

Insights into Halacha

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Sh'mitat K'safim & the Prozbol

Ed. note: Some footnotes are included in the PT version of the article; most are not. Some of those that are included have been edited and shortened. See the website for full footnotes and sources.

SH'NEI SH'MITOT

The Torah enumerates the importance of observing Sh'mita, not working the land on the seventh year, several times, stressing its significance. That there are agricultural prohibitions and produce restrictions (addressed at length in several previous articles) in letting the land lie fallow is known to most. Yet, there is another imperative aspect of Sh'mita observance - the cancelling of debts.

The Torah states (D'varim 15:2, in R'ei): V'ZEH D'VAR HASH'MITA: And this is the matter of Sh'mita: every creditor that lends to his neighbor shall release it; he shall not demand payment of debts from his neighbor or brother.”

In fact, the Gemara (Gittin 36a) derives from the double language of the word Sh'mita in this pasuk, that there are two types of Sh'mita: Sh'mitat Karka and Sh'mitat K'safim. See also Sefer Hachinuch (Mitzva 84 and 477) who

explains that a focal point of both ‘types’ of Sh'mita is to teach us VATRANUT (willingness to concede) and to demonstrate how to properly care about others’ needs. The Rambam writes that from the fact the Torah used the word SHAMOT (which is a command) to describe this occurrence (of absolving a debt), it is an actual Mitzva D'Oraita incumbent upon us to actively let Sh'mita erase a debt. However, the Sefer Yere'im (278) maintains a different understanding of Sh'mitat K'safim. He explains that Sh'mita does not actively erase a debt, but rather ‘YANU'ACH, lets lie’, meaning that the lender cannot demand it back, but it does not actually forgive the loan. He concludes that if the borrower uses Sh'mita as an excuse to never pay back the loan, he is deemed a RASHA. Although this is not the normative halacha, nevertheless, Mishnayot Sh'vi'it (10:9) concludes with praise for one who anyway pays back his debt: HAMACHZIR CHOV BISHVI'IT RU'ACH CHACHAMIM NOCHA HEIMENU.

This teaches that all loans between Jews are cancelled by the Torah; meaning that the lender may not collect what was owed to him. This is known as Sh'mitat K'safim.

Yet, there is another pasuk regarding this issue, which adds another dimension to this rule (D'varim 15:9): “Guard yourself, lest there be in your heart a lawless thought, thinking that the seventh year, the year of Sh'mita, is approaching, and you look selfishly upon your needy brother and do not lend him anything, and he cries out to Hashem against you, and it is considered a sin on your part.” This teaches us that one transgresses a prohibition if

he refuses lending to a fellow Jew before Sh'mita due to fear of his debts being cancelled.

Enter... The Prozbol

Yet, unfortunately history has proven that that is exactly what happened. The wealthy refused to lend to their poorer brethren out of fear of not recouping their cash. The Mishna teaches us that Hillel HaZakein instituted the device of Prozbol to alleviate the plight of the poor on Sh'mita. [\[Mishnayot Sh'vi'it 10:3,4 and Gittin 34b and accompanying Gemara \(36a-b\) and commentaries\]](#)

Quite interestingly, and not even remotely connected to the similar sounding All-Star Football game or even the popular frum singer, Prozbol is an abbreviation of the words PROZ BOLI BOTI - meaning 'institution for rich and poor' people. In other words, it allowed the poor to benefit from loans from the wealthy, who would not be afraid that their loans would be automatically cancelled in the Sh'mita year.

The Prozbol entails handing one's debts over to Beit Din, or authorizing and appointing Beit Din to collect his debts on his behalf.

The actual Sh'mita prohibition is that a lender may not pressure a borrower to pay him back. This, however, does not preclude Beit Din from being able to collect on one's behalf.

[In the Gemara \(Gittin 36b\), Rava gives an additional insight into the mechanics of how](#)

[this institution works: HEFKER BEIT DIN HEFKER](#), meaning the Torah provides Beit Din with the power to declare property ownerless. Hence, this empowered Hillel with the ability to require borrowers to pay their debts that would otherwise been released by the Mitzva of Sh'mitat K'safim.

Hillel's institution of Prozbol is considered so incredible that the Mishna literally describes it as a 'Tikkun HaOlam' (loosely translated as 'World Saving').

[As detailed extensively by Rav Yirmiyohu Kaganoff in a recent article titled 'Pruzbul', there are at least four ways to make loans that would not have been affected by Sh'mitat K'safim: via Beit Din, at the time of the loan to schedule the loan's due date for after Sh'mita, a loan conditional to be payable even after Sh'mita ends, and it being collateralized \(receiving a mashkon worth more than the loan\). Accordingly, creditors at the time could have easily arranged matters such that Sh'mitat K'saifim could have been avoided, and they would have had a halachically acceptable manner to collect their loans, Sh'mita notwithstanding. Nevertheless, Hillel realized that people were not utilizing these kosher methods to guarantee return of their funds, but rather were refraining from lending money - thus violating both a Mitzvat Asei of lending money to those in need and a Lo Taasei. This necessitated Hillel's new takana of Prozbol.](#)

Bizman HazeH

There is some debate among the authorities whether Sh'mitat K'safim nowadays is Biblical in nature or not. Although the Ramban and Ba'al Ha-Itur maintain that in this day and age it is

still a Mitzva D'Oraita, we find at the other extreme that the Rama cites several Rishonim who are of the opinion that this Mitzva is currently not applicable at all.

However, the vast majority of poskim rule that in our time it is nevertheless a Mitzva D'rabbanan - due to the fact that Yovel does not currently exist. In fact, and although disputed, the Rambam adds a very important point based on Abayei's conclusion in the Gemara Gittin (36a), that the whole reason a Prozbol actually works is because Sh'mita nowadays is D'rabbanan.

[There are different opinions as to whether a Prozbol will work when the mitzva of Sh'mitat K'safim will again be a d'Oraita.](#)

Moreover, and as opposed to Sh'mitat Karka'ot, the Sh'mita of the Land (the requirement of letting the land lie fallow), regarding this Sh'mitat K'safim, the halachic consensus is that it applies equally in Chutz La'aretz.

This is indeed the halacha p'suka. The Tur relates that his father, the Rosh, took great umbrage and "screamed" at those who did business as usual without writing a Prozbol. In fact, many later authorities, including the Levush, the Bach, Rav Yonason Eibeshutz, the Shulchan Aruch HaRav, the Chasam Sofer, the Sh'lah, the Kitzur Shulchan Aruch, Ben Ish Chai, and the Aruch Hashulchan, all stressed Sh'mitat K'safim's significance and application even nowadays and in Chutz La'aretz, as

well as the importance of making sure to write a Prozbol.

Pre- or Post- Prozbol?

Another important matter is defining when the Prozbol should be written, prior to the onset of the Sh'mita year, or at its close, shortly before the Sh'mita year ends. The Torah clues us in. Regarding the issue of Sh'mitat K'safim it states: MIKEITZ SHEVA SHANIM TAASEH SH'MITA - At the end of every seven years, you should make a release." The Gemara (Eirachin 28b) explains that this is referring to the end of Sh'mita.

The Sifri elucidates that this is similar to the Mitzva of Hakhel, where similar wording is used - and is exclusively observed at the end of every Sh'mita cycle - meaning the beginning of the eighth year. So too, concludes the Sifri, Sh'mitat K'safim only wipes out loans at the end of the Sh'mita year. Therefore, a Prozbol must be written at the conclusion of the Sh'mita year, prior to the onset of the eighth year. This is the actual halacha. In fact, the Beit Yosef writes that "this is the minhag pashut in Eretz Yisrael and its environs, to write a Prozbol on Erev Rosh Hashana of Motza'ei Sh'vi'it." Indeed, and on a more recent note, in Rav Yechiel Michel Tukachinsky's Sefer HaSh'mita, he writes that the minhag of RUBAM K'KULAM in Eretz Yisrael and Yerushalayim is to only draw up a Prozbol at the end of the Sh'mita year.

This means that now is the time to make sure to write a Prozbol, before the conclusion of our Sh'mita year.

Tale of Two Prozbols?

Yet, we find that the Rosh, quoting a Tosefta, maintains that a Prozbol should be written before the Sh'mita year, not at the end. He explains that although Sh'mitat K'safim only takes effect at the end of the Sh'mita year, nevertheless the prohibition of LO YIGOS, not demanding back during Sh'mita money that was previously lent out, already applies from the start of the Sh'mita year. Therefore, he maintains that a Prozbol should be written prior to the onset of Sh'mita. Several Rishonim agreed with this approach as well.

However, it has since been proven that the version of the Tosefta the Rosh quoted in formulating his ruling had textual mistakes (incorrect girsa). Additionally, most authorities reject this novel approach outright, averring that it is not normative halacha.

On the other hand, several authorities, including Rav Yonason Eibeshutz and the Shulchan Aruch Harav, argued that L'CHAT-CHILA one should take the Rosh's opinion into account and hence write a Prozbol before the onset of Sh'mita as well. It is said that the Vilna Gaon was machmir to write two Prozbols, one before and again at the end of the Sh'mita year, to fulfill both opinions. Although not the basic halacha, and many great authorities did

not write a Prozbol before Sh'mita, on the other hand, it is known that Rav Shmuel Salant, Av Beit Din of Yerushalayim in the end of the 19th century, ruled that it is proper to do so, as later did the Steipler Gaon and Rav Yosef Shalom Elyashiv.

That is why many were makpid to write an additional Prozbol before the onset of Sh'mita. However, practically, regarding this Prozbol, the rules are somewhat relaxed. In fact, according to Rav Moshe Sternbuch, since this Pre-Sh'mita Prozbol is not MEI'IKAR HADIN, one need not bother to seek out an actual Beit Din, or even members of a Beit Din, but may suffice with three fellow knowledgeable Yidden serving as an ad hoc Beit Din, similar to the annual Erev Rosh HaShana Hatarat Nedarim.

Prozbol via Real-Deal Beit Din?

What about our mandated end-of-Sh'mita-year Prozbol? Does that need to be performed done by an actual Beit Din? Or are three Yidden sufficient to be called 'Dayanim' for this purpose?

The Gemara (Gittin 36b) states that a Prozbol can exclusively be created by a high-level, established Beit Din, such as that of the renowned Amora'im, Rav, Shmuel, Rav Ami, or Rav Asi. The Shulchan Aruch rules accordingly, following the precedent of the Rambam, and Rabbeinu Tam, that it needs to be performed with a 'Beit Din Chashuv'. On the other hand, the Rama rules like the Rosh, Tur, Sefer HaTerumah, and

Rashba, who understood that the Gemara later reevaluated this position and counters that nowadays any Beit Din will suffice. The Bach concludes that the halacha here indeed follows the Rama.

On the opposite end of the spectrum, we find that the Shulchan Aruch HaRav, Aruch Hashulchan and others maintain that nowadays a Prozbul does not even need a genuine actual set Beit Din, as there are opinions in the Rishonim that it does not apply at all nowadays. The Kitzur Shulchan Aruch writes similarly and simply that ‘three Bnei Torah may serve as the Beit Din.’

On the other hand, we find that the Chochmat Adam and Chatam Sofer were nevertheless MAKPID L'CHAT-CHILA to write the Prozbul in a Beit Din Chashuv. Come what may, it is known that the Chazon Ish was very makpid that his Prozbul be presented by a ‘Beit Din Chashuv’, and used to send his Prozbul to the Badatz Eida Chareidis in Yerushalayim. Later on, toward the end of his life, he would send it to the much younger Rav Shmuel HaLevi Wosner and his Beit Din, as he was the official Av Beit Din of the Zichron Meir neighborhood in Bnei Brak. Rav Yosef Shalom Elyashiv would also LCHAT-CHILA attempt the same, to write his Prozbul with a ‘Beit Din Chashuv.’

In contrast to this, from numerous examples (and actual Prozbolim) cited in Orchot Rabbeinu, it is clear that the

Steipler Gaon was not makpid to seek out a ‘Beit Din Chashuv’. Similarly, it is reported that Rav Shlomo Zalman Auerbach was likewise not makpid for his Prozbul to be written by such a Beit Din. Likewise, Rav Yechiel Michel Tukachinsky writes that UVIZMAN HAZEH EIN TZARICH BEIT DIN CHASHUV L'PROZBOL, nowadays a ‘Beit Din Chashuv’ is not necessary.

Practically speaking, the common contemporary Ashkenazic minhag follows the Rosh and Rama, and that the same three “dayanim” who perform Hatarat Nedarim on Erev Rosh HaShana also sign someone’s Prozbul. Yet, and although not obligatory, nevertheless, it seems that there is a preference, if possible, to perform the Prozbul using an actual set ‘Beit Din Chashuv,’ like the Shulchan Aruch’s psak.

Indeed, several contemporary S'fardic authorities maintain that S'fardim, who follow the Shulchan Aruch’s rulings, should most definitely seek out a ‘Beit Din Chashuv’ for their Prozbolim. In fact, it is known that the Mabit invalidated several Prozbolim not written via ‘Beit Din Chashuv’. On a more contemporary note, this is the S'fardic minhag, as cited by Rav Ovadiah Yosef, Rav Ben Tzion Abba-Shaul, Rav Yaakov Hillel, and the Yalkut Yosef. However, Rav Ovadiah Yosef qualifies that even for S'fardim, if the Prozbul was not presented by a ‘Beit Din Chashuv,’ it still has validity and works b'dieved.

When in Rome...

Now that one Beis Din issue is settled, there is one more wrinkle to iron out. Does a Prozbol need to be written in front of the Beit Din (as in personally), or is it sufficient for it to be performed in front of witnesses in the name of the Beit Din - meaning authorizing a non-present Beit Din to collect one's debts in his name. Not a simple question, this is debated by the Rishonim, and the Shulchan Aruch cites both opinions with no clear-cut ruling.

It is interesting that much of the debate seems to be based on a few words in the Yerushalmi. When discussing how a Prozbol works, the Yerushalmi succinctly comments TANA, V'AFILU HEIN B'ROMI, It is taught, (that a Prozbol works) even if they are in Rome." Well, who or what is the "they" referred to that can be all the way in Rome, while one is presently in Eretz Yisrael trying to write a Prozbol?

Many Rishonim understand this to be referring to the loan documents, that even though they were left in Rome, as long as one is physically present at a Beit Din, a Prozbol can still be drawn up. Yet, other Rishonim and Acharonim understood this cryptic statement of the Yerushalmi to be referring to the actual Dayanim - that even if the Beit Din is in Rome, one can still authorize them to collect his debts for him, although his is physically far, far away.

Although there does not seem to be one

clear psak in the Rishonim or Acharonim, practically, the Rama ruled leniently, and several contemporary Poskim write that the minhag in Yerushalayim for generations was to allow this. Hence, for Ashkenazim, either option would be sufficient, certainly MEI'IKAR HADIN.

However, for S'fardim, it comes out that it would be preferable to perform a Prozbol in front of witnesses authorizing a set 'Beit Din Chashuv' to collect one's debts, rather than have an ad hoc three 'Dayanim' (such as those who do his Hatarat Nedarim) do it personally.

Please Process the Prozbol!

Either way, and whether or not one performed the chumra of a pre-Sh'mita Prozbol, everyone should ensure that they follow the actual halacha to write an end-of-Sh'mita Prozbol.

The Ben Ish Chai further advocates for after writing a Prozbol, lending a small token sum to someone in order to tell him when he comes to pay it back after Rosh HaShana that the loan is cancelled. This is an ingenious way of fulfilling the Takanat Hillel of Prozbol and still fulfilling the Torah's command of SHAMOT (to absolve a debt) and actively letting Sh'mita erase a debt.

To sum it up, a little Prozbol can alleviate a lot of future complications.

Disclaimer: This is not a comprehensive guide, rather a brief summary to raise

awareness of the issues. In any real case one should ask a competent Halachic authority.

Rabbi Yehuda Spitz's recent English halacha sefer, "Food: A Halachic Analysis" (Mosaica/Feldheim) containing over 500 pages featuring over 30 comprehensive chapters discussing the myriad halachic issues pertaining to food, is now available online and in bookstores everywhere."