

Shemita & Pruzbul: Part I

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THE ANNULMENT OF ONE'S DEBTS:

While those of us living in the diaspora do not have the merit of observing the laws of *shemitas karka'os*, we still are able to connect to *shemita* through the mitzvah of *shemitas kesafim*, which does apply outside of Eretz Yisroel.

In addition to the prohibition of working the land of Eretz Yisroel in the seventh year, the Torah tells us that all outstanding debts become annulled and can no longer be collected at that time. Interestingly, the Torah does not speak about *shemitas kesafim* in the same Parshah where it speaks about *shemitas karka'os*. The laws of *shemitas karkah* are in Parshas Behar, while the laws of *shemitas kesef* are found in Parshas Re'eh, where it says that one must do a *shemita* on his loans at the end of the seventh year. The root of the word *shemita* is "*shamot*", to abandon. Thus, the verse is telling us that one must abandon his claims to his outstanding loans at this time. In addition to a positive commandment (*mitzvas aseil*) to abandon the debt, the Torah also states a prohibition (*mitzvas lo sa'aseh*) to collect on a loan.

THE TORAH'S ECONOMIC PERSPECTIVE:

When we examine the verses in Parshas Re'eh, we see that the Torah is detailing an economic perspective that Jews are expected to have. This Parshah is the sole place in the Torah where the mitzvah to give *tzedakah* to poor people and the prohibition against being tightfisted and ignoring their needs are mentioned. The Torah states that there will always be poor people amongst us, and one should, therefore, open his hand to provide for them. It further states that there is a mitzvah to lend money to one's fellow Jew. The Torah goes on to add that it is prohibited to refrain from lending money out of fear that *shemita* is approaching and his loan will be erased, which will cause him to lose his money. The Parshah concludes that even if one loses his money, he should not be upset because Hashem is in charge of who has and doesn't have money, and He will grant success to all those who follow His laws.

In short, all of these monetary mitzvos are to be viewed in the context of a Jew's obligation to recognize that everything in this world really belongs to Hashem, and not to us. Therefore, one should use his money to help others, as this is the reason Hashem gave us the money in the first place, thereby appointing us to be His agents to use it properly. In this way, *shemitas kesafim* is very similar to *shemitas karka'os*. One is commanded to let the land lie fallow for one year out of every seven as a sign that he recognizes that the land is Hashem's. So too, one is obligated to abandon his debts once every seven years as a sign that he recognizes that the money is not truly his.

This concept epitomizes the Torah's entire economic outlook. Although one is not required to lend out his money if he needs it for himself, if he does have the ability to do so, he should lend out the money altruistically, without any agendas of how he can capitalize on the loan. If he was unable to collect the loan before *shemita*, he should realize that he has not lost anything, as the money always belonged to Hashem and was never really his in the first place.

In this regard, the Chinuch speaks extensively about the topic of *chemdas hamamon* (the lust for money). He says that the negative trait of *chemdas hamamon* does not refer to someone who uses his money to purchase nice things for himself, such as a nice house or material possessions. While a drive for materialism is not an ideal lifestyle for a Torah Jew, it does not fall under the category of *chemdas hamamon*. When the Torah speaks about this negative trait, it is talking about someone who simply desires money in order to hoard it and accumulate more and more. The Torah chastises someone who stockpiles money in this way and says that he should not be so tightfisted and, if he does have the money, he should lend to others who need it.

After stating that one should not pressure a Jewish borrower to repay a loan if he doesn't have the ability to do so, the verse states that one should pressure a non-Jewish borrower. The Ramban understands that the Torah is not commanding a lender to pressure a non-Jewish borrower; rather, it is stressing that one should not be aggressive when collecting a loan from a fellow Jew because he should empathize with him and feel

his pain. On the other hand, one does not need to have this level of empathy for a non-Jew and he may collect from him without any guilty feelings.

PRUZBUL:

The Mishnah in Massechet Shevi'it discusses a time when people were struggling and found it difficult to lend money to others. Since most people were struggling themselves, it was hard for them to lend money when they knew the loan might be annulled by *shemita*. In the face of this challenge, Hillel Hazakein instituted the concept of *pruzbul* as a means of allowing loans to be collected even after *shemita*. Hillel felt that it was preferable to find a mechanism to circumvent the laws of *shemita kesafim* and allow for loans to be collected, rather than for people to stop lending altogether.

The way that *pruzbul* works is a subject of much discussion in the Rishonim. Some opine that if *shemita kesafim* today would be a *d'oraysa*, it would not be possible to get around it. They say that the only reason it works is because *shemita kesafim* in our times is only a *d'rabanan*.

The basis for this notion is a statement in the Gemara that *pruzbul* is effective because *shemita kesafim* today is only *d'rabanan*. One explanation offered for this is because *shemita karkah* today is a *d'rabanan*, and *shemita kesafim* is only *d'oraysa* when *shemita karkah* is *d'oraysa* as well. Another reason that is offered is that *shemita kesafim* only applies in times when *Yovel* is practiced, which is not the case in contemporary times.

According to these Rishonim, since we see from the Gemara that *shemita kesafim* is only a *d'rabanan* today, it is possible to institute *pruzbul* as a way around it. If it would be a *d'oraysa*, that would not be possible.

It must be mentioned, however, that not all Rishonim agree that *shemita kesafim* in our times is a *d'rabanan*. While the Gemara seems to indicate that, some Rishonim learn that it is only a thought of the Gemara, and the conclusion of the Gemara is that it is a *d'oraysa* even today.

THE MECHANICS OF A PRUZBUL:

The basic explanation of how *pruzbul* works is that one gives over his debts to *beis din*, who are permitted to collect them. We find in regards to numerous types of debts that one can give them over to *beis din*, which makes them easier to collect. There is a general rule of "*hefker beis din hefker*", which means that *beis din* has the right to issue monetary rulings, taking money from one person and giving it to another as they see fit. Because of this rule, *beis din* can still collect a debt without it being erased by *shemita*, as they always have the power to remove money from one person's possession and give it to another. Accordingly, if one gives his debts over to *beis din* with a *pruzbul*, they are always allowed to collect it. When the lender later goes to collect the debt, he is only acting as the agent of *beis din* to do so, and they then allow him to keep the

money that he collected on their behalf.

WHY WERE THERE NO PRUZBULS IN SPAIN?

While it is standard practice today for everyone to write a *pruzbul*, the Tur says that for hundreds of years it was not customary to write *pruzbuls* in Spain. It is unclear why they did not have this practice and how they were permitted to collect debts after *shemita* without a *pruzbul*. The Aruch Hashulchan offers a number of suggestions:

1. Firstly, he says that there is a minority view in the Rishonim that *shemita* does not apply today at all (not even *m'derabanan*). This opinion held that both *shemita karkah* and *shemita kesef* only applied when the Bais Hamikdash stood. Alternatively, they held that *shemita* only applies in Eretz Yisroel and the surrounding areas, but not in other lands. For some reason, Spanish Jewry may have relied on this minority opinion.
2. Another possible explanation is that *pruzbul* only works if the local *beis din* has real authority to take money from one person by force and give it to another. Our *batei din* may not have the capacity to do that, and the *batei din* in Spain may not have had that power either. Since Spanish Jewry understood that it was not possible for them to rely on a *pruzbul*, every loan that was given was on the condition that it should not be erased by *shemita*. The Gemara in Makkos says that such a condition does work, and if a loan is given with such a stipulation, a lender may collect his money after *shemita*.

In any case, the Rishonim denounce the practice of not writing a *pruzbul* and say that everyone should write one.

A "NORMAL" COLLECTION:

We can see from Chazal that when the institution of *pruzbul* was established, it was done in such a way that it should look like a "normal" collection of a debt. A lender usually does not give a loan unless the borrower offers some form of security to back him – for example, if he owns a piece of land that can serve as security on the debt that can be impounded if he doesn't pay up. Because of this, Chazal say that the borrower must own some land in order for a *pruzbul* to be valid.

It has been suggested that the reason *pruzbuls* were not written in Spain was because the Jews of that region did not own land; therefore, a *pruzbul* would not be effective. Instead, lenders simply waived all their claims to their outstanding debts at the end of the seventh year.

WHEN TO WRITE A PRUZBUL:

Most Poskim say that loans become voided at the end of the seventh year; therefore, the *pruzbul* should be written at the end of *shemita*. The Rosh, however, says that one

should write his *pruzbul* before the beginning of *shemita*. The Rosh's opinion seems to be that although the borrower is only absolved from paying at the end of *shemita*, some sort of inability to collect is placed on the lender at the beginning of the year.

The Ketzos Hachoshen explains the opinion of the Rosh that there are two separate issues at hand. At the beginning of the *shemita* year, a prohibition against collecting the debt goes into effect; however, the debt still exists until the end of the year, when it becomes absolved completely. Similarly, the Minchas Chinuch writes that if one uses the court system to collect a debt after the end of the year, he has transgressed the prohibition of theft, because the debt no longer exists and therefore, he must return the money to the borrower. Later Acharonim disagreed, and state that although the lender transgressed a prohibition by collecting the money, the debt still exists and taking the money is not theft; thus, there is no obligation to give the money back once it is collected. Although the Yereim is the only *rishon* who states outright that a debt still exists even after *shemita*, there are indications in some additional Rishonim to that same effect.

The custom amongst those who are stringent is to write two

pruzbuls – one at the beginning of the year and one at the end – in order to fulfill the Rosh's opinion. Another reason to do so is because there is a debate amongst Rashi, Tosafos and the Ramban in Avodah Zara regarding how to reckon when the *shemita* year is. According to one opinion, our calculation is actually off by one year, and *shemita* should be the year before. While we would not be stringent on the farmers and ask them to observe two consecutive years of *shemita* because this is not plausible, it is not that difficult for people to write two *pruzbuls* in order to fulfill all the opinions.

THE PROCEDURE:

The basic procedure of *pruzbul* is for one to declare in front of a *beis din* of three men that he does not want his debts to be cancelled and, therefore, he gives them over to the *beis din*. The *beis din* can be made of *hedyotos* (non-experts).

He then makes a *kinyan* (an act of transferring ownership) to give over the debts to the *beis din*, and they grant him the right to collect the loans on their behalf. They affirm the process by signing on the contract.



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