Pruzbul Q & A from The Gerald & Karin Feldhamer OU Kosher Halacha Yomis

What is a *Pruzbul*?

We are now in the midst of a *shemita* year. *Shemita* has a number of aspects, and one is known as *shemitas kesafim*, the abrogation of loans, at the conclusion of the *shemita* year. The Torah (Devarim15:1-2) instructs "at the end of seven years…every creditor should release his authority over what he lent his friend." As such, loans that are not collected before this coming Rosh Hashana, may not be collected afterwards. The Gemara (Gittin 36a) relates that Hillel saw that people were reluctant to lend money as the *shemita* year was drawing near its conclusion, out of concern that their loan might be canceled. The Torah (Devarim 15:9) forbids withholding loans because of such considerations. To address this problem, Hillel established a special Rabbinic contract known as a *Pruzbul*, which provides a legal loophole that allows a loan to be collected even after the conclusion of the *shemita* year. *Pruzbul* benefited both the wealthy and the poor. The wealthy continued to lend and did not violate the prohibition against withholding loans in a *shemita* year, and the poor were able to borrow needed funds.

How does *Pruzbul* protect the loan? The *Pruzbul* contract transfers the loan to a *beis din* (Jewish court). The abrogation of loans by *shemita* only applies to loans held by people and not by a *beis din*. At the end of the *shemita* year the loan remains in force, and *beis din* authorizes the creditor to collect the loan on their behalf.

Why was it necessary for Hillel to institute *Pruzbul*, if *shemitas kesofim* does not apply to a *beis din*? The Sm"a (CM 67:22) explains that if one actually handed the loan contract to a *beis din* before Rosh Hashana, a *Pruzbul* would be unnecessary. However, this was not always practical, and Hillel's innovation was that a *Pruzbul* can be executed without handing the actual loan contract to *beis din*.

Why is a *Pruzbul* only effective if the borrower owns land?

The Mishnah (Shevi'is 10:6) states that one of the conditions for a *Pruzbul* is that the borrower must own land. Rashi and Tosafos explain that most loans are made with borrowers who own land which serves as collateral, and *Pruzbul* was enacted only for common loans. Even if the borrower owns a small piece of land that is less valuable than the loan, it is sufficient. If the borrower does not own land, the lender may gift him a piece of land by asking a friend to acquire it behalf of the debtor. This can be done even if the borrower is completely unaware of the gift.

Above, it was noted that a *Pruzbul* is only effective if the borrower owns land. What types of ownership of land qualify?

Shulchan Aruch (CM 67:22-23) writes that if the borrower owns any amount of a property, is sufficient to write a *Pruzbul*. Even owning a potted plant with a hole on the bottom, which *halachically* is considered attached to the ground, is adequate. Rental of property (e.g., apartment) or borrowing any amount of land is also sufficient. Shulchan Aruch writes that even if one lends the debtor a place in a house to store utensils, that too is satisfactory. Furthermore, even if the borrower does not own land, but others who own property borrowed money from the debtor, a *Pruzbul* may be written. If one suspects that none of the above applies to the borrower, the lender may lend the borrower a tiny corner of his yard for the day in order to write the *Pruzbul*.

In some *Pruzbul* contracts, a clause is added to the effect that the creditor lends the debtor a small parcel of land. In practice, it is very rare that a borrower does not own, lease, or have permission to use land (CF. Pischai Teshuva, Choshen Mishpat 67:4). Perhaps for that reason, the issue of land ownership is generally not addressed in a *Pruzbul* contract.

Who is qualified to serve on a *beis din* to sign a *Pruzbul*?

Since a *Pruzbul* is a transfer of the loan to a *beis din*, the *beis din* must be identified in the *Pruzbul* contract. The Rishonim (*poskim* from the 11th to 15th century) debate what type of *beis din* is qualified for the purpose of *Pruzbul*. The Rambam and others maintain that it must be a *beis din choshuv* (distinguished), while the Ramban, Rashba and Rosh maintain that any group of three people who are familiar with the *halochos* of *Pruzbul* can serve on a *beis din* for *Pruzbul.* Rav Yosef Cairo rules in the Shulchan Aruch (CM 67:18) like the Rambam, and he writes that a *Pruzbul* can only be executed by a *beis din* of prominent *talmidai chachomim* who are proficient in Jewish law and were appointed to serve as judges of the city. Sefardim follow this position. The Rema follows the lenient opinion that any group of three people who are knowledgeable can serve as a *beis din*. The Sm"a (57:36) explains that Shulchan Aruch requires a prominent *beis din* because a *Pruzbul* is based on the concept of "*hefker beis din hefker*" (a *beis din* has the authority to declare property ownerless), which can only be done by a prominent *beis din*. However, the Rema is lenient, since the concept of *Pruzbul* is Rabbinic, and therefore the Rabbis allowed any *beis din*. Jews of Ashkenaizic descent generally follow the Rema's leniency, although some people choose to be stringent and follow the Shulchan Aruch. Minchas Yitzchok (10:140) writes that according to the Rema there is basis to allow judges who are related to each other or the lender, to serve on the *beis din*, though they would be

disqualified to adjudicate a standard *din Torah*. Nonetheless, *lichatchila*, the judges should not be related to the lender, the borrower or to each other.

Must the lender execute the *Pruzbul* in the presence of a *beis din*?

This is a matter of dispute. According to the Mordechai, the lender need not appear before the *beis din*. For example, if the lender is in Rome and the loan contracts are in NY, he may execute a *Pruzbul* that transfers the loan to a *beis din* in Jerusalem. The *Pruzbul* must state the location of the *beis din* and should be signed by two witnesses. The Ran and Rashba disagree and require that the creditor appear before the *beis din*. Both the Shulchan Aruch (CM 67:21) and the Rema (ibid. 20) concur with the Mordechai that one need not appear before the *beis din*, and that is common practice.

As noted above, Sefardim require a *beis din choshuv* for *Pruzbul*, while the Ashkenazim do not. What would happen if an Ashkenazic Jew lent money to a Sefardic Jew. Following Ashkenazic tradition, the *Pruzbul* was signed by three neighbors (not a prominent *beis din*). The Sefardic Jew claims that he is not bound by this *Pruzbul*? Does the Sefardic Jew have a valid claim?

This question is discussed in Beis Aharon V'Yisreol (vol. 55 pg. 93) who rules that the Sefardi is required to repay the loan. Since it was known that Ashkenazim rely on this type of *Pruzbul,* it is as though the loan was made on condition that the *Pruzbul* would be accepted. If the Sefardi will not accept the *Pruzbul,* the loan will be invalid, and the money would have to be returned in any event. Furthermore, the creditor may make a "*tenai"* (stipulation) at the time of the loan," I am lending the money on condition that *shemita* will not cancel the loan". Though not explicitly stated, it can be assumed that the Ashkenazi lent the money with the understanding that *shemita* would not annul the loan, either because of the *Pruzbul*, or because of a *tenai*.

I forgot to write a *Pruzbul*, but my neighbor who owes me money insists on paying me back. Is this permitted?

Shulchan Aruch (CM 67:36) writes that the lender must tell the borrower, "the loan is canceled, and you do not owe me anything". If the borrower responds, "even so, I insist that you take the money", it is permitted to accept the money. However, the debtor may not say, "I am giving you the money as payment", but rather he must say, "the money is a gift". If the borrower will not say that the money is a gift, the lender may not accept the money.

In a fascinating departure from the position followed by most *Poskim*, Rav Moshe Feinstein, *zt"l* (Igros Moshe, Choshen Mishpat 2:15) writes that if the creditor forgot to write a *Pruzbul*, he may demand payment from the debtor. His *psak* is based on a major debate between the *poskim* whether *shemitas kesafim* (the abrogation of loans) applies in our times. Rabbeinu Asher (1250-1327) writes that when he fled from Germany to Spain, he was amazed to discover that loans were collected after *shemita*, even if a *Pruzbul* was not written. Though Rabbeinu Asher strongly objected to this position, he nonetheless did not attempt to change the custom in Spain. Later *poskim* such as the Terumas Hadeshen and the Maharil justified the position of the Spanish *poskim*. The Remah makes note of this debate, and Rav Moshe contends that the primary *minhag* in Europe was to not require a *Pruzbul*. Rav Moshe goes one step further and says that if the lender demands payment even though a *Pruzbul* was not executed, and the borrower refuses to pay because he subscribes to the more traditional opinion that *shemitas kesofim* is still in effect, the lender is entitled to call the borrower to a *din Torah* to extract the funds. If the lender cannot find a *beis din* that will adjudicate the case (because the *botei din* follow the opinion that without a *Pruzbul* a loan is cancelled), the creditor can take the case to a secular court, since (in Rav Moshe's opinion) the *botei din* are acting improperly. Because of the complexity of this matter, rabbinic direction is recommended.

It should be noted that the *halachos* of *shemitos kesafim* only apply to loans. *Shemita* does not cancel wages or credit obligations, unless it was agreed upon that these charges should be rewritten as a loan. However, since there is a fine line between credit and loans, and it is very easy for wages or credits to become loans, a rabbi should be consulted.