



שבת הארץ

בס"ד

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Melachos D'rabannan

by Rabbi Dovid Cohen

Administrative Rabbinical Coordinator,
cRc Kosher

General Rules

In the previous segment we saw that *melachos* which are only *assur mid'rabannan* are permitted if the result of not performing them will be that the land or the tree will be damaged. [Whether this leniency applies if it will prevent loss to the fruit will be discussed in a future segment.] This type of permitted damage-prevention is called "אוקמי אילנא" (maintaining the tree). In contrast, *melacha* done to improve a tree is forbidden and that is known as "אברויי אילנא". The exact details of what may or may not be done are the subject of the Rambam's first *perek* of *Hilchos Shemittah V'Yovel*; we will note four principles which the later *poskim* record.

1: *Hefsed* to 'Most' People

In many ways, the justifications for when *melacha* is permitted during *shemittah* match with the situations when *melacha*

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Principles and Practices of *Shemittas Kesafim* and *Pruzbul*

by Rabbi Yona Reiss

Av Beth Din, cRc

One of the laws of the *shemittah* year that is applicable even outside of Israel is *shemittas kesafim*, the cancellation of loans (see *Devorim* 15:1-2). Most *halakhic* authorities rule like the opinion of Rebbe (*Gittin* 36a), who derives from a juxtaposition of similar phrases in the Torah (*shemittah* and *sha-mot*) that *shemittas kesafim* is only a Torah law during the time that *yovel* (the Jubilee year) is in effect. Therefore, since nowadays we do not observe *yovel* (see *Erchin* 32a), *shemittas kesafim* is only observed on a rabbinic level in order that we not forsake the institution of *shemittah*.

However, during the days of the *Tenaim*, Hillel observed (*Gittin* *ibid.*) that the observance of *shemittas kesafim* was leading to the violation of a different Torah commandment, namely that lenders are not allowed to refrain from extending loans towards the end of the *shemittah* cycle out of fear that their loans would be canceled. Since lenders were in fact declining to extend loans based on this fear, Hillel enacted a special rabbinic device known as a "*pruzbul*" which enables lenders to collect their loans even after the *shemittah* year.

The mechanism of *pruzbul* is that the lenders assign their loans to a *bet din*, in which case the law of cancellation of loans is no longer applicable; either because the loans are already considered to be collected by the *bet din* (see *Aruch Hashulchan* CM 67:10) or because the prohibition of

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is permitted on *Chol HaMoed*. Nonetheless, *Chazon Ish* says that *shemittah* is different than *Chol HaMoed* insofar as a *melacha d'rabannan* may only be performed on *shemittah* if doing so prevents a type of loss which would affect most people, and not if the loss is one that is particular to this person. [In contrast, on *Chol HaMoed*, even private losses are a basis for permitting *melacha*.] For example, certain fields can be watered on *shemittah* (a *toldah* of זורע) because all such fields will be damaged if they are not watered. But if there is only one individual landowner who will have a loss from not watering his field, he may not water it.

2: External Threats

אוקמי אילנא is only permitted if the person is protecting the tree from an external threat or damage, but if the person is helping the tree itself grow and prevent internal damage – such as overgrowth that is detrimental to the tree – that is considered אברויי אילנא which is forbidden even if the person is only performing a *melacha d'rabannan*.

3: Minimize Melacha

Since *Chazal* are making a special exception to minimize the difficulty of *shevi'is*, one must make efforts to avoid *melachos d'rabannan*. Therefore, for example, a person should prune trees just before *shemittah* (or save some pruning for just after *shemittah*) to minimize the amount that must be done on *shemittah*. Similarly, a person must be careful how they perform the *melachos d'rabannan* and do only as much as is necessary and no more.

4: Forbidden אוקמי אילנא

Rambam says that fumigating a tree to kill destructive insects is forbidden. At first glance this seems to contradict the principle that any *melacha d'rabannan* done to prevent damage to the tree (אוקמי אילנא) is permitted. *Derech Emunah* says that Rambam is teaching that *Chazal* only allowed acts which are purely אוקמי אילנא. But when a *melacha* is both אוקמי אילנא and also אברויי אילנא (as in the case of fumigation) that is not permitted.

In summary, we have seen that while there is a broad leniency to perform a *melacha d'rabannan* for אוקמי אילנא, there are some restrictions in how it should be applied.

Examples for Non-Farmers

In the coming paragraphs we will note some examples of *melacha* which apply even to city-dwellers. The previous segment listed the *melachos d'oraisa*, and clearly even non-farmers must avoid those six *melachos* on *shevi'is*. Thus, someone with an outdoor yard in *Eretz Yisroel* will not plant tomatoes

during *shevi'is* as that would be forbidden as זריעה. The list of *melachos d'rabannan* is much longer, and the following are some “practical” examples of where a non-farmer might have to be careful to avoid performing them:

- Watering plants is forbidden as a *toldah* of זורע. There are certain leniencies with respect to houseplants and with respect to preventing plants from dying; these details are beyond the present discussion.
- *Derech Emunah* says that if a person lets their *sponga* (mopping) water flow outside their apartment, has water dripping out of his air-conditioner, or discards the pit of a fruit, and any of these end up on a grassy area, they are potentially violating *toldos* of זורע. However, Rav Elyashiv rules that it is permitted if the water falls onto land where nothing grows, and Rav Asher Weiss says that in all cases it is only forbidden if the person wants the grass to be watered.
- It is sometimes forbidden to remove a stone wall or stones which are stuck in the ground since doing so makes the land more usable for planting (and is therefore a *toldah* of חורש). Similarly, there are restrictions as to when and how one may build or dig, collect firewood, or rake a garden, as such actions may be, or may appear to be, done to render the land more fit for planting (a *toldah* of חורש).
- There are many details as to when and how one can cut their grass, trim their hedges, and weed their yard on *shemittah*, and anyone who has such a situation should be in contact with a knowledgeable Rav for direction.
- There are situations when one is forbidden from using a landfill or from dumping things outdoors, because that may be (or may look like) the *melacha d'rabannan* of מזבל (fertilizing) which is a *toldah* of זורע.
 - The same act will sometimes be permitted, and other times be forbidden, depending on one's intention. For example, a person can cover an area with a plastic tarp that smothers the growth if he is doing so to prevent fires, but not if he is doing so to prepare for future planting.
 - Of the different *melachos*, pruning is unique in that “pruning” is limited to the strategic removal of branches to improve growth, but random cutting of branches is completely permitted because it is not at all the same as the forbidden act. For this reason, *Chazon Ish* allowed people to cut branches for *s'chach* or to trim branches which were blocking the path leading up to his shul, because such cutting was done in a non-pruning manner.



Principles and Practices of *Shemittas Kesafim* and *Pruzbul* (continued from page 1)

collecting loans following the *shemittah* year only applies to loans between a person and “*achi'kha*” – one’s “fellow,” and *bet din* is not in that category (*Sifrei, Re'eh, Piska* 113). It is modeled after the law recorded in the *Mishna* (*Shvi'is* 10:2) that a lender may avoid the cancellation of loans by handing over his or her loan documents to the *bet din*. Hillel’s innovation was that *pruzbul* works even though the lender does not physically hand over the loan documents, and even applies to loans that are purely verbal in nature (see *Shmittas Kesafim u'Pruzbul*, p. 40).

According to most commentators, the institution of *pruzbul* only works on a rabbinic level, and therefore was only enacted by Hillel for a time such as nowadays when the cancellation of loans is only rabbinic in nature (see, e.g., Rambam, *Shmittah v'Yovel* 9:16). However, according to one opinion in the *Rishonim*, the institution of *pruzbul* can work even when the law of cancellation of loans is mandated by the Torah, such as when *yovel* is observed (see Ra'avad ad locum). The dispute may hinge on the question (see *Chazon Ovadiah, Laws of Pruzbul*, pp. 45–46) as to whether the Rabbis have the power, through the mechanism of *Hefker Bet Din Hefker*, only to cause a person to relinquish his or her money (such as through enacting *shemittas kesafim* nowadays, which removes the lender’s entitlement to the borrower’s money) or even to transfer one person’s money to another person (in this case, resulting in the borrower, whose loan would otherwise have been canceled, being obligated to relinquish his or her money and give it to the lender).

It may be useful to break down the practical applications of these laws to the following questions: (a) when; (b) which; (c) who; (d) why; (e) where; (f) what; and (g) how.

(A) When: A person’s loans become canceled at the conclusion of the *shemittah* year (*CM* 67:30). Therefore, it is advisable for lenders to perform a *pruzbul* as late as possible into the *shemittah* year, such as on erev Rosh Hashanah, in order to cover as many loans as possible. Some individuals have a practice (recorded by the *Ben Ish Chai*) of extending one small loan after executing a *pruzbul* in order to have *shemittas kesafim* apply to at least one loan that they have extended. The Rosh (*Gittin*, chapter 4, *siman* 20) was of the opinion that one should execute a *pruzbul* prior to the beginning of the *shemittah* year because he held that while the loans only become canceled at the end of the year, the prohibition of collecting a loan goes into effect at the beginning of the year. However, this opinion has not become generally accepted.

(B) Which: Any loan which has a due date prior to the end

of the *shemittah* year becomes canceled in the absence of a *pruzbul*. Included in this category are outstanding credit obligations of customers or unpaid wages when the due date has been extended in a fashion that would convert them into a loan (*CM* 67:14-15). However, if a *bet din* issued a written decision requiring money to be paid, this type of obligation would not be subject to cancellation since it is considered to be collected by the *bet din* (*CM* 67:8). If the due date of a loan is not until after the end of the *shemittah* year, it would not be canceled (*CM* 67:10).

(C) Who: Any individual who has extended a loan needs to execute a *pruzbul* for the loan not to be canceled at the end of the *shemittah* year. This includes both husbands and wives, since a wife sometimes extends loans with her own assets (*Shemittas Kesafim u'Pruzbul*, p. 53-54). It is especially important for people in business who may have made very substantial loans to remember to execute a *pruzbul*, because otherwise they will likely not be able to collect their loans in a *bet din* proceeding. Nevertheless, any individual who claims that he executed a *pruzbul*, but lost any record of it, is believed (*CM* 67:33). However, according to the rule of the *Gemora*, a *pruzbul* is only effective if the borrower owns (even through a rental) or has a lien upon real estate (*Gittin* 37a). Thus, lenders will sometimes transfer a small amount of real estate to the borrowers through a third party (in a mechanism known as “*zachin*”) to make sure that the borrowers satisfy this criterion (*CM* 67:22). It is not customary for *Batei Din* to perform such a transfer, since nowadays virtually every borrower either owns, rents, or has a lien on real estate (e.g., through having money in the bank, since the bank owns real estate that it can sell to satisfy its obligations). According to the *Chasam Sofer* (5:50), if a borrower owns movable property, it is sufficient to justify a *pruzbul*, since it is common for lenders nowadays to rely upon movable property in the same fashion that they used to rely upon real estate during the days of the *Tenaim* and *Amoraim*.

(D) Why: It is prudent and proper for everyone to execute a *pruzbul* because (a) it helps prevent the possibility of one being reluctant beforehand to extend a loan and thus violate a Torah prohibition; (b) it ensures that people be able to collect any debt owed to them, even with respect to outstanding obligations from other parties that did not start off as a loan but would be viewed as having been converted into a loan by dint of extensions granted to the debtor; and (c) it prevents lenders from violating the prohibition of collecting debt that had been canceled by the *shemittah* year. Although the Rosh cites those communities that were not meticulous about performing

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a *pruzbul*, and the lenders collected their debts anyway, he decries the practice (see *Tur CM 67*) and suggests that in some communities there may have been a built-in condition to every loan that the borrower agreed from the outset to pay back the money (despite the lack of obligation following the cancellation of the loan) which would be a binding condition (see *Makos 3b*, Rambam, *Shmittah v'Yovel 9:10*). However, it is not our practice in our communities to make such a condition.

(E) Where: *Shemittas kesafim* applies both in Israel and outside of Israel, and a *pruzbul* should therefore be executed regardless of location. A *pruzbul* is supposed to be executed in writing in front of a *bet din* (*Gittin 36b*). There is a passage in the *Talmud Yerushalmi* (*Shvi'is*, ch. 10) that indicates that it can be executed "even if they are in Rome." While the Ran (*Gittin 36a*) understands this to mean that the *pruzbul* works even if the loan documents are in Rome, the Mordechai (*Gittin* para. 380) goes further to say that it means that one can execute the *pruzbul* in the presence of witnesses even if the *dayanim* (members of the *bet din*) are in Rome. The Rema (*CM 67:20*) rules in favor of this opinion, although the *pruzbul* needs to specify the names of the *dayanim*. Many *poskim* also allow a person to designate an agent who will execute the *pruzbul* in front of the *bet din* on that person's behalf (see extensive discussion about this issue in *Chazon Ovadiah*, pp. 65–75).

(F) What: The *Gemora* (*Gittin 36a*) records the standard text of the *pruzbul* form. If the *pruzbul* is executed in front of a *bet din*, the lender says before them: "I submit to you judges in this place all of the loans that I have outstanding, and I therefore may collect these loans at any time that I desire." The *bet din* then signs the form attesting to the fact that the lender made this statement in their presence. If the lender executes the *pruzbul* in front of witnesses, the lender says: "you are my witnesses that I am submitting all of the loans that I have outstanding to the *bet din* consisting of [names of *dayanim*], and I therefore may collect them at any time that I desire." The witnesses then sign the form, and it is sent to the *bet din*. The *Gemora* (*Gittin 37a*) records that talmudic scholars may execute a *pruzbul* verbally, and the Rema (*CM 67:20*) rules that this dispensation may be relied upon by any person if necessary. The *Shulchan Aruch* rules

that the *bet din* should be a "*Bet Din Chashuv*," meaning an important and recognized *bet din*, while the Rema rules that any three knowledgeable individuals can convene a *bet din* for purposes of a *pruzbul* (*CM 67:18*).

(G) How: The Chicago Rabbinical Council sets up different *bet din* panels under its auspices in multiple locations towards the end of the *shemittah* year so that a *bet din* will be readily available for all those who wish to execute a *pruzbul*. The *bet din* also prepares forms that parties can execute in front of witnesses, as well as forms that can be executed by an agent (such as a shul Rabbi) who is appointed by members of his community to execute a *pruzbul* on their behalf.

The *Mishna* (*Shvi'is 10:9*) records that even if a lender's loans are canceled at the end of the *shemittah* year because the lender never executed a *pruzbul* or if there was no option of *pruzbul* (at least according to some commentaries) because it was a time when the *yovel* was in effect and the cancellation of loans was operative on a Torah level, it is still considered proper ethical behavior for the borrower to pay back the obligation. Since the loan has been canceled, the lender should say "I hereby cancel your loan," to which the borrower should then respond, "nonetheless I want to pay you anyway." Although this procedure seems relatively straightforward, the *Gemora* (*Gittin 37b*) tells a story of one case where the borrower forgot the "nonetheless" line and walked away without paying, leading to bad feelings. Therefore, the simplest solution remains the execution of the *pruzbul* form, which ensures that the *shemittah* laws are not forgotten, and at the same time spurs lenders to continue to extend loans during the *shemittah* year.

Ultimately, *shemittas kesafim* reminds us of the important core principle that all our finances are in the hands of Hashem (*Chinuch, Mitzvah 477*), and *pruzbul* reminds us of the significance of taking steps to ensure that we respect the financial needs of others. In this sense, the *Gemora* (*Gittin 36b-37a*) tells us that the *pruzbul* is a good "*pruz*" (remedy) for both the "*bul*" people (the rich lenders) and the "*buz*" people (the needier borrowers). Thus, observance of these important *shemittah* laws elevate us both in the spheres of *bein adam l'makom* and *bein adam l'chaveiro*.



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2701 W. Howard Street, Chicago, IL 60645
773.465.3900 | office@crcweb.org | www.crcweb.org

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