

Shemittas Kesafim and Pruzbol

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Based on the numerous sheilos this author received over this past year, it seems that there is much confusion as to what constitutes proper Shemitta observance. And this does not hold true exclusively regarding produce, but rather includes other aspects of the Mitzvos of Shemitta as well.

Indeed, we find that in his renowned Sefer of Halachos, the Ben Ish Chai uncharacteristically relates a tale of a certain Talmud Chacham at the Pesach Seder, who exhorted his son during Koreich, to not only perform the 'Zeicher L'Mikdash K'Hillel' of Koreich, but to also make sure to perform an additional important Takkana of Hillel Hazakein's – that of the Prozbol before Rosh Hashana of the eighth year.[1] Perhaps apocryphal, possibly anecdotal, yet all the same, the story has considerable ramifications for us all. But first, some background is in order.

Shnei Shemittos

The Torah enumerates the importance of observing Shemitta, not working the land on the seventh year, several times, stressing its significance. That there are agricultural prohibitions and produce restrictions (addressed at length in several previous articles) in letting the land lie fallow is known to most. Yet, there is another imperative aspect of Shemitta observance - the cancelling of debts.

The Torah states:[2] "V'zeh Dvar HaShemitta: And this is the matter of Shemitta: every creditor that lends to his neighbor shall release it; he shall not demand payment of debts from his neighbor or brother." [3] This teaches that all loans between Jews are cancelled by the Torah; meaning that the lender may not collect what was owed to him. This is known as Shmittas Kesafim.

Yet, there is another pasuk regarding this issue, which adds another dimension to this rule:[4] "Guard yourself, lest there be in your heart a lawless thought, thinking that the seventh year, the year of Shemitta, is approaching, and you look selfishly upon your needy brother and do not lend him anything, and he cries out to Hashem against you, and it is considered a sin on your part." This teaches us that one transgresses a prohibition if he refuses to lend to a fellow Jew before Shemitta due to fear of his debts being cancelled.

Enter... The Prozbol

Yet, unfortunately, history has proven that that is exactly what happened. The wealthy refused to loan to their poorer brethren out of fear of not recouping their cash. The Mishnah teaches us that Hillel Hazakein instituted the device of Prozbol (or Pruzbol) to alleviate the plight of the poor on Shemitta.[5]

Quite interestingly, and not even remotely connected to the similar sounding All-Star Football game or even the popular frum singer, Prozbol is an abbreviation of the words ProzboliBoti - meaning 'institution for rich and poor' people. In other words, it allowed the poor to benefit from

loans from the wealthy, who would not be afraid that their loans would be automatically cancelled in the Shemitta year.

The Prozbol entails handing one's debts over to Beis Din, or authorizing and appointing Beis Din to collect his debts on his behalf.[6] The actual Shemitta prohibition is that a lender may not pressure a borrower to pay him back. This, however, does not preclude Beis Din from being able to collect on one's behalf.[7] Hillel's institution of Prozbol is considered so incredible that the Mishnah literally describes it as a 'Tikkun HaOlam' (loosely translated as 'World Saving').[8]

Bezman Hazeh

There is some debate among the authorities whether Shmittas Kesafim nowadays is Biblical in nature or not. Although the Ramban and Baal Haltur maintain that in this day and age it is still a Mitzvah D'Oraysa, we find at the other extreme that the Rema cites several Rishonim who are of the opinion that this Mitzvah is currently not applicable at all.[9]

However, the vast majority of poskim rule that in our time it is nevertheless a Mitzvah Derabbanan.[10] In fact, and although disputed, the Rambam adds a very important point based on Abaye's conclusion in the Gemara Gittin (36a), that the whole reason a Prozbol actually works is because Shemitta nowadays is Derabbanan.[11]

Moreover, and as opposed to Shmittas Karka'os, the Shemitta of the Land (the requirement of letting the land lie fallow), regarding this Shmittas Kesafim, the halachic consensus is that it applies equally in Chutz La'aretz.

This is indeed the halacha pesuka. The Tur relates that his father, the Rosh, took great umbrage and "screamed" at those who did business as usual without writing a Prozbol. In fact, many later authorities, including the Levush, the Bach, Rav Yonason Eibeshutz, the Shulchan Aruch Harav, the Chasam Sofer, the Shlah, the Kitzur Shulchan Aruch, Ben Ish Chai, and the Aruch Hashulchan, all stressed Shmittas Kesafim's significance and application even nowadays and in Chutz La'aretz, as well as the importance of making sure to write a Prozbol.[12]

Pre or Post Prozbol?

Another important matter is defining when the Prozbol should be written, prior to the onset of the Shemitta year, or at its close, shortly before the Shemitta year ends. The Torah clues us in. Regarding the issue of Shmittas Kesafim it states: "Mikeitz Sheva Shanim Taaseh Shemitta - At the end of every seven years, you should make a release." The Gemara (Erechin 28b) explains that this is referring to the end of Shemitta.

The Sifri[13] elucidates that this is similar to the Mitzvah of Hakhel, where similar wording is used - and is exclusively observed at the end of every Shemitta cycle - meaning the beginning of the eighth year. So too, concludes the Sifri, Shmittas Kesafim only wipes out loans at the end of the Shemitta year. Therefore, a Prozbol must be written at the conclusion of the Shemitta year, prior to the onset of the eighth year. This is the actual halacha.[14] In fact, the Beis Yosef writes that "this is the minhag pashut in Eretz Yisrael and its environs, to write a Prozbol on Erev

Rosh Hashana of Motzai Sheviis.” Indeed, and on a more recent note, in Rav Yechiel Michel Tukachinsky’s Sefer HaShemitta, he writes that the minhag of “Rubam K’Kulam” in Eretz Yisrael and Yerushalayim is to only draw up a Prozbol at the end of the Shemitta year.[15] This means that now is the time to make sure to write a Prozbol, before the conclusion of our Shemitta year.

Tale of Two Prozbols?

Yet, we find that the Rosh,[16] quoting a Tosefta, maintains that a Prozbol should be written before the Shemitta year, not at the end. He explains that although Shmittas Kesafim only takes effect at the end of the Shemitta year, nevertheless the prohibition of ‘lo yigos,’ not demanding back during Shemitta money that was previously lent out, already applies from the start of the Shemitta year. Therefore, he maintains that a Prozbol should be written prior to the onset of Shemitta. Several Rishonim agreed with this approach as well.[17]

However, it has since been proven that the version of the Tosefta the Rosh quoted in formulating his ruling had textual mistakes (incorrect girsa). Additionally, most authorities reject this novel approach outright, averring that it is not normative halacha.[18]

On the other hand, several authorities, including Rav Yonason Eibeshutz and the Shulchan Aruch Harav,[19] argued that lechatchilla one should take the Rosh’s opinion into account and hence write a Prozbol before the onset of Shemitta as well. It is said that the Vilna Gaon was machmir to write two Prozbols, one before and again at the end of the Shemitta year, to fulfill both opinions.[20] Although not the basic halacha, and many great authorities did not write a Prozbol before Shemitta,[21] on the other hand, it is known that Rav Shmuel Salant, Av Beis Din of Yerushalayim in the end of the nineteenth century, ruled that it is proper to do so, as later did the Steipler Gaon and Rav Yosef Shalom Elyashiv.[22]

That is why many were makpid to write an additional Prozbol before the onset of Shemitta. However, practically, regarding this Prozbol, the rules are somewhat relaxed. In fact, according to Rav Moshe Sternbuch,[23] since this Pre-Shemitta Prozbol is not me’ikar hadin, one need not bother to seek out an actual Beis Din, or even members of a Beis Din, but may suffice with three fellow knowledgeable Yidden serving as an ad hoc Beis Din, similar to the annual Erev Rosh Hashana Hataras Nedarim.

Prozbol via Real-Deal Beis Din?

What about our mandated end-of-Shemitta-year Prozbol? Does that need to be performed done by an actual Beis Din? Or are three Yidden sufficient to be called ‘Dayanim’ for this purpose?

The Gemara (Gittin 36b) states that a Prozbol can exclusively be created by a high-level, established Beis Din, such as that of the renowned Amoraim, Rav, Shmuel, Rav Ami, or Rav Asi.[24] The Shulchan Aruch rules accordingly, following the precedent of the Rambam, and Rabbeinu Tam, that it needs to be performed with a ‘Beis Din Chashuv.’ On the other hand, the Rema rules like the Rosh, Tur, Sefer HaTerumah, and Rashba, who understood that the Gemara later reevaluated this position and counters that nowadays any Beis Din will suffice. The Bach concludes that the halacha here indeed follows the Rema.[25]

On the opposite end of the spectrum, we find that the Shulchan Aruch Harav, Aruch Hashulchan and others maintain that nowadays a Prozbul does not even need a genuine actual set Beis Din, as there are opinions in the Rishonim that it does not apply at all nowadays. The Kitzur Shulchan Aruch writes similarly and simply that ‘three Bnei Torah may serve as the Beis Din.’[26]

On the other hand, we find that the Chochmas Adam and Chasam Sofer were nevertheless makpid lechatchillah to write the Prozbul in a Beis Din Chashuv. Come what may, it is known that the Chazon Ish was very makpid that his Prozbul be presented by a ‘Beis Din Chashuv,’ and used to send his Prozbul to the Badatz Eidah Chareidis in Yerushalayim. Later on, toward the end of his life, he would send it to the much younger Rav Shmuel Halevi Wosner and his Beis Din, as he was the official Av Beis Din of the Zichron Meir neighborhood in Bnei Brak. Rav Yosef Shalom Elyashiv would also lechatchillah attempt the same, to write his Prozbul with a ‘Beis Din Chashuv.’[27]

In contrast to this, from numerous examples (and actual Prozbolim) cited in Orchos Rabbeinu, it is clear that the Steipler Gaon was not makpid to seek out a ‘Beis Din Chashuv.’ Similarly, it is reported that Rav Shlomo Zalman Auerbach was likewise not makpid for his Prozbul to be written by such a Beis Din. Likewise, Rav Yechiel Michel Tukachinsky writes that “U’bizman hazeh ain tzarich Beis Din Chashuv L’Prozbol,” nowadays a ‘Beis Din Chashuv’ is not necessary.[28]

Practically speaking, the common contemporary Ashkenazic minhag follows the Rosh and Rema, and that the same three “dayanim” who perform Hataras Nedarim on Erev Rosh Hashana also sign someone’s Prozbul. Yet, and although not obligatory, nevertheless, it seems that there is a preference, if possible, to perform the Prozbul using an actual set ‘Beis Din Chashuv,’ like the Shulchan Aruch’s psak.

Indeed, several contemporary Sefardic authorities maintain that Sefardim, who follow the Shulchan Aruch’s rulings, should most definitely seek out a ‘Beis Din Chashuv’ for their Prozbolim. In fact, it is known that the Mabit invalidated several Prozbolim not written via ‘Beis Din Chashuv’. On a more contemporary note, this is the Sefardic minhag, as cited by Rav Ovadiah Yosef, Rav Ben Tzion Abba-Shaul, Rav Yaakov Hillel, and the Yalkut Yosef. However, Rav Ovadiah Yosef qualifies that even for Sefardim, if the Prozbul was not presented by a ‘Beis Din Chashuv,’ it still has validity and works b’dieved.[29]

When in Rome...

Now that one Beis Din issue is settled, there is one more wrinkle to iron out. Does a Prozbul need to be written in front of the Beis Din (as in personally), or is it sufficient for it to be performed in front of witnesses in the name of the Beis Din – meaning authorizing a non-present Beis Din to collect one’s debts in his name. Not a simple question, this is debated by the Rishonim, and the Shulchan Aruch cites both opinions with no clear-cut ruling.[30]

It is interesting that much of the debate seems to be based on a few words in the Yerushalmi. When discussing how a Prozbol works, the Yerushalmi succinctly comments “Tana, V’afilu Hein B’Romi, It is taught, (that a Prozbol works) even if they are in Rome.”[31] Well, who or what is the “they” referred to that can be all the way in Rome, while one is presently in Eretz Yisrael trying to write a Prozbol?

Many Rishonim understand this to be referring to the loan documents, that even though they were left in Rome, as long as one is physically present at a Beis Din, a Prozbol can still be drawn up.[32] Yet, other Rishonim and Acharonim understood this cryptic statement of the Yerushalmi to be referring to the actual Dayanim – that even if the Beis Din is in Rome, one can still authorize them to collect his debts for him, although his is physically far, far away.[33]

Although there does not seem to be one clear psak in the Rishonim or Acharonim, practically, the Rema ruled leniently, and several contemporary Poskim write that the minhag in Yerushalayim for generations was to allow this.[34] Hence, for Ashkenazim, either option would be sufficient, certainly mei’ikar hadin.

However, for Sefardim, it comes out that it would be preferable to perform a Prozbol in front of witnesses authorizing a set ‘Beis Din Chashuv’ to collect one’s debts, rather than have an ad hoc three ‘Dayanim’ (such as those who do his Hataras Nedarim) do it personally.[35]

Please Process the Prozbol!!

Either way, and whether or not one performed the chumrah of a pre-Shemitta Prozbol, everyone should ensure that they follow the actual halacha to write an end-of-Shemitta Prozbol, as the Talmud Chacham in the Ben Ish Chai’s story exhorted his son.

The Ben Ish Chai further advocates for after writing a Prozbol, lending a small token sum to someone in order to tell him when he comes to pay it back after Rosh Hashana that the loan is cancelled.[36] This is an ingenious way of being mekayem the Takkanas Hillel of Prozbol and still fulfilling the Torah’s command of ‘Shmote’ (to absolve a debt) and actively letting Shmittah erase a debt.

To sum it up, a little Prozbol can alleviate a lot of future complications.[37]

For any questions, comments or for the full Mareh Mekomos / sources, please email the author: yspitz@ohr.edu.

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Rabbi Spitz’s recent English halacha sefer, “Insights Into Halacha - Food: A Halachic Analysis,” (Mosaica/Feldheim) has more than 500 pages and features over 30 comprehensive chapters,

discussing a myriad of halachic issues relating to food. It is now available online and in bookstores everywhere.

'Insights Into Halacha' wishes a special, hearty Mazel Tov to Shira Yaffa bas Rochel Miriam for finally receiving her GET after 13 long years. Baruch Mattir Assurim!! May your family know only Simchos!!

[1] Ben Ish Chai (Year 1, Parashas Ki Savo 26 s.v. prozbol).

[2] Parashas Re'eh (Devarim Ch. 15:2).

[3] In fact, the Gemara (Gittin 36a) derives from the double language of the word Shemitta in this pasuk, that there are two types of Shmitta: Shmittas Karkah and Shmittas Kesafim. See also Sefer Hachinuch (Mitzvah 84 and 477) who explains that a focal point of both 'types' of Shemitta is to teach us 'vatranus' (willingness to concede) and to demonstrate how to properly care about others' needs. The Rambam (Hilchos Shemitta V'Yovel Ch. 8: 1) writes that from the fact the Torah used the word 'Shmote' (which is a command) to describe this occurrence (of absolving a debt), it is an actual Mitzvah D'Oraysa incumbent upon us to actively let Shmitta erase a debt. However, the Sefer Yereim (278) maintains a different understanding in Shmittas Kesafim. He explains that Shemitta does not actively erase a debt, but rather 'yanuach, lets lie,' meaning that the lender cannot demand it back, but it does not actually forgive the loan. He concludes that if the borrower uses Shemitta as an excuse to never pay back the loan, he is deemed a 'Rasha'. [Thanks are due to Leon Metzger for pointing out this important source.] Although this is not the normative halacha, nevertheless, Mishnayos Sheviis (Ch. 10, Mishnah 9) concludes with praise for one who anyway pays back his debt: "hamachzir chov b'Sheviis ruach chachamim nocheh heimenu."

[4] Parashas Re'eh (ad loc. Ch. 15: 9).

[5] Mishnayos Sheviis (Ch. 10:3 and 4) and Gittin (34b) and accompanying Gemara (36a-b) and commentaries.

[6] There is some debate among the Rishonim whether writing a Prozbol and Mesiros Shtaros L'Beis Din are considered the same institution or not. See Tosafos (Gittin 36a s.v. mi and Makkos 3b s.v. hamoser), Ritva (ad loc.), Meiri (Gittin 37a), Rambam (Hilchos Shemitta V'Yovel Ch. 9: 15), Sefer Haterumah (Shaar 45, 11), Yam Shel Shlomo (Gittin Ch. 4: 45), and Minchas Chinuch (Parashas Re'eh Mitzva 477: 12). Either way, both are practically effective methods of not having debts cancelled by Shmitta [see Mishnayos Sheviis (ibid.), Rambam (ibid. 15 and 16), and Tur and Shulchan Aruch (Choshen Mishpat 67: 11, 18, and 19)]. A Prozbol also works for loans created in the presence of witnesses when no written contract was drawn up. See Rema (ad loc. 19; citing the Ran), SM"A (ad loc. 39), and Biur HaGr"a (ad loc. 32).

[7] In the Gemara (Gittin 36b), Rava gives an additional insight into the mechanics of how this institution works: “Hefker Beis Din Hefker,” meaning the Torah provides Beis Din with the power to declare property ownerless. Hence, this empowered Hillel with the ability to require borrowers to pay their debts that would otherwise been released by the Mitzva of Shemittas Kesafim.

[8] As detailed extensively by Rav Yirmiyohu Kaganoff in a recent article titled ‘Prozbul,’ there are at least four ways to make loans that would not have been affected by Shemittas Kesafim: via Beis Din, at the time of the loan to schedule the loan’s due date for after Shemitta, a loan conditional to be payable even after Shemitta ends, and it being collateralized (receiving a mashkon worth more than the loan). Accordingly, creditors at the time could have easily arranged matters such that Shemittas Kesafim could have been avoided, and they would have had a halachically acceptable manner to collect their loans, Shemitta notwithstanding. Nevertheless, Hillel realized that people were not utilizing these kosher methods to guarantee return of their funds, but rather were refraining from lending money – thus violating both a Mitzvas Asei of lending money to those in need (“Im Kessef Talveh”; Shemos Ch. 22:24; see the Chofetz Chaim’s Ahavas Chessed Ch. 1 and 2) and a Lo Saaseh (“Hishamer Lecha Pen”; Devarim Ch. 15:9; see Sheviis Ch. 10, Mishnah 3 and Rambam, Hilchos Shemitta V’Yovel, Ch. 9:30). This necessitated Hillel’s new takkana of Prozbul.

[9] See Rema (Choshen Mishpat 67:1, and in Darchei Moshe ad loc. 1), Beis Yosef (ad loc. s.v. v’hashmatas), Biur HaGr”a (ad loc. 5), SM”A (ad loc. 3), Aruch Hashulchan (ad loc. 1), and Shu”t Igros Moshe (Choshen Mishpat vol. 2:15 s.v. uv’etzem). The Rishonim who held this way include the Baal HaMaor, Maharil, Maharik, Terumas Hadeshen, and the Raavad. Although not the practical halacha, this nonetheless does make a practical halachic difference - there are those who hold [see, for example Shulchan Aruch Harav (Choshen Mishpat, Hilchos Halva’ah 35); see also Shu”t Hisorerus Teshuva (vol. 3:23, 2; new print Choshen Mishpat 13:1) and Shu”t Minchas Yitzchak (vol. 10:140)] that nowadays a Prozbul does not need a genuine actual set Beis Din, nor the applicant to actually own karka (be a landowner), as opposed to the strict letter of the law in the Mishnah (Sheviis Ch. 10, Mishnah 6), and later the Rambam (Hilchos Shemitta V’Yovel Ch. 9:19) and Shulchan Aruch (Choshen Mishpat 67:22). [Actually, the clause of owning karka is anyway not exact, as the Shulchan Aruch himself (ad loc. 23; see also Pischei Teshuva ad loc. 4, citing the Chasam Sofer, Shu”t vol. 5 - Choshen Mishpat 50) qualifies that renters or even anyone who has permission to live somewhere, are considered as ‘owning karka’ for this purpose. Rav Yaakov Hillel (Luach Ahavat Shalom(5776; pg. 12, note 93) adds that this category would certainly include Yeshiva Bochurim; since they have permission to eat, sleep, learn and generally occupy space in their Yeshiva, they can and will need to each write their own Prozbul.] See also footnote 36.

[10] This is due to the fact that we no longer have Yovelos (Jubilee years). Therefore Shmittas Kesafim is no longer D’Oraysa, but rather Derabbanan. See the main commentaries to Gemara Gittin (36-37) - Rashi, Tosafos, Rif, Ran, and Rosh, SMA”G (Lavin 270), Sefer Hachinuch (Parashas Re’eh, end Mitzvah 477), Tur and Shulchan Aruch (Choshen Mishpat 67:1), Shulchan Aruch Harav (ibid. 34), Pe’as HaShulchan (Ch. 29:3), Aruch Hashulchan (Choshen Mishpat 67:1), and Ben Ish Chai (Year 1, Parashas Ki Savo 26). See also Rambam (Hilchos

Shmitta V'Yovel Ch. 9:1-3) who writes that although it is an actual Mitzvah D'Oraysa to actively let Shmitta erase a debt, he nonetheless concludes that nowadays with Yovel currently non-applicable, this Mitzva Chiyuv is strictly Derabbanan.

[11] The Rambam (ad loc. 16; and seconded by many others, i.e. see Bartenura to Mishnayos Sheviis Ch. 10, Mishnah 3) adds a very important point, based on Abaye's conclusion in Gemara Gittin 36a, that the whole reason a Prozbol actually works is because Shemitta nowadays is Derabbanan. When Shemitta's status reverts to a D'Oraysa obligation, the Rambam avers that a Prozbol will not help one to collect his loans. On the other hand, Rav Chaim Kanievsky in Derech Emunah (Hilchos Shemitta V'Yovel Ch. 9:87 and Tziyunei Hahalacha 207) cites a whole cadre of Rishonim and Acharonim who argue on this point, as well as many other who agree. He concludes "tzarich iyun." I guess we will have to wait and see... IY"H we'll find out soon...

[12] Levush (Choshen Mishpat 67:1), Bach (ad loc. 6), Urim V'Tumim (67, Tumim, 1), Shulchan Aruch Harav (Choshen Mishpat, Hilchos Halva'ah 35), Shu"t Chasam Sofer (vol. 5, Choshen Mishpat, beg. 113 s.v. kibalti), Shlah (Shaar Ha'osiyos, Kedushas Ha'achilah), Kitzur Shulchan Aruch (180: 1), Ben Ish Chai (Year 1, Parashas Ki Savo 26 s.v. prozbol), and Aruch Hashulchan (Choshen Mishpat 67: end 1 and end 10). See also Elef HaMagen (on the Matteh Efraim; 581:133).

[13] Sifri (Devarim, Re'eh, Piska 58 pg. 122b), cited by the Bach (Choshen Mishpat 67: end 4). The Rambam (Hilchos Shemitta V'Yovel Ch. 9:4) gives the same explanation. For more on this drush, see the commentaries of the Malbim and Netziv on the Sifri, and Shu"t Shoel U'Meishiv (Mahadura Rivi'ai vol. 1:10). See also the Shaagas Aryeh's Turei Even (Rosh Hashana end 12b s.v. Shnas HaShemitta).

[14] See Rambam (ibid.), Ramban (Teshuvos 98), Ritva (Gittin 37a), Rashba (Shu"t vol. 2: 314), Ohr Zarua (Avoda Zara vol. 1: 107), Sefer Hachinuch (ibid. s.v. m'dinei), Shu"t Radbaz (vol. 5: 2238), Beis Yosef (Choshen Mishpat 67: 32), Shulchan Aruch (ad loc. 30), Shu"t Chasam Sofer (vol. 2, Yoreh Deah 19 and vol. 5, Choshen Mishpat 50 s.v. nachzor; cited by Pischei Teshuva ad loc. 5), Shu"t Shoel U'Meishiv (Mahadura Rivi'ai, vol. 2: 53), Kitzur Shulchan Aruch (180: 13), Aruch Hashulchan (Choshen Mishpat 67: 2), and Shu"t Rav Pe'alim (vol. 1, Kuntress Sod Yesharim 11).

[15] Sefer HaShemitta (pg. 57).

[16] Rosh (Gittin Ch. 4: 18 and 20) citing the Tosefta (Sheviis Ch. 8: 11).

[17] The Baal Haltur (Os 'Pei', Pruzbol pg. 76c), and Tur (Choshen Mishpat 67: 30) hold this way as well. Rabbeinu Chananel (Shabbos 148b) heavily implies that he is of the opinion that the beginning of Shemitta cancels debts. [Thanks are due to Rabbi Yehoshua Pasternak for pointing out this important source.] The Yerushalmi (Rosh Hashana Ch. 3, end Halacha 5), according to statement of Rabbi Yochanon, implies this way as well, regarding the Shmittas

Kesafim of Yovel. See also Netei Gavriel (Hilchos Shemittas Kesafim U'Prozbol Ch. 15 pg. 101-102, footnote 3) who adds that Rabbeinu Yerucham, Rabbeinu Nasan Av HaYeshiva, the Mahar"i ben Malki Tzedek, and the Kaftor VaFerach all held akin to the Rosh's shittah, that the issur of 'lo yigos', not demanding the lent money during Shemitta, already applies from the start of the Shemitta year, and therefore a Prozbol should already be written prior to the onset of the Shemitta year. This is also the explanation of the Minchas Bikkurim on that Tosefta.

[18] The Ramban (Teshuvos 98), cited by the Beis Yosef (ibid.), proves that the Rosh and Baal Haltur had an incorrect girsa in the Tosefta. Similarly, see Haghos HaGr"a on that Tosefta (Sheviis Ch. 8: 11, 3) who amends the Tosefta's text to read that the proper time to write a Prozbol is on Erev Rosh Hashana of Motzai Sheviis; and not Erev Rosh Hashana of Sheviis. See also Ketzos Hachoshen (67:1) who maintains that if the Rosh's shittah holds true, then there is an apparent stirah in his shittah here and Shu"t HaRosh (77: 4); the Ketzos concludes that the Rosh's opinion is 'tzarich iyun.' Also, the Pe'as Hashulchan (Ch. 29: 96) vigorously argues on Rav Yonason Eibeshutz's proofs that the Rosh is correct (see next footnote). Interestingly, the Bach (ibid. 32) and the Radbaz (ibid.) maintain that there really is no machlokes between the approaches of the Rosh and the Rambam. However, it seems that most authorities do not concur. See also Shu"t Chasam Sofer (vol. 5, Choshen Mishpat 50) at length. Rav Yechezkel Abramsky, in his Chazon Yechezkel on the Tosefta (Sheviis Ch. 8: 11, Biurim 11), after citing the shittah of the Rosh, cites the Ramban and Gr"a's amending of the Tosefta to read "Erev Rosh Hashana of Motza'ei Shevii," and concludes simply "v'chen anu nohagim."

[19] Urim V'Tumim (67: Urim 54 and Tumim 26; "hayarei v'chareid yesh lehachmir la'asos pruzbol b'erev Sheviis") and Shulchan Aruch Harav (Choshen Mishpat, Hilchos Halva'ah 36). The Mahari Assad (Shu"t Yehuda Yaaleh vol. 2: 179), the Misgeres Hashulchan (on Kitzur Shulchan Aruch 180:9), and Chasdei Dovid (on Tosefta, Sheviis Ch. 8:11) wrote similarly, to be makpid for the shittah of the Rosh. The Pischei Teshuva (Choshen Mishpat 67:5) implies that although not the normative halacha, it would nonetheless be preferable to be choshesh for this shittah.

[20] The Vilna Gaon being machmir for both opinions is cited in his talmid's Pe'as Hashulchan (ibid. 97), Rav Moshe Sternbuch's Shemitta Kehilchasa (Prozbol Erev Shnas HaSheviis s.v. uva'ikar), and Netei Gavriel (Hilchos Shemittas Kesafim U'Prozbol Ch. 15, pg. 102-103).

[21] See, for example, Rav Chaim Kanievsky's Derech Emunah (vol. 4, Hilchos Shemitta V'Yovel, Ch. 9: 80) and Orchos Rabbeinu (new edition, vol. 3, Prozbol, pg. 349: 21), who relate that the Chazon Ish did not write a Pruzbol before Shemitta. See also Shu"t Chelkas Yaakov (vol. 3: 143), Shu"t Divrei Yisrael (vol. 2: 41), Shu"t Kinyan Torah B'Halacha (vol. 3: 15), Shu"t Lechem Shlomo (Choshen Mishpat 17), Miktzoa L'Torah (Choshen Mishpat 67: 15), and Netei Gavriel (Hilchos Shemittas Kesafim U'Prozbol Ch. 15, pg. 101 and 104), citing the Klausenberger Rebbe, the Tzehlemer Rav, Rav Shmuel HaLevi Wosner, and the Minchas Yitzchak.

[22] Aderes Shmuel (Piskei Rav Shmuel Salant zt"l; Hilchos Sheviis, Prozbol, 420, pg. 428-429), Orchos Rabbeinu (vol. 2, 378; adding that the Steipler did so in order to have an additional zechus for Rosh Hashana), and Netei Gavriel (ibid. pg. 105), citing that Rav Elyashiv told him that "although me'ikar hadin one does not need a Prozbol before the Shmitta year, nevertheless "Yakirei Yerushalayim Mehadrim B'zeh," as this was the custom of Rav Shmuel Salant." This author has also heard this psak from Rav Elyashiv's noted talmid, Rav Nochum Eisenstein.

[23] Shemitta Kehilchasa (Prozbol Erev Shnas HaSheviis s.v. ulefi aniyus daati). Similarly, since the pre-Shemitta Prozbol, is essentially considered a chumrah, the Steipler Gaon once did it with only two 'dayanim'; seemingly not the normative halacha. See Orchos Rabbeinu (new edition, vol. 3, Prozbol, pg. 336-337: 4).

[24] See SM"A (Choshen Mishpat 67:36) who explains that the ability to declare someone's property ownerless, "Hefker Beis Din Hefker," is not granted to just any Beis Din, but rather a "Beis Din Chashuv," one in the league of such Gedolim.

[25] Shulchan Aruch (Choshen Mishpat 67:18) ruling like the Rambam (Hilchos Shemitta V'Yovel Ch. 9: 17), and Rabbeinu Tam (Tosafos Gittin 36b s.v. d'ilimi), the Rema (ad loc.) ruling like the Rosh (Gittin Ch. 4:13), Tur (Choshen Mishpat 67:18), Sefer HaTerumah (Shaar 45:16), and Rashba (Shu"t vol. 3: 33). The Bach (ad loc. 21 s.v. ul'inyan) concludes that the halacha here indeed follows the Rema.

[26] Shulchan Aruch Harav (Choshen Mishpat, Hilchos Halva'ah 35), Aruch Hashulchan (Choshen Mishpat 67: 10), and Kitzur Shulchan Aruch (180: 15).

[27] Chochmas Adam (Shaarei Tzedek 21: 4) and Chasam Sofer (Shu"t Choshen Mishpat 113). Re: the Chazon Ish see Orchos Rabbeinu (vol. 2, pg. 379; new edition vol. 3, Prozbol, pg. 349-353) and Rav Chaim Kanievsky's Derech Emunah (vol. 4, Hilchos Shemitta V'Yovel Ch. 9: 88 and Tziyun Hahalacha 209). Rav Chaim adds that "b'shaas hadchak yeish lehakel bazeh"). The anecdote about Rav Elyashiv is cited in Shu"t Yissa Yosef (vol. 5 - Sheviis, pg. 251).

[28] Orchos Rabbeinu (ibid.), Shulchan Shlomo (Sheviis pg. 297), and Sefer HaShemitta (pg. 58:8).

[29] See Shu"t HaMabit (vol. 2: end 81), Mizbach Adamah (Yoreh Deah, end 391), Ohr L'Tzion (Sheviis, Ch. 7:3), Chazon Ovadiah (Prozbol, 2), Rav Yaakov Hillel's Luach Ahavat Shalom (5776; pg. 12-13, note 94), and Yalkut Yosef (Sheviis, Ch. 24: 23). However, Rav Ovadiah Yosef (Chazon Ovadiah ad loc. pg. 20: 4) qualifies that even for Sefardim, if the Prozbol was not presented by a 'Beis Din Chashuv,' it still works b'dieved.

[30] The Mordechai (Gittin, Perek Hasholei'ach 380) writes that this is a debate between Rabbeinu Yechiel and himself, with Rabbeinu Yechiel ruling stringently and himself being meikil. The Shulchan Aruch (Choshen Mishpat 67: 19 and 21) cites each side with no clear-cut ruling.

The Rema (ad loc. 20) concludes that it does not need to actually be performed in front of Beis Din.

[31] Yerushalmi (Sheviis, Ch. 10, Halacha 2).

[32] Including the Ramban (Chullin 4b and Gittin 36b), Ran (ad loc. 18b in the Rif's pagination), Rashba (Shu"t vol. 2:313), and Rivash (Shu"t 491). The SM"A (Choshen Mishpat 67:38 and 40) implies that he understood this shittah to be the ikar, as did the Urim V'Tumim (ad loc. Urim 40 and Tumim 21) who concludes that the Rema's psak is "tzarich li iyun."

[33] See Shu"t HaMabit (vol. 2:81), Mahari Korkos (on the Rambam, Hilchos Shemitta V'Yovel Ch. 9:17), Bach (Choshen Mishpat 67: 24), Biur HaGr" a (ad loc. 35-36), Tiferes Yisrael (on Mishnayos Sheviis Ch. 10, Mishnah 3, Yachin 18), and Shu"t Chasam Sofer (Choshen Mishpat 50; citing his rebbi, Rav Nosson Adler).

[34] Rema (Choshen Mishpat 67:20). See Sefer HaShemitta (pg. 58: 8), Shu"t Yechaveh Daas (vol. 4: 63 s.v. v'nusach), and Yalkut Yosef (Sheviis, Ch. 24: 25-26).

[35] Shu"t Yechaveh Daas and Yalkut Yosef (ibid.). Similarly, and although not discussing this specific case directly, Rav Mordechai Eliyahu, in his Darchei Halacha additions to the Kitzur Shulchan Aruch (pg. 655, Hilchos Prozbol) only mentions this lashon as his nusach for Prozbol – written and signed by witnesses, giving authority over to a Beis Din to collect his debts for him.

[36] Ben Ish Chai (Year 1, Parashas Ki Savo 26 s.v. v'hinei). On the other hand, Rav Ovadiah Yosef (Shu"t Yechaveh Daas vol. 4, end 63 s.v. v'da) qualifies this, that since a "Stam Halva'ah Sheloshim Yom," a standard loan is for 30 days (Makkos 3b) it is as if one set a payback date thirty days hence – after Shemitta is over, so Shemitta would not knock it off (as discussed in a previous footnote). Therefore, Rav Ovadiah advises those who wish to fulfill the 'hiddur' of the Ben Ish Chai, after writing a Prozbol to loan a small amount of money and specify that that it is due back before Rosh Hashana. In this way, one can fulfill "Lo Yigos" and allowing Shemitta to absolve the borrower from his loan, while still being mekayeim Takkanas Hillel. Rav Chaim Kanievsky (Derech Emunah, Hilchos Shemitta V'Yovel Ch. 9, end 85) also alludes to this solution, stating that to fulfill this, one should write in his Prozbol "except for this one specific loan" or to take out a small loan immediately after the Prozbol "with payment immediately due."

[37] The halacha is that if someone claims he wrote a Prozbol but later lost it, is believed in his claim that he wrote one and may collect the money owed to him. This is because we assume that a religious person would not violate the Torah when he could accomplish the same thing in a permitted manner. See Shulchan Aruch (Choshen Mishpat 67:33) and SM"A (ad loc. 55). Quite interestingly, Rav Moshe Feinstein (Shu"t Igros Moshe (Choshen Mishpat vol. 2:15) maintains that nowadays, if one forgot to write a Prozbol, it is possible that he may still be able to collect the debt, as although we hold that one should write a Prozbol, perhaps one can still be somech on the ikar din of the Rema, quoting many Rishonim ('minhag doros Hakadmonim b'Ashkenaz uv'Sfard') who did not write Prozbolim. Additionally, as the Aruch Hashulchan

(Choshen Mishpat 67:10) mentions, our Batei Din are subservient to the court system and cannot actually legally obligate or exempt someone from paying a debt. Therefore maintains Rav Moshe, and especially as it is written in Mishnayos Sheviis (Ch. 10, Mishnah 9), 'hamachzir chov b'Sheviis ruach chachamim nocheh heimenu,' nowadays, if one forgot to write a Prozbol and is now strapped for cash, he may still ask for his money he lent back. Rav Shlomo Zalman Auerbach (Shu"t Minchas Shlomo, Tinyana 123: 12, 2) seems to agree with this assessment in specific circumstances as well. See also Minchas Asher (Sheviis, Tinyana 54 and 55), who addresses this topic regarding Baalei Teshuva.

Disclaimer: This is not a comprehensive guide, rather a brief summary to raise awareness of the issues. In any real case one should ask a competent Halachic authority.

L'iluy Nishmas the Rosh HaYeshiva - Rav Chonoh Menachem Mendel ben R' Yechezkel Shraga, Rav Yaakov Yeshaya ben R' Boruch Yehuda.