

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

By Rabbi Avraham Chaim Bloomenstiel

As we learned in Part I, the *pruzbul* was not an innovation that provided a “way around” *shemitas kesafim*. Even before Hillel HaZaken established the *pruzbul*, there were many *d’Oraisa* options creditors could use to preserve debts owed to them (i.e. *moser shtarosav* or making the loan due after *shemita*). The purpose of *pruzbul* was to make it easier for lenders to preserve their loans. Hillel’s hope was that *pruzbul* would encourage lending and prevent the needy from being shut out of the credit market.

In this second installment on *shemitas kesafim* and *pruzbul*, we are going to look at some of the *halachos* of *pruzbul*.

### When Should One Make a *Pruzbu*?

As discussed in my previous article, *shemita* only cancels debt at the end of the year. Therefore, a *pruzbul* must be made before the end of the *shemita* year.<sup>1</sup> This is the fundamental *halacha*. However, some have the *chumra* of making two *pruzbuls*, one *pruzbul* in the sixth year of the *shemita* cycle (before the onset of the *shemita* year) and a second *pruzbul* before the *shemita* year concludes.

The origin of this *chumra* is the view of the Rosh that even though *shemita* only cancels debts at the end of the *shemita* year, certain prohibitions on collecting loans go into effect at the beginning of the *shemita* year.<sup>2</sup> Although a few other *rishonim* agree with the Rosh,<sup>3</sup> many *acharonim* believe the Rosh based his view on

---

<sup>1</sup> Shulchan Aruch C.M. 67:30-31.

<sup>2</sup> Rosh, Gittin 4:18, 20, relying on Tosefta, Sheviis 8:10.

<sup>3</sup> See, for example the Tur, C.M. 67:32.

a defective version of the Tosefta.<sup>4</sup> While everyone agrees that the fundamental *halacha* is that a *pruzbul* should be made at the end of *shemitah*, some observe the *chumra* of making an additional *pruzbul* before the *shemitah* year.<sup>5</sup>

### Before What Type of *Beis Din* Should One Make a *Pruzbul*?

The Rambam holds that the *beis din* for *pruzbul* must be a *chashuv beis din* whose members are experts in *halacha* and the laws of *pruzbul*.<sup>6</sup> The Tur disagrees with the Rambam and writes that a *pruzbul* can be made before any *beis din*. In Shulchan Aruch, C.M. 67:18 the Mechaber rules like the Rambam and the Rema rules like the Tur.

Ashkenazim, following the Rema, will make a *pruzbul* before a *beis din* of any three people. Sefardim, however, follow the Mechaber and will only make a *pruzbul* before a prominent *beis din* of experts. This creates a practical difficulty in that many people do not have access to such a *beis din*. Rav Ovadia Yosef ztz"l advised that in such a situation a Sefardi creditor should use a variant text of the *pruzbul* in which he declares before two witnesses that he entrusts his loans to a specific, named *chashuv beis din*.<sup>7</sup> This declaration is sufficient even if the declarant is not before the named *beis din* or if the *beis din* is in another city.

---

<sup>4</sup> Tosefta, Sheviis 8:10 states that a *pruzbul* should be made on "erev Rosh HaShanah of *sheviis*." The Hagahos HaGra writes that the word "*motzoei*" was erroneously omitted from the text, and that the correct version should read "erev Rosh HaShanah of *motzoei sheviis*." See also Beis Yosef 67:30 citing Shu"t Ramban 68; Ketzos HaChoshen 67:1.

<sup>5</sup> See Shulchan Aruch HaRav, C.M. Hilchos Halvaah 36; Urim VeTumim 67 (Urim 54, Tumim 26). According to many, this was also the minhag of the Gra.

<sup>6</sup> Hilchos Shemitah VeYovel 9:17. The Rambam learns this from Gittin 36b, which implies that *pruzbul* may only be made before *beis din* comparable in expertise to Ezra or Yehoshua. This was also Rabbeinu Tam's opinion. See Rosh, Gittin 4:13. See also Sema 67:36.

<sup>7</sup> Shu"t Yechaveh Daas 2:63. This procedure is provided for in Shulchan Aruch, C.M. 67:21.

## Pruzbul and Landed Debtors

According to the Mishnah, Sheviis 10:6, a *pruzbul* is only effective if the creditor's borrowers own real property. Rashi, Gittin 37a explains that significant loans (the type one wouldn't want cancelled by *shemittah*) are only made to borrowers who own real estate, and an implicit condition of any significant loan that the borrower's land serves as collateral. According to Rashi, Hillel HaZaken only established *pruzbul* for these sorts of loans because they represent the most common type of loan.<sup>8</sup> Any loans to borrowers who do not own land were not included in Hillel HaZaken's *takanah*.

Landed borrowers are, therefore, a technical requirement for a valid *pruzbul*.<sup>9</sup> However, this is rarely an impediment. Because we are dealing with *d'Rabbanon* matters, we rely on the most liberal *halachic* definitions of land ownership to validate the *pruzbul*. For example, the Shulchan Aruch, C.M. 67:22 rules when a borrower owns a potted plant with a hole in the bottom, this is sufficient "land ownership" to validate a *pruzbul*!<sup>10</sup>

Because the *halacha* is so incredibly broad in defining "land ownership,"<sup>11</sup> nearly all debtors are considered to have some interest in real property sufficient for *pruzbul*. In the very rare situation in which a borrower truly has no real property interests, the halacha allows the lender to grant the borrower a tiny share in his own property. This is done by giving the interest to a third party who acquires it on behalf of the borrow.<sup>12</sup> This grant is written into many versions of the *pruzbul* text and, when used, requires a *kinyan*.

---

<sup>8</sup> See Rosh, Sheviis 10:6 for a very different explanation of why a borrower must own land.

<sup>9</sup> Shulchan Aruch, C.M. 67:22.

<sup>10</sup> This *halacha* is based upon the Mishnah, Shabbos 95a, which teaches that a plant in a perforated pot is considered halachically connected to the ground beneath it. Shulchan Aruch, O.C. 336:8; Mishnah Berura 336:43.

<sup>11</sup> See Shulchan Aruch, O.C. 67:23-24. Even rented property suffices to validate a *pruzbul*.

<sup>12</sup> Technically, this grant works on the principle of *zachin leadam shelo befanav*. But how is this grant to the debtor's benefit? Wouldn't the debtor willingly forego this token interest in land to have his debt cancelled? See Sema 67:44 and Aruch HaShulchan 67:11 for answers.

## What Happens to Loans Made After the *Pruzbul*, But Before Rosh HaShana?

Reuven made his *pruzbul* on 21 Elul in a *shemita* year. The next day, Reuven lent Shimon \$500.00 with the understanding that Shimon would pay him back before Rosh HaShana. Rosh HaShana comes and goes without Shimon paying the debt. Did *shemita* cancel this debt, or was Reuven protected by the *pruzbul* he made on 21 Elul?

In such a case, the loan is cancelled by *shemita*. A *pruzbul* only applies to those loans that were collectable at the time of the *pruzbul*. Reuven's loan to Shimon wasn't collectable at the time of the *pruzbul* because it didn't even exist! It may be that the *minhag* is to be *mesader* a *pruzbul* on *erev* Rosh HaShana *davka* to prevent these kinds of scenarios.

Reuven could have also avoided this situation by stipulating that the loan was due after Rosh HaShana. That way, the loan wouldn't be collectable until after Rosh HaShana and *shemita* would have no effect on it.

## Who Keeps the *Pruzbul* Document? What Happens if a Creditor Loses His *Pruzbul*?

The *pruzbul* document does not need to be deposited with the *beis din*. The creditor keeps the document as proof that the debt is still valid. If he needs to take the borrower to *beis din* at some future date, he will then need to produce the *pruzbul*.

The *Gemara* brings two opinions as to what should be done with a creditor who appears before *beis din* and claims that he lost his *pruzbul*. The Mishnah, Kesubos 89a, seems to hold that a creditor in this situation would need to bring evidence that he actually made the *pruzbul*. In Gittin 37b, Rav and Rav Nachman disagree with this Mishnah. Relying upon a *braisa*, Rav and Rav Nachman hold that the creditor is believed outright and such is the *halacha*.<sup>13</sup> The reasoning here is that it is such a simple thing to make a *pruzbul* (which is the whole point of *pruzbul*), that we have no reason to doubt the creditor actually did it.<sup>14</sup> According to Tosafos,

---

<sup>13</sup> Shulchan Aruch, C.M. 67:33.

<sup>14</sup> See Sema 67:55 for further explanation of this *halacha*.

Rabbeinu Tam holds that the creditor doesn't even need to take an oath to substantiate his claim.<sup>15</sup>

## Conclusion

It is a venerable, old custom for every adult Jew, both men and women, to make a *pruzbul* on Erev Rosh HaShana (married women can appoint their husbands to make a *pruzbul* on their behalf). Even if you are uncertain whether or not anyone owes you money, it is still proper to make a *pruzbul*. After all, you never know what you might discover or remember as the new year begins.

This year, Congregation Torah Chaim will have a *beis din* available for *pruzbul* immediately after *shacharis* on *erev* Rosh HaShana, Sunday, September 25, 2022. *Pruzbul* forms and *halachic* guidance will be provided.

*Leshana tovah u'mesukah*, and may we all be inscribed for a good sweet year.

---

<sup>15</sup> Tosafos, Gittin 37b, *d.h. Lo*.