A store owner who allows customers to buy on credit is actually loaning them money and requires a *Pruzbul* in many situations.

If a loan was made after a *Pruzbul* was written then it is not covered by the *Pruzbul*. Since the institution of *Pruzbul* is predicated on giving over one's loans to *Bais Din*, one cannot give over a loan that has not yet taken place.

Another *Pruzbul* will need to be written for the new loan. This is why the *Pruzbul* is made *Erev Rosh HaShana* so that it covers all the previously made loans as close to *Rosh HaShana* as possible. A possible solution for the store owner who has issued purchases on credit after writing his *Pruzbul* on *Erev Rosh HaShana* is for him to extend the loan repayment date to after *Rosh HaShana*. A *Pruzbul* is only necessary when the due date is before *Rosh HaShana* or no specific date for repayment has been given. The announcement by the store owner extending the loan repayment date need not be made with the knowledge of the borrower, according to Rav Y. S. Elyashiv Zt'l. It should, however, lechatchila be done in front of two kosher witnesses. If not possible, it should be done even in front of two passul witnesses, and bedieved can be done without any witnesses.

According to the *Igros Moshe* no *Pruzbul* is necessary if a loan was repaid by a check whose date is after *Rosh HaShana*. If the check was made for a date before *Rosh HaShana* it is subject to a dispute between the *Poskim*

whether it is subject to *Shemitas Kesofim* or not.

A final issue concerns the fact that a *Pruzbul* can only be written if the *loveh* who has borrowed the money owns land, rents or has some room and board agreement. He must have some connection to land. What if someone lent money to a young *bochur* who has no connection of his own to owning land how can the *Pruzbul* be written? It is for this reason that some texts of the *Pruzbul* have a clause stating that being that the borrower has no land the lender is giving him a minute piece of land and now the *Pruzbul* can be properly written.

Suite of *Pruzbul* Forms