

# HALOCHOSCOPE <sup>TOI</sup>

May one make a verbal *Pruzbul* during *Bain Hashmoshos* on *Erev Rosh Hashana* or after he accepted the onset of *Yomtov* before sunset?

The issues:

- (A) *Shemitas Kesafim*, the cancellation of debts because of *Shemita*; its timing
  - (B) *Pruzbul*, institutionalized suspension of such cancellation
  - (C) *Bain Hashmoshos*, twilight, especially as it relates to this case
- (A) *Shemitas Kesafim*

*Shvi'is* is the Mitzvah to let the land “rest” every seventh year. Agricultural activity in Eretz Yisroel must cease. At the same time there is another cessation, *Shmittas Kesafim*, which applies outside Eretz Yisroel too. A lender may not collect a loan after Shmitta year has passed. Shmitta annuls the debt, according to most, at the end of the year. The lender may collect it throughout the year.

The Poskim explain *Shmittas Kesafim* in three ways. Some consider it *Afkaata Demalka*, Hashem takes the debt off the books. At the other extreme, some say that the debt is in fact still due, and withholding it is like stealing. The issue is purely a Mitzvah *Akarkafta Degavra*, on the lender to desist from asking for it. The middle view is that one has a Mitzvah to actually forgive it, but if he does not it is still due. Most Poskim consider it a Rabbinical obligation today. Some rule that it does not apply at all today.

Only debts due before the time of *Shmittas Kesafim* (the beginning or end of *Shmitta*) are cancelled. For the negative Mitzvah of *Lo Yigoss*, do not collect, to apply, the collector must be able to collect. A debt due after *Shvi'is* could not be included, since he could not collect it if he wanted to at the end of *Shvi'is*.

If the borrower offers to pay after *Shmitta* the lender is obliged to tell him: “I am *Meshamet*”, the debt was annulled. If the borrower insists that he accept payment as a gift, the lender may take it. He may even urge the borrower on to insisting. [See *Mishpatim* 23:10-11, *Behar* 25, *Re'ay* 15:1-6, *Shevi'is* 10, *Gitin* 36a-b, *Erchin* 31b, *Moed Katan* 4a, *Poskim*. *Rambam*, *Shmitta* 4:25, 1:11, 4:15, *Ra'avad*. *Chinuch* Mitzvah 84, 326-335, 475 & 477, *Minchas Chinuch*. *Tur*, *Bais Yosef* *Yoreh Deah* 331. & *Shulchan Aruch* *Choshen Mishpat* 67.]

## (B) Pruzbul

Since a borrower might not pay on time, a loan made close to the time of Shmittas Kesafim has an in-built risk of being annulled. Potential lenders might hesitate or refuse to lend people money as it approaches. The Torah warns strongly against this attitude, making it a negative commandment not to think of withholding a loan from a potential borrower. Yet, it became common practice. This created hardship for the poor borrowers and resulted in many violations of this commandment.

To correct the situation Hilel instituted the preparation of a Pruzbul by one who had outstanding debts, when Shmitta was about to cancel them. The lender gives *Bais Din* power of attorney to collect them. The prohibition against collecting a debt annulled by Shmitta does not apply to Bais Din. Thus, when Shmitta comes, the debt is not annulled. The lender may collect it after Shmitta, and he need not be concerned at the time of lending that the debt will be lost. Another view considers a loan against land security as though it has been collected. The lender has the right to seize the land. Individuals have little power to carry this out. Bais Din has the right to seize property without asking. Thus, it is as though it was truly collected.

To make a Pruzbul the lender goes before a Bais Din and makes a statement transferring his debts to them. They record it in a signed document. The Poskim debate whether one may state it verbally. Since Shmittas Kesafim is Rabbinical nowadays we rely on a verbal declaration. One may also declare to witnesses that he grants a Bais Din power of attorney, even if the Bais Din is not present.

The principle behind Pruzbul is a Scriptural exclusion to the laws of Shmittas Kesafim. Yet, how could Hilel institute a clear way of avoiding the Torah's commandment of Shmittas Kesafim? (Hilel did not "change" the Halacha; neither did he look for convenient loopholes. His purpose was to strengthen observance of the commandment against withholding a loan.) One of two approaches resolves this issue. Either forgiveness of debts is a monetary law and in monetary issues the Bais Din, i.e., the Rabbis, have the power to decide who owns the money if and when they see the need, known as *Hefker Bais Din Hefker*. Thus, they remove money from one party and give it to another. Here they remove it from the possession of the borrower to give it to the lender. Or, Shmittas Kesafim being a Rabbinical institution today, the same Rabbis have authority to adjust their laws. Thus, when Shmittas Kesafim is a Scriptural obligation a Pruzbul would not be made.

Pruzbul was only instituted for loans backed by real estate in the possession of the borrower. The debtor must therefore have a nominal measure of real estate for the lender to make a valid Pruzbul. If the debtor owns none he may be given some

for the purpose of Pruzbul. Since the Pruzbul is usually written without the borrower's presence or knowledge, a third party acts in his behalf as a self-appointed agent, known as *Zachin Le'adam Shelo Befanav*, to legally acquire some real estate, which is usually given to him by the lender. In some Batei Din an arrangement is made to give all the debtors a nominal amount of land (such as a square inch under the sink). Sometimes it is even written into the document. However, it is questionable whether this always works or is done correctly. Therefore, it is advisable for the creditor to make his own arrangements by giving his debtors some of his own land through Rosh Hashanah. [See Parshas Re'ay 15:9-11 Gitin 36a-b. Chinuch, Mitzvah 480. Tur Sh. Ar. C.M. 67. commentaries. Shmitta Kehilchasa.]

## (C) Bain Hashmoshos

The year is up when the last day ends, either sunset or nightfall. The twilight period is considered a *Safeik*, doubt on whether it is day or night, and in this case, Shvi'is or *Motza'ei Shvi'is*. As with any Yomtov, one should accept Rosh Hashana before sunset. May one make a verbal Pruzbul during this time?

The issues are whether the debt is cancelled at sunset due to the *Safeik*. Is it cancelled early if one considers it Rosh Hashana, or it is still really Shvi'is? May one make such a transaction when it is either a question of Yomtov, or a personally accepted Yomtov? As mentioned, a Pruzbul often includes a provision giving the borrower some real estate. This transaction could not be made at this time, so it must be excluded. Transactions, including collecting a debt, are Rabbinically forbidden to prevent writing, itself forbidden Scripturally. Pruzbul is not a transaction, but granting of power of attorney. However, it would ideally be written down by the Bais Din. Maybe it should be forbidden as an independent part of the restrictions on commerce on Shabbos. And since Pruzbul can only be made as long as one may actually claim the debt, may one collect it "in theory" during this time period?

If one may not collect it now, it could be compared to a debt that did not come due until after Shvi'is. Since one could not collect at this time, the debt should not be cancelled. If so, it should not be possible for Shmittas Kesafim to apply to any debt, since the time it takes effect is a time when one could not collect.

In former times, Rosh Chodesh was determined each month, on the twenty-ninth or thirtieth day after the preceding Rosh Chodesh, depending on when the new moon was witnessed. The Talmud discusses one who divided the meat of an animal to customers on Rosh Hashana. The payment they owe is not a debt and is not cancelled. He then told a customer that his payment should be considered a loan, on the first day of Rosh Hashana, thinking that it was already a new year and that

this debt could no longer be cancelled. Then Bais Din determined that the next day was really Rosh Hashana, and the first day was still Shvi'is. Is the loan now cancelled? The Poskim point out that it could not be collected anyhow due to Yomtov. One answer is that it is forbidden Rabbinnically, but could be collected Scripturally. Therefore, it is forbidden, even though it would be a Safeik whether it is Yomtov, and a Safeik whether it was already Shvi'is. Another solution is that the reason it may not be collected is not intrinsically loan related, but due to incidental reasons. Therefore, Lo Yigoss applies.

Accordingly, during Bain Hashmoshos one could collect and it would therefore be eligible for cancellation. Were it not for this, one Posek says, he could actually collect it Bain Hashmoshos. Collection even if it were considered Shabbos or Yomtov is Rabbinnically forbidden, and in this period it is a Safeik. Thus, one may tend to leniency. However, now that it might be the next year, one may not collect, due to the prohibitions of Shmitas Kesafim. An additional theory is suggested with reservation. In situations of Safeik on whether a change of status has occurred due to time, we sometimes view it as unchanged. Thus, at the onset of Shabbos we could consider Bain Hashmoshos Friday. At the end of Shabbos we consider it Shabbos. At the end of Shvi'is we could consider it Shvi'is.

As for accepting Yomtov early, one may even recite Kiddush according to most Poskim. However, one can not actually change the calendar, affecting the fixing of a birthday (a Bris or Bar-Mitzvah) and the like. These are determined by the facts. Therefore, it is not yet Shvi'is, and he should be allowed to collect and therefore make a Pruzbul. In terms of restrictions on anything leading to writing, one should be allowed to do them Bain Hashmoshos. For the same reason one may collect his debt then. In addition, Bais Din can record it at a later date. Since they are a group, and usually learned, the concern for writing might not apply anyhow. [See Mishna Shvi'is 10:1, Yerushalmi, Gitin 37b (Chasam Sofer), Poskim, Gidulai Teruma Shmitas Kesafim 13. Minchas Chinuch end Mitzvah 477. Aruch Hashulchan Choshen Mishpat 67:2.]

In conclusion, during Bain Hashmoshos, due to the Safeik about which year it is, he may not collect. For the same reason it is too late to make a verbal Pruzbul. Before sunset one may do so even having accepted Yomtov early.

***Kesiva Vachasima Tova!***