

# An Overview of the *Halachos* of *Shemitas Kesafim* and *Pruzbul* 5782 – Part I

By Rabbi Avraham Chaim Bloomenstiel

The end of 5782 is only a few short weeks away and, as this year draws to a close, we are blessed with a *mitzvah* that only occurs once in seven years: *shemitas kesafim*, the cancellation of loans.

The source of this *mitzvah* is found in Parshas Re'eh:

*At the end of seven years, you will make a release [shemitah]. This is the manner of the release: to release the hand of every creditor from what he lent his friend. He shall not exact from his friend or his brother, because time of the release for the L-rd has arrived. From the foreigner you may exact. But what is yours with your brother, your hand shall release. (Devarim 15:1-3).*

This cancellation of debt is known as the *mitzvah* of *shemitas kesafim*. This is the first of two articles in which we will look at the origin and applications of this *mitzvah* and the famed *pruzbul* enactment of Hillel HaZaken.

## Is *Shemitas Kesafim* D'Oraisa or D'Rabbanon?

All of the *mitzvos* associated with *shemitah* year are bound up with the larger *yovel* cycle, in which every seven cycles of seven years is capped with a *yovel* (jubilee) year.<sup>1</sup> The *mitzvah* of *yovel* only applies when all (or nearly all) of the Jewish people live in Eretz Yisroel according to their tribal inheritances.<sup>2</sup> Around 600 BCE, the tribe of Gad and half of the tribe of Menashe were exiled from their lands, causing a rupture in the tribal sovereignty of ancient Israel. With this loss, the *mitzvah* of *yovel* ceased.<sup>3</sup>

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<sup>1</sup> Rashi to Gittin 36a citing Yerushalmi Gittin 4:3. In our times, the *halacha* follows the *shittas he-Geonim* that *yovel* is neither counted nor observed. See Rambam, *Shemita VeYovel* 10:5.

<sup>2</sup> Arachin 32b learns this from Vayikra 25:10. See Rambam, *Shemitah VeYovel* 10:8.

<sup>3</sup> Ibid.

Without *yovel*, the *mitzvah* of *shemitas kesafim* also ceased to apply *mid'Oraisa*. Today, our observance of this *mitzvah* is *mid'Rabbanon*.<sup>4</sup>

### Where Does the Mitzvah of *Shemitas Kesafim* Apply?

Mishnah, Kiddushin 36b teaches that, generally speaking, agricultural *mitzvos* apply in Eretz Yisroel only. However, *mitzvos* that devolve upon an individual apply everywhere. The Gemara on *daf* 38b explains that the *mitzvah* of *shemitas kesafim* is a personal obligation and therefore applies both in and outside of Eretz Yisroel.

### When Does the Mitzvah of Shemitas Kesafim Apply?

The *posuk* states:

*At the end of seven years, you will make a release [shemitah].*  
(Devarim 15:1).

Arachin 28b learns that it is only “at the end” of seven years, as the last day of the *shemitah* year draws to a close, that debts are cancelled.<sup>5</sup>

### To Which Types of Debts Does *Shemitas Kesafim* Apply?

*Shemitas kesafim* only applies to those loans that have actually come due to the lender. If a debt has not come due for payment, then *shemitas kesafim* does not cancel that debt.<sup>6</sup> For example: on 1 Av, 5782, Reuven lent Shimon \$500.00 for a term of six months. This means that the loan would come due and be collectable six months later on the first of Shevat, 5783. Should Reuven be concerned that,

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<sup>4</sup> There are several views in the *rishonim* about the status of *shemitas kesafim* in our times. Some, such as the Ramban in the Milchamos HaShem to Gittin 36, hold that it remains *d'Oraisa* even today. Diametrically opposed is the Raavad, who holds that *shemitas kesafim* is only a *middas chassidus* today. The Shulchan Aruch C.M. 67:1 *paskens* like the Ramban, Hilchos Shemita veYovel 9:3, Tosafos to Gittin 36a-b, and Chinuch 477 that *shemitas kesafim* today is *mid'Rabbanon*.

<sup>5</sup> Rambam Shemita veYovel 9:4; Shulchan Aruch C.M. 67:30

<sup>6</sup> Rambam Shemita VeYovel 9:9; Shulchan Aruch, C.M. 67:10.

because 5782 was a *shemita* year, his loan to Shimon is now void? The answer is “No.” The loan was for a six-month term and is not collectable until the following year. *Shemita* will not have any effect on this loan because it had not come due at the time of *shemita*.

The situation gets a bit more complicated if Reuven lent Shimon \$500.00 and said “Shimon, good buddy, just pay me back whenever.” This is a loan without a defined term. In *halacha*, a loan without a specified term is considered due after 30 days (unless there is some other time period observed in that locale for such loans).<sup>7</sup> If such a loan is made more than 30 days before 29 Elul, the last day of the year in a *shemita* year, then *shemita* would certainly cancel the loan. However, the *halacha* is not so clear for a loan of unspecified term made within 30 days of the end of the *shemita* year.<sup>8</sup> In the case of such a loan it is proper to make a *pruzbul*.<sup>9</sup>

*Shemita* not only cancels monetary loans, but other types of debt that *halacha* recognizes as comparable to monetary loans. For example: a man lent his neighbor a bag of flour and expected to receive a bag of flour back as repayment. Now, the lender knows that he will not receive back the same bag of flour—he knows that the borrower is going to use up his bag. So, the lender obviously lends the flour knowing that he will be paid back with a “replacement” bag. This makes the lending of the bag of flour indistinguishable from a monetary loan. When one makes a monetary loan, he does not expect back the same bills and coins that he lent. Rather, the lender expects back “replacement” bills and coins of the same value. These types of loans are called *milveh lehotzaah nitneh*, loans made to be spent or used up, and are the exact type of loans cancelled by *shemita*.<sup>10</sup>

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<sup>7</sup> Shulchan Aruch, C.M. 73:1. This 30-day term is a default in *halacha* that can be superseded by local custom. See Shu”t Devar Avraham 1:32 and Chasdei Dovid, Tosefta Bava Metzia 10:1 as to the underlying reasons.

<sup>8</sup> It is difficult in such a situation to assess the intent of the parties, a factor that may impact whether or not the loan is cancelled by *shemita*. Chiddushei HaRan Shabbos 148b, Minchas Chinuch 477 and Shu”t Yechaveh Daas 4:62 hold that such a loan is unaffected by *shemita*. Bach 67:13 and Urim VeTumim, Tumum 67:27 disagree, ruling that the loan is cancelled.

<sup>9</sup> Shu”t Devar Avraham 1:32.

<sup>10</sup> Yalkut Yosef 24:12.

Other debts cancelled by *shemita* may include debts for purchases made on credit (such as grocery or bar tabs)<sup>11</sup> as well as wages owed to certain types of independent contractors.<sup>12</sup> In both of these cases, the debt may be subject to cancellation if a final bill has been presented to the debtor or if a demand or payment deadline has been set.<sup>13</sup> However, if at the end of the *shemita* year the creditor is still allowing the bill to accrue without tallying it or demanding payment, then *shemita* will not cancel the debt.

It may come as a surprise that *shemita* can even affect money deposited in or owed to banks. When you deposit money with a bank, you are essentially making a loan to your bank. The funds on-deposit constitute a debt payable to you upon demand (meaning, when you make a withdrawal). If the bank is Jewish-owned, then there is a possibility that *shemita* will cancel the bank's debt to its customers. This is mainly a concern in Israel where the banks are owned by a majority of Jewish shareholders. The interaction of *shemita* and the banking system is very complicated<sup>14</sup> and the *halacha le-maseh* depends largely on the structure of the bank's ownership.<sup>15</sup> It is nevertheless advisable to make a *pruzbul* in such a case (*pruzbul* will be discussed below).

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<sup>11</sup> Mishnah, Sheviis 10:1; Rambam Shemita veYovel 9:11; Shulchan Aruch C.M. 67:14.

<sup>12</sup> Shulchan Aruch C.M. 67:15.

<sup>13</sup> Both of these cases are brought in Rambam, Shemita VeYovel 9:11. See Peirush HaMishnayos, Sheviis 10:1 for an explanation of the Rambam's reasoning and Rema, Shulchan Aruch C.M. 67:14.

<sup>14</sup> See Kuntres Devar HaShemitta by Rav Moshe Shapira, appended to his Mishnas Kesef. Published in the 1960's, this is an in-depth examination of *shemita* and the banking system in Israel. Although its presentation of the relevant *halachos* is excellent, much of its information and assumptions about the Israeli banking industry are out-of-date today.

<sup>15</sup> There is disagreement among the *poskim* as to whether Jewish identity can be imparted to a corporate entity. If so, then Jewish customers of a bank owned by a majority of Jewish shareholders would require a *pruzbul*. However, if corporate ownership does not translate into Jewish ownership, then a *pruzbul* is not necessary. Rav Moshe Feinstein and Rav Yosef Shalom Elyashiv held that corporations can never be considered "your brother" (see Devarim 15:3) and therefore the laws of *shemita* do not apply to them. Rav Ovadia Yosef disagreed and required Israeli banks and their customers to make a *pruzbul*.

According to many *poskim*, *shemita* may also void uncashed personal checks dated before the end of the *shemita* year. It seems to this writer, however, that this may only be the case in Israel. Under Israeli law, personal checks are promissory notes that create an actual debt obligation between the payor and payee.<sup>16</sup> This is not so in the United States. In the United States, personal checks are not debt instruments; a check does not create a debt between two parties.<sup>17</sup> Instead, a check is a creature of contract. It is simply an order to one's bank to release funds to a third party. Since personal checks are not debt obligations in the U.S., they might not be voided by *shemita*. Should a U.S. resident forget to make a *pruzbul* in the *shemita* year and, after Rosh HaShanah, discover an uncashed check laying around, he should consult with a *posek*.

### What Debts Are Not Cancelled by *Shemita*?

As discussed above, any loan that has not yet become due is unaffected by *shemita*. Also unaffected are debts that arise from revolving or "open ended" credit, such as rent payments, tuition, and auto leases. Although these debts have fixed days on which some amount must be paid, such debts are continually incurred by the debtor and do not resemble the type of payable loans cancelled by *shemita*. According to some *poskim*, credit card debt, being a type of revolving credit, is also not cancelled by *shemita*.<sup>18</sup>

Certain purchases that are paid for in installments may also be unaffected by *shemita*.<sup>19</sup> Similarly, wages owed to salaried employees or even to hourly employees with fixed, regular pay days are not cancelled by *shemita*.<sup>20</sup>

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<sup>16</sup> *Pekudat ha-Shetarot (Nusah H'adash)* §1.

<sup>17</sup> See U.C.C. §3-408.

<sup>18</sup> *Nitei Gavriel* 12:13.

<sup>19</sup> *Shulchan Aruch C.M.* 67:14; *Sema* 67:26.

<sup>20</sup> *Rambam*, *Hilchos Shemitta VeYovel* 9:11; *Shulchan Aruch C.M.* 67:15.

Secured debts (meaning collateralized debts) are also not cancelled by *shemita*.<sup>21</sup> The Gemara, Kiddushin 9b teaches that "a creditor acquires the collateral given to him." The Rambam explains that when a loan is given on collateral, the lender acquires the collateral until the loan is repaid. Therefore, it is as if there is no debt for *shemita* to cancel.<sup>22</sup>

Certain obligations, such as *tzedakah* pledges<sup>23</sup> and fines or judgments assessed by a *beis din*,<sup>24</sup> also remain intact after *shemita*.

### ***HaMoser Shtarosav LeBeis Din vs. Pruzbul***

It is understandable that lenders might be anxious about loaning money as the *shemita* year approaches. Yet, the Torah solemnly warns lenders against such reluctance:

*Beware, lest there be in your heart an unfaithful thought, saying, "The seventh year, the year of shemita has approached," and you will begrudge your needy brother and not give him, and he will cry out to the Lord against you, and it will be a sin to you.*

Lenders are not without options, though. The Mishna, Sheviis 10:2 teaches that a creditor who is concerned that *shemita* will cancel a debt owed to him can preserve the debt by assigning it to a standing *beis din*. The lender does this by physically handing over the loan instrument (promissory note or contract) to the *beis din*.<sup>25</sup> The Yerushalmi explains that the debt remains intact because, on a biblical level, *shemita* only cancels debts owed to private individuals, but not to a *beis din*.

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<sup>21</sup> Rambam Hilchos Shemitta VeYovel 9:14.

<sup>22</sup> Peirush HaMishnayos, Sheviis 9:2.

<sup>23</sup> Shulchan Aruch 67:28 and Sema 67:17. See also Aruch HaShulchan 65. Such pledges are not viewed *halachically* as debts, but as vows.

<sup>24</sup> Shu"t Maharit, C.M. 2:114; Shu"t Toras Chaim 2:34.

<sup>25</sup> See Tosafos, Makkos 3b, d.h. *HaMoser*.

This arrangement, called *hamoser shtarosav le-beis din* (“one who transfers his documents to *beis din*” —or *hamoser shtarosav*, in short), worked on a *d’Oraisa* level to allow lenders to preserve their loans despite *shemita*. However, *hamoser shtarosav* had limited application. It only worked for lenders with documented loans who had access to a *beis din* capable of carrying out collections. *Hamoser shtarosav* did little for lenders with oral loans or who lived in “out of town” communities.

It appears that the sages were concerned for the limitations of *hamoser shtarosav*, and worried that lenders would give into their reluctance to lend as *shemita* approached. This could have devastating consequences in a year when the agricultural economy was already limited. It appears that this problem existed in the times of the Mishnah.

Hillel HaZaken proposed a solution that would make it possible for all lenders to preserve their loans, whether oral or written, despite *shemita*. This was the institution of *pruzbul*.<sup>26</sup> *Pruzbul* is a declaration made by a lender that accomplishes two things:

- 1) The lender gives his debts (whether oral or written) over to a *beis din*, and
- 2) The lender appoints himself as agent to collect these debts on behalf of the *beis din*.

With *pruzbul*, lenders no longer needed to rely on *beis din* to handle collections. Also, the *pruzbul* was also capable of preserving oral as well as documented loans. Although the later sages agreed that *moser shtaros* was effective to preserve loans, they questioned the authority on which Hillel’s *pruzbul* was based, asking in Gittin 36a, “How can Hillel uproot an entire *mitzvah* from the Torah?”

Abbaye and Rava offered differing answers to this question. According to Abbaye, Hillel’s enactment works today only because the *mitzvah* of *shemitas kesafim* is *d’Rabbanon*. Indeed, the Rambam writes in Hilchos Shemita VeYovel 9:16 that when *shmitas kesafim* regains its biblical status the *pruzbul* will no longer function.

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<sup>26</sup> Mishnah, Sheviis 10:3. The explanation of *hamoser shtarosav* and *pruzbul* presented here is according to Tosafos, Makos 3b *d.h. HaMoser Shtarosav LeBeis Din*. According to Rashi, *hamoser shtarosav* and *pruzbul* are one-in-the-same. Rambam, Shemita ve-Yovel 9:15 agrees with Tosafos. The Shulchan Aruch adopts the view that they are two separate *halachos* in C.M. 67:11 and 67:18.

Rava, however, says that *pruzbul* can even uproot the biblical *mitzvah* of *shemitas kesafim* because of the principal of *hefker beis din hefker*: a *beis din* has the inherent power to uproot ownership.<sup>27</sup> According to Rava, even though an oral loan may be canceled on a biblical level, a *beis din* can return ownership of the loaned monies to the original lender and thus preserve the loan.<sup>28</sup> The Raavad, *Hilchos Shemitah VeYovel* 9:16 follows Rava, holding that *pruzbul* would even be effective when *shemitas kesafim* is operating on a biblical level.

In the next article, we will look at the different texts of the *pruzbul*, how a *pruzbul* is executed, and who needs to make a *pruzbul*.

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<sup>27</sup> See Mishnah, *Shekalim* 1:2; *Moed Katan* 16a; *Yevamos* 89b; Rambam, *Sanhedrin* 24:6.

<sup>28</sup> This is the Raavad's understanding of Rava. It is very, very different from how Tosafos understands Rava. See Tosafos *Gittin* 36a, *d.h. Mi lka*.