

# Shmittas Kesofim & Pruzbul

## Background and Guidelines

transcribed from the Shiurim of Harav Shraga Feivel Zimmerman שליט"א

### The source of שמיטת כספים and its current halachic status

The פרשת in שמיטת כספים of מצוה introduces the תורה. The פסוקים read as follows:

מקץ שבע שנים תעשה שמיטה. וזה דבר השמטה שמוט כל בעל משה ידו אשר ישה ברעהו לא יגש את רעהו ואת אחיו כי קרא שמטה לה' (דברים טו: א-ב)

These פסוקים emphasise two points:

1. Debts owed to a specific person are cancelled by the שמיטה year
2. There is a prohibition of יגוש – one may not press the person who owed the money to pay it back.

The status of שמיטת כספים in the present day is debated by the ראשונים. The ספר רמב"ן quoted by the ספר עיטור and the התרומות (סימן מה) both view it as a דאורייתא level obligation. However, most ראשונים quote the רמב"ם that שמיטת כספים is only binding on a דאורייתא level when the רמב"ם applies, the חושן משפט סימן סז' in שלחן ערוך follows the רמב"ם.<sup>1</sup> The רמ"א quotes an opinion that שמיטה is not applicable at all today and notes how the רא"ש objected but to no avail.

The רמ"א defends those who do not follow שמיטה today, quoting the מהרי"ק, who says that a שטר (a document with a lien) is not cancelled by שמיטת כספים. The רמ"א brings further defence for this practice; as the תרומת הדשן says that שמיטה outside א"י is only binding on the countries near to א"י and the מהרי"ל says that since in civil law one is obliged to pay their debts, it is as if one made a condition that שמיטה should not cancel his debts. Nevertheless, most פוסקים (including the של"ה, the רמב"ם, the באר הגולה, the רמ"א) say that שמיטת כספים applies today, albeit on a דרבנן level.

### What is the actual מצוה of שמיטת כספים and to whom does it apply?

The יראים writes that there is a מצוה on the person to renounce his debt. According to him, if a person does not do so, he violates a מצוה but the debt is still extant. Most ראשונים understand that שמיטת כספים works through דמלכא, in other words, אפקעתא, which cancels the debt and that this effect takes place automatically.

Is שמיטת כספים incumbent upon women? The ספר החינוך writes that this מצוה applies to both men and women and this is implied by the גמרא which relates that a כתובה is not subject to שמיטת כספים (see כתובות נה). All כתובות are held by women, which indicates that other debts owed to women would indeed be waived by שמיטת כספים. Since שמיטה is a מצוה עשה שהזמן גרמא, women's liability in this מצוה is understandable according to the view that שמיטת כספים takes place as an automatic effect. However, according to the יראים, who understands that the מצוה requires one to do something, how can it apply to women as a מצוה עשה? One answer is that they are bound by לא תעשה that one cannot go and collect the debt. If a child lends out money, is this subject to שמיטה? The שו"ע says that orphans' debts are not cancelled because אביהן בית דין, in effect the debts are already given over to ב"ד, which implies that the debts of an ordinary child are cancelled.<sup>2</sup>

### What is subject to שמיטת כספים?

The שו"ע says שמיטת כספים applies to a מלוה בשטר and even to an object, for example if one lent a bottle of milk, the obligation to replace it would be cancelled. A חוזר בעין, which is not subject to

1 חושן משפט סימן סז' refers to שלחן ערוך and all references to the רמב"ם are in הלכות שמיטה ויובל פרק ט' הלכה ב' unless otherwise stated.

2 (מנחת שלמה סימן מז' see) Rav Shlomo Zalman Auerbach addresses this also raises this issue and מנחת חינוך.

שמיטת כספים.<sup>3</sup> The debts of an ערב are also waived, he cannot collect from the borrower.

A loan given with collateral (a loan given with collateral) is not subject to שמיטה because it is considered already collected. If the debt is greater than the value of the deposit, there is a מחלוקת whether the additional value is subject to cancellation (חושן משפט סי' סז' סעיף שמיטה) (יב').

Debts which are not loans, such a credit extended by a shop or wages owed to a hired worker are not cancelled by שמיטה. There are two opinions why this is the case: The רמב"ם writes that it is because these debts were not due to be paid immediately and since they were not due to be paid before ראש השנה, they are not cancelled by שמיטת כספים. According to this view, these debts are not intrinsically different to any other debt. However, the ראב"ד, the ר"ש, the ברטנורה, and the תוס' all understand that שמיטה only affects loans, but other debts are not affected. Today, many shops do not allow one to pay on credit. Likewise salaries are often due on a given day at the end of a month and this will be subject to the above מחלוקת. According to the שמיטה רמב"ם, שמיטה will cancel shop credit and salaries, unless one wrote a פרוזבול. However, the other ראשונים would maintain these debts will not be cancelled as they are not loans. The אבן העזר (סימן קא', סעיף ג') in חלקת מחוקק writes that the הלכה that a כתובה is not cancelled is because it is a debt and not a loan; this is echoed by the גר"א, שנות אליהו and the השלחן, תומים.

However, the משנה and the שו"ע say that even these forms of debts which are not loans, "אם זקפן עליו, במלוה", they become subject to שמיטה. The meaning of this phrase is explained by the רמ"א: if you issue an invoice requesting payment. What difference does an invoice make?

As stated, the רמב"ם understands that a debt becomes due because of your request for payment and שמיטה simply does not affect whatever was not due to be collected before the end of the year. Accordingly, the invoice places the due date before the time of שמיטת כספים, thereby subjecting these debts to שמיטה. However, according to the other opinions, such debts are not loans so why does a person's the invoice make a difference? The אחרונים explain that when describing the effects of שמיטת כספים, the תורה does not refer to debts, but to a משה ידו – a debt which is being demanded. A loan by definition equals a demand that it be repaid, otherwise it would be a gift and not a loan. In the case of a working salary or shop credit, the moment a person demands that the outstanding amount be

paid, they become a משה ידו – a person demanding money from another and are subject to גיוש לא.

The משנה tells us that מוסר שטרותיו לבית דין is not subject to שמיטת כספים. The שו"ע says that צדקה is likewise not cancelled, because אביהם של ב"ד are יתומים. The ערוך השלחן raises the question of צדקה which does not go to charities, e.g., if a person pledges to donate money to a yeshiva or a shul. Would such monies also be considered to already be collected by the ב"ד? He says that the answer is yes, so debts to a shul are not cancelled.

**גמ"ח:** If you put money in a גמ"ח, do you need to write a פרוזבול? A גמ"ח benefits everyone, as anyone can borrow from it (and not just the poor). The אחרונים write that one need not write פרוזבול for a גמ"ח for two reasons:

1. It is a פקדון – the owner of the גמ"ח has no right to use it; it is your money until he gives it out, which only happens when you say so.
2. There is no personal liability on the part of the owner of the גמ"ח and therefore it is not subject to שמיטה.

**Long term loans and bills:** If one lends his friend money with a due date for repayment in ten years' time, the גמרא says it is not cancelled, because it was not yet due when שמיטת כספים takes place. If one lives in א"י and receives an electricity bill, can it be cancelled by שמיטה? This will depend on when it is due, it is like a credit due to a shop which has been זקפן במלוה and it would appear that this is subject to שמיטת כספים. Of course, you cannot tell the electricity that you won't pay it because of שמיטה but at the same time you should not be paying. The same question exists with ריבית; if you did not pay your bill on time, and they are demanding it plus ריבית, you are not allowed to pay ריבית but just like in the first case, if you do not pay, they will shut off your electricity. In both cases Rav Elyashiv says you should give it [both the original payment and the extra] but in your head, have in mind to give it to them as a present.

**שדכנות:** If a person did not pay a שדכן before ר"ה, does one need to pay? שדכנות is defined in חושן משפט (סימן קפה' סעיף י') where the רמ"א says he is a סרסור (middleman), no different than a real estate broker. If the שדכן demanded the payment, then it is subject to שמיטה but this depends on the date that the payment is due. The רמ"א addresses a question of whether the payment is due when the couple become engaged or when they get married. The תורה is if the engagement falls through. If it is due upon engagement, then the שדכן must be paid

<sup>3</sup> If you lend your car out to a friend, instructing them to replace the lost petrol and return it before ראש השנה, but he delays until after ר"ה, the car must still be returned but not the petrol.

immediately. However, if it is due upon marriage, then one does not need to pay the שדכן. This depends on the local מנהג (Rema). In a place which has מנהג, then the דין would be מחבירו עליו הראיה, because one can say that they hold like the other opinion. Payment for שדכנות will be subject to שמיטה if it fulfilled two conditions:

1. It was already due before the end of the year.
2. The שדכן demanded the payment.

## Cheques and banks during שמיטה and in הלכה in general

If a person owes you money and gives you a cheque before ראש השנה but you did not pay it in at the bank until after ר"ה, can you deposit it into the bank, or has the loan been cancelled by שמיטה? This will depend on the halachic definition of cheques. One possibility is that a cheque is worth money, in which case the debt is considered to have already been paid. A second possibility is that a cheque is merely a promissory note, but the debt is not yet paid. A third view is that the cheque is an instruction to the bank to give money to the one carrying it. Rav Shlomo Zalman Auerbach and the שבת הלוי held that the handing over a cheque before the end of שמיטה is defined as a payment, and the debt remains valid even if the cheque is not deposited until the following year. Rav Elyashiv held that a cheque is not money, it is only a promissory note due on the day of the cheque (unless it is post-dated), and is therefore subject to שמיטה.<sup>4</sup>

The question of a בר מצוה who receives cheques (which are not payment of debts), who did not deposit the cheques before ר"ה will likewise depend on how a cheque is considered. If it is akin to money, then it is a present which has already been given. If it is a promissory note, it will be waived by שמיטה; but if it is a letter to the bank instructing

the bank to give money to him, then שמיטה will not cancel it.

If you have money in a Jewish bank and did not write a פרוזבול, can this money be taken out from the bank? Contrary to popular perception, money in the bank actually involves lending money. In effect, giving over a cheque means that you instruct them to give the debt owed to you to someone else and therefore שמיטה<sup>5</sup> should cancel the debt. The אגרות משה and Rav Elyashiv were of the opinion, however, that since there is no personal liability to any particular person this debt is not cancelled; שמיטה only cancels debts to רעהו, as mentioned in the פסוק.

## מוסר שטרותיו לבית דין

The השמר לך פן יהיה דבר עם לבבך בליעל לאמר תורה warns in רמב"ם. קרבה שנת השבע שנת השמיטה...ולא תתן לו writes that if one does not lend on account of the impending שמיטה, then one is liable for two לאווין.<sup>6</sup> If שמיטה passes, it is forbidden to accept payment of a debt, and even to press for the debt to be repaid is also forbidden. If the person wants to pay, one needs to say "משמט אני" and this is learnt from the words השמיטה. If he still wants to pay, it is a מצוה for him to do so, the משנה says רוח חכמים נוחה הימנו. How does this work? The answer is that שמיטה waives the right to demand payment of the debt but doesn't cancel the actual debt. The משנה (שביעית יב) tells us that if a person hands over his debts to the ב"ד they are not cancelled.<sup>7</sup>

## The meaning and effect of פרוזבול

The גמרא explains the meaning of the term פרוזבול: פרוז means an enactment, בול means rich and בוטי means poor. הלל made an enactment benefiting the rich and the poor, the rich were guilty of the sin of not lending and the poor had no money. The גמרא says that רב נתמן instituted that people should make פרוזבול, but he was far later than הלל, so what did

4 The son of Rav Neuwirth (the author of שבת כהלכתה) asked his father whether Rav Shlomo Zalman or Rav Elyashiv is correct. His father said that Rav Shlomo Zalman was right, provided that the cheque is honoured later, i.e., only if the cheque does not bounce. If the bank account has insufficient funds, then it would emerge retroactively that there was no payment and the debt was impacted by שמיטה and thereby cancelled, so it would be advisable to make a פרוזבול. It is worth noting that in Israel a cheque may be considered as payment by some but in the UK it is accepted that it is not considered as payment and is merely a שטר חוב.

5 Another נפקא מינה which results from how we perceive money in the bank is whether a בכור receives פי שנים - a double portion, when inheriting money in the bank. A בכור only receives a double portion in מוהוק - that which is already in the possession of the deceased, but not in ראוי - that which is fitting for a person to take possession of (such as debts owed to them). Another effect is the question of whether a person be a שומר of money transferred to their account on behalf of someone else. Since there is no money there, seemingly the answer is no.

6 Since today שמיטה, דרבנן would one be liable for not lending? The שור בכור says that one would. Rav Shlomo Zalman (מנחת שלמה א:מו) explains that this is implied by the רמב"ם listing this איסור, even though he holds that שמיטה, דרבנן is currently שמיטה, דרבנן, he therefore says that it must be an איסור דרבנן. תתם סופר says that there could be no איסור at all, because the whole איסור is because שלמה הקב"ה ברכה that one will not lose out from lending, as noted by the סמ"ע. The שו"ת חיון איש disagrees. Rav Shlomo Zalman explains that the בכור שור held: 1) There is still a ברכה if you keep 2) שמיטה. The איסור is if you do not lend because of an unnecessary fear. Therefore, if you do not lend because the person is untrustworthy, this is not a problem.

7 The רמב"ם (חן) notes that this is learnt from אשר יהיה לך - the פסוק says that your debts are cancelled, but not those which are given to ב"ד. The שו"ת מלכאל explains that they are not collecting because they are owed money, but because they must make sure there is justice in the world. The שו"ת חיון איש says that ב"ד do this based on the הפקר, they can appropriate money where they see fit. The חידושי הרי"ם says that appears to be a מחלוקת, both reasons are needed. שמיטה entails two separate aspects: the איסור, לא יגוש איסור, and the fact that the debt has also been cancelled. The מנה"ם's logic addresses the איסור, but to reinstate the debt, the הפקר aspect is needed in order to enable the collection of a debt which no longer exists.

actually do? The סמ"ע says that הלל decreed for his generation alone, but רב נחמן extended it to future generations. Another answer is that הלל only decreed a פרוזבול written; רב נחמן enabled a פרוזבול to be made verbally.

## What type of ב"ד can write a פרוזבול?

The מחבר writes that only a ב"ד חשוב can write a פרוזבול. In this context, חשוב means that they are experts in הלכה and were appointed by the town. The רמ"א says that any ב"ד can write a פרוזבול, and in the present day one can be lenient. Are these דינים allowed to be related to each other or either of the parties? The ערך לחם and Rav Elyashiv say that they cannot. The מנחת יצחק and שבט הלוי say that they can.<sup>8,9</sup>

The רמ"א says that instruction to write a פרוזבול is enough. A predated פרוזבול is valid but a post-dated one is פסול, because it includes debts that were not extant at the time of writing. There are three ways of making a פרוזבול:

1. Go in front of a ב"ד and say that you are handing over the debt; you write and they sign. The שו"ע says this is the best form.

2. Make your declaration in front of witnesses, then they sign that you gave it over to a ב"ד. You can write to whichever ב"ד you want, they need not be in front of you.
3. The רמ"א says that you can hand the debts over verbally, but the חכמת אדם says that this is only so בשעת הדחק.

The common practice today is to go in front of ב"ד (whether an established one, as the מחבר says a ב"ד חשוב, or רמ"א like the הדיוטות) and say that you give the debts over to ב"ד. You also write out that you are handing over your debts and the דינים sign it on the bottom, although the שו"ע does not mention this.<sup>10</sup> The חתם סופר writes that you do not need a שליח, while the חזון איש maintains that you do. What lies behind this מחלוקת? Rav Chatzkel Bretler, a תלמיד of the חזון איש, said that this was based on the question of who makes the פרוזבול. One possible understanding is that the lender makes it, and the ב"ד merely certify it, the other understanding is that the ב"ד make the פרוזבול and the מלוה authorises them to do so. According to the first approach, a שליח is needed, but according to the second, a שליח is not needed, a פרוזבול can be sent by postal service.<sup>11</sup>

- 8 A similar model exists in regard to התרת נדרים, which also requires a ב"ד but relatives are permitted to take part since התרת נדרים is not a פסק of a ב"ד but an act of ב"ד. The question here is whether פרוזבול is an act of ב"ד or a פסק. The ערך לחם says that another נ"מ is whether it can be written at night; a פסק cannot be made by ב"ד at night but התרת נדרים could be done at night.
- 9 On the question of what type of ב"ד should be used to arrange a פרוזבול, אורחות רבינו cites that the Steipler would use any three people. The חזון איש and Rav Elyashiv were מחמיר to use an official ב"ד because the מבי"ט said that the רמ"א may only have been dealing with a case where no ב"ד חשוב was present but if there is a ב"ד חשוב, one must go for it. Rav Benzion Abba Shaul in אור לציון says that ספרדים cannot rely on the רמ"א and must follow the מחבר, who says that one requires a ב"ד חשוב.
- 10 Rav Wosner noted that one year the חזון איש came to his ב"ד and personally made the declaration, wrote the פרוזבול and signed it himself and left, as only the מלוה has to sign. Another time, the חזון איש was in Yerushalayim and was too weak to go to the ב"ד so he wrote a פרוזבול and told Rav Moshe Dytch to take it to the ב"ד, telling him that he wanted him to be the שליח.
- 11 Rav Dovid Soloveitchik in his final שמיטה did a פרוזבול with three תלמידים like the רמ"א and then made one of the three a שליח to bring the פרוזבול to the ב"ד, so he fulfilled פרוזבול according to all opinions.

**The Federation Beis Din will be sitting to arrange Pruzbuls, on the following days:**

### GOLDERS GREEN

Sunday  
18 September  
11-1pm  
Machzikei Hadass  
1-4 Highfield Rd NW11 9LU

### EDGWARE

Tuesday  
20 September  
6-8pm  
Seed  
Mowbray House HA8 8DJ

### HENDON

Wednesday  
21 September  
2-4pm  
Federation Beis Din  
65 Watford Way NW4 3AQ

For further explanation and instructions or if you are unable to attend:

[www.federation.org.uk/pruzbul](http://www.federation.org.uk/pruzbul)

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