

**The 'Magical Power' of the Rabbis:  
How Does The *Pruzbul* Really Work?**

**By: Rabbi Tzvi Price**

In *Parshas Re'eh* the Torah states, "At the end of seven years you shall institute a *Shemittah* (release)... Every creditor shall release his authority over what he has lent his fellow Jew; he shall not press his fellow Jew..." (*Devarim* 15:1-2) *Chazal* (our Sages) explain that these words present us with two commandments. Firstly, there is a positive commandment to declare that we waive our right to collect any loans that were payable during the year of *Shemittah*. Secondly, the Torah commands us to refrain from demanding payment of those loans. Later on in the same passage (*Devarim* 15:9) the Torah obligates us in a third *Shemittah* commandment. There the Torah states that when making a decision whether to lend money, one is not allowed to take into account the possibility that *Shemittah* may release the loan. The concept that is formed by these three *mitzvos* is called *Shemittas Kesafim*, 'the release of monies.' Surprisingly, though the agricultural *Shemittah* only applies in the land of Israel, the *mitzvos* of *Shemittas Kesafim* are incumbent upon every Jew wherever he may find himself.

On the surface, our present observance of *Shemittas Kesafim* bears very little resemblance to that which the Torah describes. Unlike in olden times, today's Jewish courts rarely, if ever, enforce the release of a loan due to *Shemittah*. The rabbinic enactment of the *Pruzbul*, which is a main cause for this change, is often misunderstood. Unfortunately, the procedure of making a *Pruzbul* leaves the onlooker with the feeling that he had just witnessed some kind of magic which somehow makes the *mitzvah* of *Shemittas Kesafim* disappear. The purpose of this article is to demystify this often poorly understood subject.

**Today's Obligation**

Let us ask a fundamental question regarding *Shemittas Kesafim*. In our day and age is our responsibility to keep the laws of *Shemittas Kesafim* a Torah obligation or a rabbinic decree? The *Rambam* rules that today the observance of *Shemittas Kesafim* is no longer an obligation from the Torah. This is because the Torah made *Shemittas Kesafim* contingent on the observance of the laws of the *Yovel*, the Jubilee, which cannot be observed when we are in exile. However, our present observance of *Shemittas Kesafim* is a *mitzvah* of rabbinic origin. The reason that *Chazal* made this decree is so that the Torah concept of *Shemittas Kesafim* should not be forgotten. This view is held by the overwhelming majority of halachic authorities.

The view of the *Ramban* represents a more stringent opinion. He considers today's *Shemittas Kesafim* observance to be *min haTorah*, a Torah law that

is still in effect. He contends that the supposition that *Shemittas Kesafim* is contingent on the *Yovel* is not true. In fact, the *Ramban* states that even if today's agricultural *Shemittah* in the land of Israel is of rabbinic origin, the status of *Shemittas Kesafim* is still one of Torah law. At the other extreme, there is the opinion of the *Baal HaMeor*. He would consider today's observance of the laws of *Shemittas Kesafim* to be only an obligatory custom.

### **The *Pruzbul* Concept**

Due to the intervention of *Chazal*, *Shemittas Kesafim* as we know it today does not normally require any real financial loss. In fact, it has been that way since the times of Hillel the Elder, who was the leader of the generation that immediately preceded the destruction of the Second Temple. Hillel saw that the rich were refraining from lending to the poor because of a fear that their loans would be cancelled by *Shemittah*. In fact this behavior is exactly what the Torah prohibited in *Devarim* 15:9 as we have learned.

With his great wisdom, Hillel decided it would be best to minimize the damage. He devised a legal instrument which would, in effect, circumvent *Shemittas Kesafim* while at the same time maintain at least a semblance of adherence to its *halachos*. Hillel's enactment saved the rich from flagrantly ignoring the prohibition of refusing to give a loan because of the fear of *Shemittah*. Now, they would be able to collect their money. Furthermore, Hillel's innovation was also intended to help the poor by alleviating the difficulty they had in obtaining loans. Hillel called this new innovation a *Pruzbul*, which is a shortened form of the Aramaic expression *pruzbulti*, 'an enactment for the rich and the poor.'

How does Hillel's *Pruzbul* circumvent the laws of *Shemittas Kesafim* without abolishing them entirely? In order to accomplish this, Hillel used an existing *halacha* and then, with the authority that was given to him by the Torah, he extended it further, as will be explained.

According to the Torah, *Shemittas Kesafim* only applies to a loan in which payment is being demanded solely by the lender himself and not with the help of *Bais Din*, a Jewish court. If, however, the lender had already entrusted collection of the loan to *Bais Din* before the onset of *Shemittas Kesafim*, then that loan will not be subject to the laws of *Shemittah*. One explanation given for this *halacha* is that the Torah prohibition not to press a borrower for payment only refers to the lender himself but not to *Bais Din*.

Although this *halacha* does circumvent *Shemittas Kesafim*, widespread use of this loophole would prove quite impractical. This is due to the fact that the only legally recognized method by which a lender entrusts *Bais Din* to collect the debt owed to him is by physically giving his loan document to *Bais Din*. Typically, a lender would think twice before he relinquishes control of his loan document to anyone, including *Bais Din*.

The halachic innovation of the *Pruzbul* was to allow the lender to make a

verbal declaration in front of *Bais Din* or in front of two witnesses in which he states that he entrusts *Bais Din* to collect his debts for him. This would take the place of actually giving documents to *Bais Din*. In fact, Hillel went so far as to empower a *Pruzbul* declaration with the ability to entrust a loan even when no loan document was written at all. This declaration must also be written down and signed by the three judges that comprise the *Bais Din* or, alternatively, by the two witnesses who hear his declaration. There is a difference of opinion regarding the validity of a *Pruzbul* that was made by verbal declaration but was not written down.

### **Rabbinic 'Magic'**

By what authority did Hillel make this enactment? This is an especially troublesome question in light of the *Ramban's* understanding that *Shemittas Kesafim* is always a Torah obligation. According to that opinion, Hillel's *Pruzbul* is a direct contradiction to the Torah! The Talmud asks this question. According to the *Ramban*, the Talmud answers that with regard to monetary matters, the Torah itself empowers the Jewish court with the authority to seize the assets of one individual and give them to another if the court has a legitimate reason to do so. The expression used by the Talmud to describe this power is *hefker Bais Din hefker* - property declared ownerless by *Bais Din* becomes ownerless property. In effect, this is what Hillel did when he enacted the *Pruzbul*.

Thus, although the *Pruzbul* does seem to be a 'legal fiction' created by some 'rabbinic magic,' in truth it is not fiction or magic at all.

The *Pruzbul* is not an example of a rabbinical abrogation of the Torah, *chas v'shalom*. Rather, it is an example of the use of a legitimate power invested in the Sages by the very Torah that they strive to uphold. In addition, one should understand that the power of *hefker Bais Din hefker* was meant by the Torah to be used sparingly and with clearly defined guidelines. In the entire Talmud one can find very few instances where the Sages invoked the power of *hefker Beis Din hefker* to effect change. From that fact, it would seem that this power was not intended by the Torah to be a 'magic bullet' which can be aimed at every social problem.

It is true. The Rabbis do have broad, far-reaching powers to effect *halachic* change, but they were directed by the Torah to use those powers in only very limited situations. Furthermore, today's Jewish courts do not apply *hefker Bais Din hefker* to situations where no precedence for such action is found in the Talmud. So, if we are looking to fix that which is wrong with today's society, *hefker Bais Din hefker* is not going to be the solution. Instead, we had better look to our own powers to change our attitudes and actions. That is the kind of change the Torah wants from us anyway.

Suite of *Pruzbul* Forms