

HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

SERIES 2: 38 - PROZBUL OU ISRAEL CENTER - SUMMER 2022

- In the previous shiur we looked at the halachic and some of the hashkafic background to the mitzva of Shemitat Kesafim.
- In this shiur we will address the halachic and hashkafic background to the special Rabbinic enactment of Prozbul.
- In the following shiur we will be'H look in more depth at the concept of *ha'arama* - halachic mechanisms that appears to circumvent mitzvot in the Torah. How, why and when is this acceptable?

A] DEBTS OWNED BY BEIT DIN

1. המלוה על המשכון והמוסר שטרותיו לבית דין אינו משמטין.

משנה שביעית פרק י משנה ב

The Mishna rules that any debt which is transferred to the Beit Din will not be released in the Shemita year.

2. המלוה על המשכון - דכתיב (דברים טו:ג) וְאֵשֶׁר יְהִי לָהּ אֶת-אֶחִיךָ שֹׁמֵט יִדְּךָ. פרט לזה שיש לאחייך צידך.

המוסר שטרותיו לב"ד - דכתיב וְאֵשֶׁר יְהִי לָהּ אֶת-אֶחִיךָ. פרט למוסר שטרותיו לבית דין שצית דין יש להם זה כחוב אלל אחיו.

ר' עובדיה מברטנורא מסכת שביעית פרק י משנה ב

The rationale for this law is based on the verse in the Torah which states that any loan owed by one Jew to his or her fellow Jew is released. However, a debt owed to the court does not belong to a few Jew but a community institution of Beit Din.¹

- This appears to be a Torah law, which is learnt directly from a verse, although we will clarify this below.
- As such, if an individual were owed a debt and then transferred the debt to the Beit Din, that debt would survive Shemitat Kesafim. However, since it is now owned by the Beit Din, presumably they, and not the original owner, would have the right to decide if and when to enforce it. Also, is it morally correct, or within the spirit of the law, to transfer a debt to Beit Din in order to avoid release by Shemita?

B] THE INNOVATION OF PROZBUL

3. ג פרזבול אינו משמט.

משנה מסכת שביעית פרק י משנה ג

The Mishna continues with the definition of the Prozbul, which avoids release by Shemita.

4. מאי פרוסבול? אמר רב חסדא: פרוס בולי ובוטי. בולי - אלו עשירים, דכתיב: (ויקרא כו:ט) וְשִׁבְרַתְּ אֶת-נְאֻן עִזְכֶם. ותני רב יוסף: אלו בולאות שביהודה. בוטי - אלו העניים, דכתיב: (דברים טו:ח) וְהֶעֱבַט תַּעֲבִיטֶנּוּ. אמר ליה רבא ללעווא: מאי פרוסבול? א"ל: פורסא דמילתא.

גיטין לו-לו.

Chazal give two explanations as to the origins of the word 'Prozbul' or 'Prosbul':

1. First, Rav Chisda explains that the word is a compound noun from the Aramaic - 'Pros-buli-ubuti'. 'Buli' is an Aramaic word for rich people, as seen in Rav Yosef's explanation of Vayikra 16:19. 'Buti' is seen as a reference to the poor, due to is assonance with the word 'avot' - a pledge given by the poor for a loan. 'Pros' or 'proz' is translated various as 'enactment', 'ordinance' or 'benefit'.⁵ Thus Prozbul is an enactment for the benefit of the rich and poor.

1. The Beit Din has its own persona in Jewish Law. Even if a modern day corporation might be viewed in halacha as a partnership of the managing shareholders, the Beit Din is NOT seen as a personal partnership of the three judges who are on it.

2. Rav Rimon - Shemita p463.

3. Sefaria/Steinsaltz edition.

4. Artsroll Schotenstein.

5. The benefit to the rich is the primary focus - since it saves them from the Torah prohibition of denying loans to the poor as Shemita approaches. The benefit to the poor is those

2. Rava spoke to a foreigner (or maybe a linguist) who used the word 'prozbul' in his language to refer to an 'adjustment (or enactment) of the matter.

- However, its origins are also Greek and many mefarshim quote the Greek work 'prozbulbuti' as meaning 'the local council'.⁶

5. ג פרובול אינו משמט. זה אחד מן הדברים שהתקין הלל הזקן כשראה שנמנעו העם מלהלוות זה את זה ועוברין על מה שכתוב בתורה (דברים טו:ט) הַשְּׁמֵר לְךָ פְּנֵי־הַיְהוָה דְּבַר עַם־לְבָבְךָ בְּלֹא־עַל וְגו' התקין הלל לפרובול. ד זהו גופו של פרובול - 'מוסר אני לכם איש פלוני ופלוני הדיינים שבמקום פלוני שכל חוב שיש לי שאגבנו כ"ז שארצה'. והדיינים חותמין למטה או העדים.

משנה מסכת שביעית פרק י משנה ג-ד

The Prozbul was innovated by Hillel (1 century BCE) who saw that Jews were breaking the Torah mitzva⁷ by refraining to give loans as the Shemita approached since they were worried about losing the money through Shemitat Kesafim. Hillel therefore introduced a mechanism which enabled the debt to survive Shemita through its transfer to Beit Din. In that way, people would continue to lend to the poor as the Shemita year approached.

- The central wording of the Prozbul is: "I turn over to you, so-and-so, judges of such and such a place, that any debt that I may have outstanding, I shall collect it whenever I desire."
- What precisely was the innovation of Hillel? We saw above that there was already a Torah law that debts held by a Beit Din were not cancelled.
- Also, interestingly, this seems to BOTH transfer the debt to the Beit Din yet ALSO retain the right for the creditor to enforce it. How does that work?

6. ומי איכא מידי דמדאורייתא משמטא שביעית, והתקין הלל דלא משמטא?! אמר אביי: בשביעית בזמן הזה, ורבי היא ותקינן רבנן דתשמט זכר לשביעית. ראה הלל שנמנעו העם מלהלוות זה את זה, עמד והתקין פרוסבול רבא אמר: הפקר ב"ד היה הפקר.

גיטין לו.

The Gemara raises a fundamental question. If the Torah decreed that loans must be released, how could the Rabbis reverse that and decree that loans should NOT be released? It gives two answers: (i) Abaye understands that the enactment of Prozbul by Hillel only works when Shemita is itself rabbinic in authority, as it was in the time of Hillel⁸. (ii) Rava rules that, even if Shemita is a Torah law, authority is vested in the Rabbis to reallocate property through the principle of 'hefker Beit Din hefker'.⁹

- The difference between the opinions of Abaye and Rava is whether Prozbul would work EVEN if Shemita was a Torah law. According to Abaye, it would not. According to Rava, it would work. Since most opinions rules that Shemita today is rabbinic, the difference between Abaye and Rava remains conceptual.
- Do we follow the explanation of Abaye or Rava? The usual meta-halachic rule is that we always follow the opinion of Rava over that of Abaye apart from in 6 famous cases: יע"ל קג"ם¹⁰. This is NOT one of the six cases so in theory we should follow Rava.

loans. Rav Chisda did not want to focus only on the rich - Prozbuli, but also on the poor - hence Prozbulbuti.

6. See the Jastrow dictionary. *Przbutelis* is an ambassador, *bulbutelis* means a senator. *Prosbole* in Greek means a delivery, transfer or sale. *Pros boule bouleuton* in Greek means (before the assembly of the councilors), from *pros* (toward, to, against, before, in presence of), dative of *boule* (counsel, deliberation, assembly) and general plural of *bouleutes* (councilor), from *bouleuein* (to take counsel), from *boule*. The lower house of the modern Greek legislature is known as the Boule. See <https://www.balashon.com/2007/10/prozbul.html>
7. According to the most poskim, Shemita was in effect only rabbinically at that time. Nevertheless, there may still have been was a Torah mitzva of tzedaka and/or yashrut not to enforce such a loan.
8. Hillel lived at the end of the 2nd Temple period. However, we saw in Part 1 that R. Yehuda Nasi understands that the laws of Shemita are linked to those of Yovel. Since Yovel ceased to have effect once the tribal settlements ceased (during the 1st Temple period) so too Shemita operates now on a rabbinic level only.
9. The Gemara here goes on to derive the source of the principle of *hefker Beit Din hefker* from pesukim in Ezra and Yehoshua.
10. Most mefarshim explain these 6 cases as follows:
 - א - YEUSH SHELO MIDA'AT - The owner of a lost or stolen object does not as yet know that his object is lost or stolen. Had he known, he would have given up hope of ever getting it back, and would have verbally acknowledged that the loss is irretrievable. Abaye rules that yeush shelo mida'at is not considered yeush (Bava Metzia 21b).
 - ב - EID ZOMEM LIMAFRE'A HU NIFSAL - Abaye rules that a witness who is found to be an eid zomem is disqualified retroactively, such that all testimonies that he gave between the time that he gave his false testimony and now are considered invalid (Sanhedrin 27a).
 - ג - LECHI HAOMED ME'ELAV - Abaye rules that a board which was not put in place for the purpose of being used as a lechi (to permit carrying objects from a chatzer to a mavoy, and in the mavoy itself) is still considered a lechi (Eruvin 15a).
 - ד - KIDDUSHIN SHE'EINAM MESURIN LEBI'AH - Abaye rules that Kiddushin (betrothal) to a woman with whom marital relations will be prohibited due to a safek issur karet are considered binding to the extent that the woman needs to receive a get from the mekadash and becomes prohibited to his immediate relatives.
 - ה - GILUY DA'AT BEGITA - A husband has sent a get to his wife with a messenger, and the messenger returns having not been able to deliver the get. The husband then hints that he is pleased with the fact that he has not as yet divorced his wife, but he does not state explicitly that he does not want the messenger to deliver the get, or that he wishes to revoke the get. Abaye rules that his hints have no bearing on the validity of the get, and the messenger is still able to deliver the get (Gitin 34a).
 - ו - MUMAR OCHEL NEVEILOT LEHACHIS - Abaye rules that a person who eats non-kosher food (or transgresses any other sin) in order to anger his Creator is disqualified from being a witness, even though he has not demonstrated a willingness to transgress the Torah for monetary benefit (Sanhedrin 27a). See <https://dafyomi.co.il/sanhedrin/backgrnd/sn-in-027.htm>

7. **טו** המוסר שטרותיו לבית דין ואמר להם 'אתם גבו לי חובי' - זה אינו נשמט. שנאמר ואשר יהיה לך את אחיך, וזה בית דין תובעין אותו. וכן ב"ד שחתכו את הדין וכתבו 'איש פלוני אתה חייב ליתן לזה כך וכך' - אינו נשמט, שזה כגבוי הוא וכאילו בא לידו ואינו כמלוה.

טז כשראה הלל הזקן שנמנעו מלהלוות זה את זה ועוברין על הכתוב בתורה השמר לך פן יהיה דבר וגו' התקין פרוזבול כדי שלא ישמט החוב עד שילוו זה את זה. ואין הפרוזבול מועיל אלא בשמטת כספים בזמן הזה שהיא מדברי סופרים, אבל שמטה של תורה אין הפרוזבול מועיל בה. **השגת הראב"ד** - א"א זה אינו מחוור. דאזני הוא דאמר הכי אצל רבא פליג ואמר הפקר בית דין הפקר והלכך נוכח בכל זמן.

רמב"ם הלכות שמיטה ויובל פרק ט הלכה טו-טז

The Rambam states the halachot of transferring loans to Beit Din and then (separately) the din of Prozbul. However, he rules like Abaye and not like Rava!! The Ravad immediately points out that the halacha should be like Rava¹¹.

• As such, the Rambam rules that the mechanism of Prozbul only works if Shemita is rabbinic. However, the Ravad rules that Prozbul will work even if Shemita is min haTorah. This brings us to the question of how Prozbul actually works in halachic methodology.

C] HOW DOES PROZBUL WORK?

- There are 4 different halachic approaches as to how the mechanism of Prozbul works in halachic thought.
- We saw above that the Mishna records the halacha that Shemita does not cancel loans where the lender holds collateral or when the loans have been transferred to Beit Din. The Mishna then (separately) recorded the innovation by Hillel of Prozbul. Are these halachot connected and, if so, how?

C1] RASHI: PROZBUL/ASSIGNMENT OF DEBTS TO BEIT DIN ARE THE SAME

8. **מוסר שטרותיו לב"ד** - הוא פרוזבול שהתקין הלל שכתב צו 'מוסרני לכם פלוני ופלוני כדיינין שצמקום פלוני שכל חוב שיש לי שאגזנו כל זמן שארצה'.

רש"י מכות ג:

Rashi¹² understands that Prozbul is exactly the same as the transfer of debts to the Beit Din.

- According to Rashi's understanding, Hillel innovated BOTH (rabbinic) laws at the same time: (i) that any debts transferred to Beit Din will not be released by Shemita¹³; and (ii) that one way to effect this transfer was through the Prozbul.¹⁴

9. ואשר יהיה לך את אחיך. ולא שלאחיד בידך - מכאן אמרו המלוה על המשכון אינו משמט. ואשר יהיה לך את אחיך תשמט ידיך. לא המוסר שטרותיו לבית דין. מכאן התקין הלל פרוזבול. וכך דרש הלל, ואשר יהיה לך את אחיך תשמט ידיך, לא המוסר שטרותיו לבית דין.

מדרש הגדול דברים טו:ג

A number of Midrashim¹⁵ explicitly support this position - that Hillel introduced both laws together, Prozbul and the status of debts assigned to Beit Din.

C2] TOSAFOT: PROZBUL WAS A NEW WAY TO ASSIGN OF DEBTS TO BEIT DIN

10. **המוסר שטרותיו לב"ד** - פירש הקונט' דהיינו פרוזבול. ולא נראה דהא צמסכת שביעית (פ"י מ"ב) תני המוסר שטרותיו לב"ד והדר קתני פרוזבול אינו משמט. אלמא תרי מיילי נינהו. לכך נראה דתרי מיילי נינהו ומוסר שטרותיו לב"ד מדאורייתא אינו משמט.

תוספות מכות ג:

Tosafot disagree with Rashi's analysis. They understand that the halacha that debts assigned to Beit Din are not released is a Torah law. However, use of this mechanism to avoid Shemita had been discouraged. The innovation of Hillel was to allow people to use the mechanism, given the reality of his times where people were not longer lending.

11. This is also the view of Rashi, the Rashba and the Ran. The mefarshim explain the Rambam's unexpected psak (like Abaye) in different ways. The Radvaz explains that the halachic preference for Rava's position over Abaye's applies only when they are arguing concerning their own logical conclusions. When, by contrast, they argue about the interpretation of another position, as in this case, the halacha can follow Abaye's view. The Kesef Mishne explains that Rava's position actually flows from Abaye's. Since Shemita today is rabbinic, the principle of *hefker Beit Din hefker* can apply. So what is their actual argument? Rav Rimmon suggests that this may reflect a deeper machloket on how *hefker Beit Din hefker* actually works. According to one view it simply removes property from the ownership of one party but does not necessarily vest it in the ownership of another. According to the other view, *hefker Beit Din hefker* achieves both of these - divestment from one person and assignment to the other. We will return to this psak below when we address the mechanism of Prozbul.

12. This approach is also that of the Ramban and Meiri (Gittin 36b).

13. Hillel was able to do so for the reasons we saw above - either because the status of Shemita was rabbinic or because of *hefker Beit Din hefker*.

14. One of the problems with Rashi's approach is that the Mishna ruled these laws separately, as does the Rambam (see below for the Rambam's different approach to Prozbul).

15. See also Midrash Tannaim on this verse and Pesikta Zutrata Devarim 24a.

C3] RITVA: PROZBUL ALLOWS A DECLARATION OF ASSIGNMENT WITHOUT ACTUAL TRANSFER

11. אלא ודאי כל שמוכר שטרותיו ממש לז"ד מדאורייתא אינו משמט דהא נגוש ועומד הוא, והלל תקן פרוזבול שלא יהא לריך למסור שטרותיו, וכן משום מלוה על פה שיאמר להם מוסרני וכו'

חזושי הריטב"א מכות ג:

The Ritva¹⁶ quotes the position of Rashi and Tosafot and then suggests a third approach. According to this, the Torah law provided that debts actually assigned to Beit Din would not be released. Hillel's innovation of Prozbul was to permit the release even without the actual assignment of the debts, but just by a declaration of the lender.

C4] RAMBAM: PROZBUL HAS NOTHING TO DO WITH THE BEIT DIN

- There is a subtle but critical difference regarding Prozbul in the wording between the version in the Sifrei and that in the Mishna

12. וזהו גופו של פרוזבול מוסרני אני לכם פלוני ופלוני הדיינים שבמקום פלוני כל חוב שיש לי שאגבנו כל זמן שארצה

ספרי דברים פרשת ראה פסקא קיג

In the Sifrei, the lender gives over ('mosrani ani') to the dayanim every debt ('kol chov').

13. זהו גופו של פרוזבול - 'מוסר אני לכם איש פלוני ופלוני הדיינים שבמקום פלוני שכל חוב שיש לי שאגבנו כ"ז שארצה

משנה מסכת שביעית פרק י משנה ד

In the Mishna, the lender informs ('moser ani') the dayanim THAT every debt ('SHEkol chov') can be collected¹⁷.

14. [ד] מוסר אני לכם, ענינו מעיד אני אתכם זכך וכך.

פירוש המשנה לרמב"ם מסכת שביעית פרק י משנה ד

The Rambam read the Mishna as a declaration to the dayanim that the lender intends to collect the loans after Shemita. The loans do not actually need to be transferred to the court at all!

- So, according to the Rambam, Prozbul has nothing to do with transferring loans to the Beit Din. It is simply a statement that Shemita will not apply to these loans. Since Shemita is in force only on a rabbinic level¹⁸, the Rabbis created the Prozbul as an exception to their halacha of Shemita derabbanan.
- But, according to this, why would Prozbul need to be in front of Dayanim at all? It has nothing to do with the court!

15. טז כשראה הלל הזקן שנמנעו מלהלוות זה את זה ועוברין על הכתוב בתורה השמר לך פן יהיה דבר וגו' התקין פרוזבול כדי שלא ישמט החוב עד שילוו זה את זה. ואין הפרוזבול מועיל אלא בשמטת כספים בזמן הזה שהיא מדברי סופרים, אבל שמטה של תורה אין הפרוזבול מועיל בה. יז אין כותבין פרוזבול אלא חכמים גדולים ביותר כבית דינו של רבי אמי ורבי אסי שהן ראויין להפקיע ממון בני אדם, אבל שאר בתי דינין אין כותבין.

רמב"ם הלכות שמיטה ויובל פרק ט הלכה טז-יז

The Rambam requires a Prozbul to be made in front of an extremely important Beit Din, not just three men.

16. תלמידי חכמים שהללו זה את זה ומסר דבריו לתלמידים ואמר 'מוסרני לכם שכל חוב שיש לי שאגבנו כל זמן שארצה' אינו צריך לכתוב פרוזבול. מפני שהן יודעים שהשמטת כספים בזמן הזה מדבריהם ובדברים בלבד היא נדחית. (השגת הראש"ד - ח"א דבריו כותבין זה את זה!)

רמב"ם הלכות שמיטה ויובל פרק ט הלכה כז

In fact, where the Prozbul is made by talmidei chachamim, who understand that it only works because Shemita is rabbinic today, they do not need any Beit Din and do not even need to write it down at all!

- According to the Rambam¹⁹, the requirement for Prozbul and Beit Din is only for the masses who may make the mistake of thinking that a verbal declaration can override a Torah mitzva!
- The Ravad (who rules that Prozbul is effective even for Shemita deoraita) sees the massive gap between the Rambam's requirement for talmidei chachamim and for the masses as a contradiction.

16. This is also the position of the Ran and R. Chesdi Crescas (Gittin ibid).

17. Some girsaot of the Mishna do use the wording 'kol chov', and this is also found in the Rishonim (Tosafot Gittin 32a, Ran on Rif Gittin 18b, Yere'im 164, Tur CM 67 and others).

18. The Rambam stresses this point, both in the Mishne Torah and in his commentary on the Mishna.

19. Some mefarshim understand the position of the Rambam to be less extreme.

• In practice, one difference between the different approaches above is whether one would be required to actual deliver the loan documents to the Beit Din. According to positions of Rashi and Tosafot this may be required. For the Ritva and Rambam it would not.

17. זה גופו של פרוזבול: מוסרני לכם פלוני ופלוני והדיינים שבמקום פלוני שכל חוב שיש לי שאגבנו כל זמן שארצה. והדיינים או העדים חותמים מלמטה. וה"ה שיוכל למסור צבית דין חוצותיו שצטל פה. (ר"ן פרק השולח).

שולחן ערוך חושן משפט הלכות הלואה סימן סז סעיף יט

From the wording of the Shulchan Aruch, it is not clear which approach he takes. The Rema rules that even oral loans can be covered by a Prozbul, and loan documents do not have to be given to the Beit Din²⁰.

D] THE PROZBUL DOCUMENT

- A sample text of the Prozbul document is set out in the Appendix.
- What type of document is the Prozbul? There are fundamentally 2 types of shtar: (i) Shtar Ra'aya - a document that serves as a deed of proof that a certain transaction took place, such as a ketuba; (ii) Shtar Kiyum - a document which effects the transaction or change of status, such as a get on divorce. How do we view Prozbul?

18. אלא שצריך לדקדק בזה מדתן צפרק צתרא דשביעית [מ"ה] דפרוסבול המאוחר פסול. ואמאי? נכי שנכתב זמנו שלא כראוי נאמין צו שנמסר חוצ זה צצ"ד ולא יהא משמע. לאו קושיא היא, שאלו היה הפרוסבול מעיד שנמסרו השטרות לצ"ד אין הכי נמי. אבל הפרוסבול אין עניינו כך שכגון זה לא הולך כלל לתקן דמוסר שטרותיו לצ"ד מדאורייתא הוא. ותקנתו של הלל היתה צמסירת מילי לצד, וצכהאי גוונא משמע ששטר הפרוסבול עלמו הוא שמפקיע הממון ולא ישיצת הצ"ד שישצו על כך.

שו"ת הר"ן סימן עז

The Ran²¹ asks why it is so important that the Prozbul must not be post-dated. As long as we know that the loans were actually transferred to the Beit Din, why do we care about the date of the document. He answers that the Prozbul itself is the actual legal transfer of the loans, and not just proof of the transfer. As such the Prozbul itself is a 'ma'aseh Beit Din' and must accord with all the halachot of deeds and be dated correctly.

19. כיון שאמר לפני צ"ד מוסרני לכם פלוני ופלוני דיינין, הרי נגמר מעשה הפרוסבול. והפרוסבול שחותמין צו אינו אלא לראיה צעלמא. דהא למאן דאמר פרוזבול צשששה, אפ"ה סגי דלחתמו ציה עדים משום דלא הוי אלא לראיה צעלמא.

שו"ת הריב"ש סימן שפב

The Rivash²² disagrees and rules that the Prozbul is only a deed of proof and not a court document. As such, he rules that only the two witnesses need to sign, and not the dayanim²³.

E] THE BEIT DIN

E1] MUST THE DECLARATION BE IN THE PRESENCE OF A BEIT DIN?

20. הדיינים חותמין למטן או העדים: ר' חזקיה בשם רבי ירמיה ואפילו נתונים ברומי.

תלמוד ירושלמי מסכת שביעית פרק י הלכה ב

On the requirement for the dayanim to sign, the Yerushalmi rules that this works 'even if they are in Rome'. What does the 'they refer to'?

21. ותיקן דצמסירת מילי צעלמא סגי דאפילו אין השטרות צידו וכדאמרינן צירושלמי דאפילו נתונים צרומי

חדושי הר"ן גיטין לו.

The Ran understands that the case is where the loan documents are in Rome. The lender can make the declaration before a Beit Din in Eretz Yisrael and does not need to hand over the actual loan documents - a verbal declaration before the dayanim will suffice.

20. The Rema rules like the Ran who follows the position of the Ritva above.

21. Spain/N. Africa (1320-1380).

22. Spain/N. Africa (1326-1408). The Rosh also takes this position. In fact, he understands the line of the Gemara that some Rabbis merely 'gave the wording one to the other' in this way - that the document was a deed of proof and thus was not required bedieved. We saw above that the Rambam does not understand the Gemara in this way. Rather, he learnt that this was a special dispensation to talmidei chachamim that they did not need a Prozbul at all! The Ran reads the Gemara like the Rambam.

23. We will see below the extreme position of the Mordechai that the lender does not even need to be in the presence of the Beit Din when making the Prozbul. Clearly, according to that opinion, the Prozbul is not a 'ma'aseh Beit Din' but a deed of proof.

22. אפילו נחונים צרומי – פירוש הדיינים. כלומר יכול לומר 'מוסרני לפלוני ופלוני דיינין שצמקום פלוני' אפילו רחוקין ממנו הרצה, אף על פי שאינם בפניו שפיר דמי.

מרדכי מסכת גיטין פרק השולח רמו שפ

The Mordechai learns that the case is where the dayanim are in Rome and the lender is in a different country! According to this approach, the lender does not even need to be physically present before the Beit Din.

23. יח פרוזבול אינו משמט. ואינו נכתב אלא בבית דין חשוב ...

כ תלמידי חכמים שהלוו זה את זה, ומסר דבריו לתלמידים, ואמר: 'מוסרני לכם שכל חוב שיש לי שאגבנו כל זמן שארצה', אינו צריך לכתוב פרוזבול מפני שהם יודעים ששמיטת כספים בזמן הזה מדבריהם, ובדברים בלבד היא נדחת. הגה: וי"א דכל אדם נמי יוכל לומר דבריו בעל פה לפני צ"ד ומהני ואין לריך פרוזבול (טור). ואין חילוק בין אם המלוה צעיר דיינים או לא כי יכול לומר אפילו שלא בפניהם: 'אני מוסר שטרותי לבית דין פלוני שצעיר פי' (מרדכי ס"פ השולח).

כא יש מי שכתב ענין שטר פרוזבול כך הוא: הולך המלוה אצל שלשה עדים ...

שולחן ערוך חושן משפט הלכות הלואה סימן סז סעיף יח, כ, כא

The Shulchan Aruch rules in principle that a Prozbul must be made in front of a Beit Din Chashuv (see below), although he rules like the Rambam (above) that talmidei chachamim can make the declaration without a Prozbul. However, the Mechaber also quotes the opinion that the Prozbul need not be made in the presence of the Beit Din. The Rema rules like the Rosh that a person may make an oral declaration before a Beit Din and he also brings the opinion of the Mordechai that the declaration does not have to be made in the actual presence of a Beit Din.

• Many Acharonim rule²⁴ that one should not rely on the Rosh except in a bedieved situation and that one may not rely on the more extreme view of the Mordechai in most situations²⁵.

E2] WHICH TYPE OF BEIT DIN?

• Some halachic actions which require a Beit Din can be done in the presence of any adult male Jews, even non-experts, eg hatarat nedarim. What is the position with Prozbul?

24. ת"ש דאמר שמואל: לא כתבין פרוזבול אלא אי בבי דינא דסורא אי בבי דינא דנהרדעא ... כי תקין הלל לדרי עלמא - כגון בי דינא דידיה, וכרב אמי ורב אסי, דאלימי לאפקועי ממונא, אבל לכולי עלמא לא. ת"ש, דאמר שמואל: הא פרוזבולא - עולבנא דדייני הוא. אי איישר חיל אבטליניה. אבטליניה! והא אין ב"ד יכול לבטל דברי ב"ד חברו אלא א"כ גדול הימנו בחכמה ובמנין! הכי קאמר: אם איישר חיל יותר מהלל אבטליניה. ורב נחמן אמר: אקיימנה! אקיימנה! הא מיקיים וקאי הכי קאמר: אימא ביה מילתא, דאע"ג דלא כתוב ככתוב דמי.

גיטין לו:

Shmuel rules in the Gemara that a Prozbul may only be made before a Beit Din like those of Sura or Neharda'a with expert dayanim and which is authorized to expropriate money, but not before a regular Beit Din. Shmuel also expresses the strong opinion that he believes the entire innovation of Prozbul to be 'ulbena dedaynei' - a disgrace for the judges! He clearly had strong moral misgivings as to the appropriateness of Prozbul, which appears to protect unscrupulous lenders. However, other Amoraim disagreed. We will expand on this more hashkafic issue in the next shiur be'H.

25. אין כותבין פרוזבול אלא חכמים גדולים ביותר כבית דינו של רבי אמי ורבי אסי שהן ראויין להפקיע ממון בני אדם. אבל שאר בתי דינין אין כותבין.

רמב"ם הלכות שמיטה ויובל פרק ט הלכה יז

The Rambam rules like Shmuel that a Beit Din akin to that of Chazal is needed for Prozbul.

26. ורבינו תם ז"ל כתב צספר הישר דשביעית נוהגת בזמן הזה ... ואין לכתוב פרוזבול בזמן הזה שאין לנו מומחין כרב אמי ורב אסי. ושוב חזר בו רבינו תם וכתב הוא בעלמו פרוזבול כי היכי אומר דלא צעין אלא בית דין חשוב שצדור ...

רא"ש מסכת גיטין פרק ד סימן יג

Rabbeinu Tam original ruled this way and held that this effectively ruled out Prozbul in our times since we do not have such a Beit Din. But he later changed his position and ruled that Prozbul requires a 'Beit Din Chashuv' according to the standards of the generation.

24. See Bach CM 67:23 and Chatam Sofer CM 50.

25. See Tumah CM 67:21.

- The Rif also omits the ruling of Shmuel and many Rishonim reject Shmuel's positions in halacha since he also expressed a personal wish to abolish entirely the institution Prozbul!

27. פרוזבול אינו משמט. ואינו נכתב אלא בבית דין חשוב - דהיינו שלשה בקיאים בדין ובענין פרוזבול, ויודעים ענין שמיטה. והמחוסר רבים עליהם באותה העיר. וי"א דכותבין פרוזבול בכל בית דין ונראה לי דיש להקל בזמן הזה.

שולחן ערוך חושן משפט הלכות הלואה סימן סז סעיף יח

The Shulchan Aruch rules in accordance with Rabbeinu Tam - that any Beit Din Chashuv in the generation will qualify. The Rema rules²⁶ that one can rely on the opinion that any 'beit din' of 3 adult Jewish males will suffice²⁷.

- In practice, it is not feasible for each person making a Prozbul to appear before the most important Beit Din of the generation, so there are two practical options:
 - to rely on the view of Mordechai and make the Prozbul declaration to the most important Beit Din, but not in their presence. This is the practice of many Sefardim.
 - to rely on the view of the Ramban and make the Prozbul declaration in the presence of a regular Beit Din. This is the practice of many Ashkenazim.
- The Prozbul wording of R. Rimon (see the Appendix) includes a stipulation that, if the halacha requires the most prominent Beit Din, then the Prozbul is also addressed to the Supreme Court of the Rabbanut HaRashit. In this way, it is addressed both to the regular Beit Din in front of them and also to the Supreme Beit Din, albeit not in their presence.

E3] THE ROLE OF THE BEIT DIN

- What is the halachic function and role of the Beit Din in the Prozbul process?

28. מוסר שטרותיו לב"ד דתפסי להו בי דינא

גיטין לו.

The Gemara states that when the lender hands over his debts to the court, the court 'seizes the debts for him'.

- There are two approaches in the Rishonim to understand the halachic mechanism at work here:

(i) The Court as Enforcer

- Some Rishonim equate this process with the previous law ruled by the Mishna - that loans for which the lender already holds collateral are not released by Shemita. The Sifrei explains that Shemita releases only loans in which the property of the lender (ie the money) is in the hands of the borrower and NOT where the property of the borrower (ie the collateral) is in the hands of the lender.

29. ודאי כל שמוסר שטרותיו ממש לב"ד מדאורייתא אינו משמט דהא נגוש ועומד הוא

חדושי הריטב"א מכות ג:

The Ritva rules that, since the Beit Din have broad powers to seize property, a debt transferred to Beit Din is effectively as good as collected! As such, it is not released since the money is effectively back in the hands of the lender.

- According to this approach, the lender remains the creditor, but now has the power of Beit Din on his side as enforcer.

(ii) The Court as Creditor

- Other Rishonim see Prozbul as quite distinct from the case where the lender holds collateral.

30. מוסרני לכם - גבי פרוזבול שכוא מוסר שטרותיו לב"ד דאיכו לא תצט ליה לב"ח אלא לב"ד וכן יורדין לנכסיו ולא קרינא ציה לא יגוש.

רש"י גיטין לב:

Rashi understands that a debt assigned to the Beit Din is not released since Beit Din becomes the creditor in place of the original lender. Since the court is not an individual but a legal institution, the loan will not be released.

E4] RELATIVES ON THE BEIT DIN

- Although some poskim insist that the judges should not be related to each other or the lender, others are lenient.²⁸

26. This is the position of the Ramban (Sefer HaZechut Rif Gittin 18b), the Rashba (Gittin 37b) and the Rosh (13).

27. Note also, as we saw in detail in the previous shiur, that the Rema also quotes a number of opinions that support the position that Shemita Kesafim does not apply today. The Rema disagrees with that position in principle, but it may be reflected in his psak.

28. Yabia Omer (3 CM 6), Minchat Yitzchak (10:141). R. Rimon cites a Prozbul drawn up by R. Shlomo Zalman Auerbach for his grandson where the dayanim included R Auerbach and his son-in-law.

F] WHEN TO MAKE THE PROZBUL

- As discussed in the previous shiur, the Prozbul should be made at the end of the Shemita Year as close to Rosh Hashana as possible so as to catch all debts made and due in the Shemita Year. A loan made after the Prozbul and due before the end of the year would not be released.
- However, many Acharonim are lenient and regard a 'stam chov' with no specific repayment date as due after 30 days²⁹. This would mean that such a loan given in Elul after a Prozbul had been made would only be due after the Shemita year and thus not released.
- In practice, the poskim recommend that the Prozbul should be made as close to Rosh Hashana as possible.

G] LAND OWNERSHIP BY THE BORROWER

31. תנן התם: אין כותבין פרוזבול אלא על הקרקע, אם אין לו - מוכהו בתוך שדהו כל שהו. וכמה כל שהו? אמר רב חייה בר אשי אמר רב: אפילו קלח של כרוב.

גיטין לו.

The Gemara states that a Prozbul can only be made if the borrower has ownership of or rights to occupy land³⁰. If he does not, the creditor should transfer to him a nominal amount of land so that the Prozbul can take effect,

32. אין כותבין פרוזבול אלא על הקרקע. ואפילו קרקע כל שהוא סגי ...

שולחן ערוך חושן משפט הלכות הלואה סימן סז סעיף כב

The halacha is that the Prozbul only works if the borrower has land, although this can be a tiny amount and can be owned, borrowed or rented.

- In practice, it is assumed that all borrowers have some land³¹ and the lender can transfer some land to the borrower if he has none. There is no requirement for the creditor to own land.

H] PROZBUL AND WOMEN

33. כותבים לאיש על נכסי אשתו, ולאשה על נכסי בעלה ...

שולחן ערוך חושן משפט הלכות הלואה סימן סז סעיף כה

The Shulchan Aruch rules that a husband or wife can write a Prozbul on their spouses loans.

- Women are obligated in almost all negative mitzvot³² and will be bound by the prohibition to enforce a loan after Shemita.
- Women are not generally obligated in positive time bound mitzvot but they ARE obligated in the positive mitzva to release a loan at Shemita since this is a positive mitzva achieved through refraining from an action, rather than performing one³³.
- If a husband and wife have a joint bank account, then the husband's Prozbul relating to that account will also be valid for the wife.
- If a woman has her own business loans and/or bank account she should make a Prozbul. She can appoint the husband as her agent, in which case the husband should explicitly include her in his document. She can alternatively make her own Prozbul.³⁴

I] LENDING A LITTLE AFTER THE PROZBUL

- Some have a custom to lend a little money after making a Prozbul and to allow that loan to be released, in order to fulfil the mitzvot of Shemitat Kesafim³⁵.

29. The position of the Bach CM 67:13 is stricter and he rules that such a loan WOULD be released unless it contained an explicit repayment date after Rosh Hashana. This is also the position of the Tumim. However, the positions of the Minchat Chinuch (477) and the Reshash (Makkot 3b) are lenient and R. Ovadia Yosef rules leniently in practice (Yechave Da'at 4:62 (end)).

30. The Rishonim give different rationals for this halachic requirement. Rashi and Tosafot understand that it is very unusual for a person to have no land and the rabbinic decree of Prozbul was not made for unusual situations. The Ran (Rif Gittin 18b s.v. u'mistabra) understands that for Prozbul to work the debt must be seen as 'already collected' by the Beit Din (this was also the understanding of the Ritva above) and this is only possible for a debt secured on land.

31. Even rights to sleep in a communal dorm are considered sufficient property rights for these purposes.

32. The three negative mitzvot which do not bind women are (i) shaving the corners of the head; (ii) shaving the corners of the beard; and (iii) becoming tamei met (for Cohanot).

33. See Shu't R. Akiva Eiger 3:80, Shu't Shoel U'mashiv 1:61, Ktav Sofer OC 56, Chazon Ovadia p 38 n20.

34. R. Rimon has a specific form of words for use by women.

35. See Ben Ish Chai Year 1 Ki Tavo.

APPENDIX - THE PROZBUL DOCUMENTPROZBUL³⁶**פרוזבול**⁵³

במותב תלתא בי דינא כחדא הוינא, ובא לפנינו _____ ואמר לנו:

"הן שנה זו היא שנת השביעית ויש לי חובות בשטר ובעל-פה על איזה אנשים ו/או חברות והריני מוסר בפניכם פרוזבול ומצהיר כי אם נכון להלכה ולמעשה כי אפשר לסדר פרוזבול גם שלא בפני הדיינים אליהם הוא נמסר, הנני מוסר פרוזבול זה וכל חוב שיש לי לבית הדין הגדול שבירושלים, והריני מרשה אותם לגבות כל חוב שיש לי, ומעתה יהיו הם דיינים ויגבוהו בשבילי; ואם לא יגבוהו הם, מעתה כיון שמסרתי פרוזבול זה, אגבה אני כל חוב שיש לי עד היום אצל כל אדם כל זמן שארצה. ובאם נכון כי פרוזבול מועיל רק אם נמסר בפני הדיינים, הריני מוסר את הפרוזבול ואת החובות שיש לי, לכם הדיינים בפניהם אני מצהיר, במקום לחברי בית הדין הגדול, ויהיה תוקף הפרוזבול, הכל כמבואר לעיל, לגביכם ועל ידיכם."

ואנו, בית דין החתומים מטה, כיון שראינו דבריו נכונים, והואיל מוסר לפנינו דברי פרוזבול כתקנת הלל וחד"ל, קבענו שלא תשמט שביעית חובותיו ויוכל לגבותם כל עת שירצה.

ובאנו על החתום, יום _____ לחודש אלול שנת ה'תש____, פה _____.

נאם: _____

נאם: _____

נאם: _____

ע"פ נוסח הרב ליכטנשטיין שליט"א

The three of us were in session together, and [*name of creditor*] came before us and said to us: "This year is the *shemita* year and I have outstanding debts - in writing and verbal - that are due me from various people and/or companies. I present you with a *prozbul* and I declare that if the law in practice is that it is possible to arrange a *prozbul* even not in the presence of the judges to whom it is being handed over, I hand over this *prozbul* and all outstanding debts to the Supreme Rabbinical Court in Jerusalem, to the judges [*names of dayanim*]. I authorize them to collect any outstanding debts that are due me. And from now on they shall be my judges, and collect them and receive for me. And if they do not collect them, from here forward, because I have presented you with this *prozbul*, I shall collect any debt that is due to me until this day, from any person and at any time I like. And if the law is that a *prozbul* is only effective after it is arranged in the presence of the judges, I hand over this *prozbul* and all outstanding debts to you, the judges before whom I make this declaration, instead of to the Supreme Rabbinical Court, and this *prozbul* shall be valid, all as explained above, with respect to you and through you." And we the court, the members of which have signed below, since we have seen his words to be correct, and since he has arranged the *prozbul* before us in accordance with the enactment of Hillel and the Sages, we have established that the *shemita* year not release his debts, and that he be able to collect all of his debts at any time he likes.

Signed on the [] day of the month of [], in the year [], here in the city of [].

Signed []

Signed []

Signed []

36. This is the wording of R. Yosef Zvi Rimon, according to the psak of Rav Aharon Lichtenstein. R. Rimon gives an alternative version of the Prozbol which is preferable for use where the debtor does not own land and the creditor first grants the debtor a nominal amount of land. There are other versions of the text and each person should consult their own Rav. Rav Lichtenstein rules that, for the general version, there is no additional requirement for a *kinyan sudar*. For the version including a gift of land, the creditor should do a *kinyan sudar* using an article received from the judges.