

BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

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CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

PRUZBUL FOR WOMEN

Mr. Guttyor and his family sat around the Shabbos table, partaking of the meal, singing *zemiros* and sharing *divrei Torah*.

"I can't believe it's almost Rosh Hashanah!" exclaimed Mrs. Guttyor. "How the year flew by!"

"Indeed!" acknowledged Mr. Guttyor. "We've been preparing – blowing the *shofar* and saying *Selichos*. Tomorrow, Erev Rosh Hashanah, has very long *Selichos*."

"Tomorrow we also do *hataras nedarim* – annulment of vows," added their son, Avraham. "And don't forget *Pruzbul*," chimed in their son-in-law Yitzchak.

"It's going to be a long *davening* plus," said Mr. Guttyor. "I'm glad I don't have to rush off to work!"

"What about us?" asked Mrs. Guttyor. "The girls and I will be in the house tomorrow getting ready for Rosh Hashanah. How do we do *pruzbul*?"

"Why do you need a *pruzbul*?" asked Mr. Guttyor. "Did you lend anyone money?"

"I did," said Sara, their 19-year-old daughter. "A friend needed money, and I lent her \$100 from my camp earnings."

"And I babysat on Thursday night," said Rivka, their 14-year-old daughter. "They almost always pay me immediately, but this week they didn't have cash and I said it's OK if they pay me later."

"What about the bank account for the kids, which is in my name?" asked Mrs. Guttyor. "My pension also is in my name. What if it were a Jewish-owned bank?"

"This is real food for thought!" said Mr. Guttyor, as he sliced a piece of roast beef.

At *Minchah*, Mr. Guttyor asked Rabbi Dayan:

"Do women also need a *pruzbul*?"

"*Shemittas kesafim* might seem like a time-bound, positive commandment – *mitzvah aseh shehazman grama* – but women are also obligated," replied Rabbi Dayan. "This is because the *mitzvah* to exempt the borrower applies at whatever time he comes after *Shemittah* to repay; because there is an associated negative prohibition in collecting the loan; and because, according to many, the cancellation of the loan is automatic, without action of the lender" (*Sefer Hachinuch* #477, 480; *Shemittas Kesafim u'Pruzbul* 7:5).

"Thus, a woman or young lady above *bas mitzvah* who granted a loan from her own money, or who has a liquid account under her name alone at a Jewish financial institution (as

DID YOU KNOW?

Earning interest on a loan for the days of Rosh Hashanah is considered Schar Shabbos.

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לע"נ ר' שלמה ב"ר ברוך ז"ל מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

HELP ME DO TESHUVAH!

Part I

Q: Each year, as Yom Kippur draws to a close and I say the words in *Ne'ilah*, "*Lemaan nechdal mei'oshek yadeinu* (so we can be spared from the thievery of our hands)," I shudder inwardly. Many years ago, I stole money from someone, and I have long wanted to return it, but I'm too embarrassed to approach him and admit that I stole from him.

Is there any way for me to return the money without coming clean about my sin?

A: We must preface our response to your question by quoting from the Chofetz Chaim, who writes (*Sha'ar Hatziyun* 606:2): "It is clear that regarding the prohibitions of stealing, *onaah* (monetary exploitation) and similar transgressions, which, we know, are in the category of *lav hanituk l'asei* — the prohibition is connected to (and repaired by) the *mitzvah* of repaying the victim — a person is not allowed to wait until Erev Yom Kippur to repent. Rather, each and every moment, the *mitzvah* of *hashavas hazezilah* obligates him to repay, and thereby repair his transgression."

Having said that, we will divide our response into two sections. This week, we will discuss how to compensate your victim monetarily, and in the next issue we will discuss how to seek his forgiveness.

Whether a thief may return what he stole without notifying the victim depends on whether the victim ever realized the item was missing.

If the victim was unaware that it was missing, the thief may return the object to its original location (*Nimukei Yosef, Bava Kamma* 45b in the Rif's folios), or, according to some *poskim*, to any area of the victim's property where it will be guarded from further theft or loss (*Maggid Mishneh, Hilchos Geneivah* 4:10).

If the victim did realize that the item was missing, it is considered *bona fide gezeilah*, and a proper *hashavah* is necessary. A proper *hashavah* is achieved only when the thief knows for certain that the victim realizes that he received the money



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is common in Israel where many women have a *keren hishtalmut* – sabbatical fund, liquid after six years) – should write a *pruzbul*.

“However, a married woman who has only a joint account with her husband does not have to write her own *pruzbul*, since it suffices if one of the partners with signature rights does the *pruzbul*” (*Derech Emunah* 9:20[11]).

“According to most *poskim*, the woman does not have to appear herself before *beis din*; her husband or father can fill out the *pruzbul* in her name on her behalf” (*Shemittas Kesafim u’Pruzbul* 11:1,11).

“The *kesubah* does not require a *pruzbul*, since it is not due until divorce or death. Even a woman who was divorced before *Shemittah* and hasn’t collected her *kesubah* does not need a *pruzbul* for it, since the *kesubah* is a debt imposed by the Sages. However, if she collected it partially, the remainder is now considered a regular debt and requires a *pruzbul*” (*C.M.* 67:17).

“A young lady who babysat and was not paid yet does not need a *pruzbul* for her wages, since only loan-debt is canceled by *Shemittah*, not wages due,” concluded Rabbi Dayan. “However, if before Rosh Hashanah she tallied the wages due as a sum-total bill (*zakaf alav b’milveh*), such as if she worked a few times and tallied the hours on Friday for a total payment of X dollars, the initial wages for babysitting are thereby converted into a global sum of debt owed by the employer, and it requires a *pruzbul*” (*C.M.* 67:14-15; *Urim* 67:30).

Verdict: Single women, women with accounts at Jewish financial institutions under their name alone, or women who extended loans of their own money should make a *pruzbul*. According to most *poskim*, their husband, father or other person can do it for them.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Dayanim (Judges) #15

Rosh Hashanah Pruzbul

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' ח'י בת ר' שמואל חיים ע"ה

Q: Which *beis din* can serve for the purpose of writing a *pruzbul*?

A: Shmuel (*Gittin* 36b) states that the *pruzbul* must be written in a *beis din* like that of Sura or Nehardei'a, which were major Babylonian Torah centers and had the power to confiscate money. Rambam rules accordingly (*Hil. Shemittah v'Yovel* 9:17).

R. Yosef Karo, in *Kesef Mishneh* and *Shulchan Aruch*, qualifies this in accordance with time and place. He requires a *beis din* of stature, well versed with the laws of *shemittas kesafim* and *pruzbul*, and that is accepted upon the community (*C.M.* 67:18).

Other *Rishonim*, however, do not accept Shmuel's ruling, and maintain that any *beis din* suffices to write a *pruzbul*. Rama (*ibid.*) writes that nowadays we can be lenient like this opinion.

Sephardim should follow the ruling of the *Mechaber* and transfer the loans to the authority of a recognized *beis din*, even if the *pruzbul* is written elsewhere, in the presence of others. Ashkenazim can suffice with three Rabbanim or people knowledgeable about *pruzbul* in whose presence the *pruzbul* is written (*C.M.* 67:20-21).



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(*Rashi, Bava Kamma* 108a and *Perishah, Choshen Mishpat* 355. [This response is written according to their approach; cf. *Rashi Bava Metzia* 31a, *Sema* 355:1 and *Maasei Roke'ach Gezeilah* 1:8 for a more lenient approach]).

As long as the victim is unaware of the return, the thief is still liable for loss, theft or damage (*ibid.* 355:1-2).

The *Gemara* (*Bava Kamma* 118b, cited *lehalachah* in *Tur Choshen Mishpat* 232 and *Sma* 232:7) teaches that if a person is embarrassed to admit that he stole money, he may include it in a transaction between him and the victim. If he is buying something from the victim, for instance, he can pay more than the price of the object he is buying, with the intention that the difference will serve as a *hashavah*. Furthermore, if he doesn't normally do business with the victim, he may give the money to someone who does and ask him to "overpay" and get the money back to the victim.

He may also put the money directly into the victim's wallet or pocket, because *Chazal* taught that a person frequently checks the place where he keeps his money, and when he realizes he has more money than he had the previous time he checked, it is considered a *hashavah* (*Shulchan Aruch Harav, Gezeilah* 8; see *Sma* 355:2).

Since when a person knows that he was robbed, he must also know that his money was returned to him, some *poskim* write that if the thief wants to give him the money as a gift rather than admit that he stole it, it is not considered a proper *hashavah*. The fact that the victim now has the exact sum of money in his possession is not enough; he must know that the stolen money was returned (*Shvilei David* 355:1).

He may, however, give the victim the money and say, "This is the money I owe you." Since the victim will not remember having loaned him money, he will think that he is either returning a loan that he (the victim) forgot about, or returning money that he (the thief) stole.

It is questionable whether the thief may say, "Here's the money / borrowed," because we can't know for certain that the victim will realize that he never loaned this person money, and that this was merely a way for him to save face (*ibid.*)

But if he says, "Someone wanted to return money he stole from you without you knowing who he is," that would seem to be a valid *hashavah*.

Even if the victim never realized that he was robbed — in which case, as we discussed, the thief may return it without the victim knowing that it was returned — he still is not allowed to give it to the victim as a gift. Although by doing so the thief may technically have returned whatever he stole, the victim will now feel indebted to him for the gift, because he doesn't realize that he is merely recouping his own money; this would therefore be considered *geneivas daas* (see *Demai* 4:4, with *Gr"a, Mishnah Rishonah, and Rashash*). But if the victim never knew it was stolen, and the thief says, "I found this item (or money) that you lost," it presumably does qualify as a *hashavah*.

To be continued...

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