



## TWO METHODS TO EXECUTING A PRUZBUL

Separate and distinct from the agricultural restrictions of the shmittah year, the Torah (Devarim 15:1-3) forbids collecting outstanding debts following Rosh HaShanah of the conclusion of Shmittah.<sup>1</sup> However, this prohibition does not apply to loans that beis din has been empowered to collect (*Mishnah Shviis* 10:2). The mechanism of *pruzbul* (*Shviis* 10:3, *Gittin* 36), which should be executed in advance of Rosh Hashanah of this year,<sup>2</sup> entrusts beis din with the ability to collect outstanding debts,<sup>3</sup> allowing their collection even after the conclusion of the shmittah year.<sup>4</sup>

There is a dispute among the rishonim as to whether an individual must execute a *pruzbul* in the actual presence of a beis din or whether it is sufficient to empower a beis din remotely in the presence of witnesses. The *Mishnah* (*Shviis* 10:4) writes that the text of a *pruzbul* contract reads: "I give over to you so-and-so and so-and-so the dayanim in such-and-such a place that any debt that I have I may collect at any time that I want." The *Yerushalmi* on this *Mishnah* says that one may write a

*pruzbul* "even if they are in Rome." *Prnai Moshe* understands this to mean that even if the dayanim are in Rome and the lender is in Israel, he may empower the dayanim to collect his loans in writing in the presence of witnesses and need not appear in front of the dayanim in person. This appears to be the ruling of *Shulchan Aruch* (*Choshen Mishpat* 67:21, who quotes two opinions) and *Rema* (67:20).

However, a number of rishonim (including *Ramban* and *Ran*, *Gittin* 36b; *Shu"t Rashba* 2:313) understand the reference in the *Yerushalmi* to a situation in which the loan documents, and not the members of the beis din, are in Rome. As such the *Yerushalmi* cannot be a source for executing a *pruzbul* remotely. According to this opinion (the first opinion in *Shulchan Aruch* 67:21) one would need to appear in person in front of a beis din in order to execute a *pruzbul*.

There is a further complication in identifying what beis din may be employed (either in person or remotely). The *Gemara* (*Gittin* 36b)

records that according to *Shmuel* one may only write a *pruzbul* in the beis din of Sura (the town of Rav) or Naharda'a (the town of *Shmuel*).<sup>5</sup> *Ramban* (s.v. *V'ha*) and *Tur* assume that *Shmuel's* statement is not accepted in practice, and therefore any beis din, even an ad hoc beis din, would be acceptable for *pruzbul* purposes.<sup>6</sup> *Rema* (67:18) quotes this position and notes that one can rely on it.<sup>7</sup>

*Rambam* (*Shmittah* 9:17 and *Kesef Mishneh*) and *Ran* (*Gittin* 19a s.v. *Garsinan*) accept the position of *Shmuel*, but understand that *pruzbul* does not require a beis din on the level of Rav and *Shmuel*, but that a competent and knowledgeable beis din in any generation suffices.<sup>8</sup> *Shulchan Aruch* requires a *beis din chashuv* comprising members who are proficient in the relevant halachos and appointed by the community to their position.<sup>9</sup>

It stands to reason that according to the *Shulchan Aruch* which requires a *beis din chashuv* and allows for the remote authorization of a beis din, it would be preferable to appoint a *beis din chashuv*

remotely rather than appointing an ad hoc beis din in person. Rav Ovadia Yosef (*Yechaveh Da'as* 4:63 and *Yabia Omer* Vol. 3 *Choshen Mishpat* 6) notes that this was the minhag in the Sefardic community of Yerushalayim going back at least 150 years. According to the minhag of the Rema to not require a *beis din chashuv*, there may be more grounds to prefer having a *pruzbul* signed by a beis din of three, even though the Rema does allow for a remotely authorized *pruzbul*. The text of the *pruzbul* used by the Ashkenazic community in Yerushalayim in the late 1800s reflected that it was signed by a beis din of three.<sup>10</sup>

Rav Moshe Shturnbuch (*Moadim U'zmanim* 6:18) thinks that is preferable even for Ashkenazim to appoint a *beis din chashuv* in the presence of two witnesses (if they can't appear in person in front of such a beis din), as most rishonim require a *beis din chashuv* and most rishonim allow for appointing a beis din remotely. Rav Asher Weiss (*Minchas Asher Shviis* 61) also recommends that Ashkenazim use this mechanism, since even according to the opinions that one does not need a *beis din chashuv*, the members of the beis din needs a minimal level of competence that not everyone has.<sup>11</sup> If one has the ability to sign in person in the presence of a *beis din chashuv* of three that would satisfy all opinions. Some communities and batei din make arrangements for people to sign a *pruzbul* in front of a *beis din chashuv* in advance of Rosh Hashanah. However, this is often not practical.

The Beth Din of America makes available two versions of a *pruzbul*, as standard Ashkenazic practice should allow for use of either version. One version allows for the authorization of a named panel of the *beis din* to be signed by two witnesses. The other provides for the execution of a *pruzbul* in front

of an ad hoc beis din of three. Both forms are available at <https://bethdin.org/wp-content/uploads/2022/08/Pruzbul-5782.pdf>.

## Endnotes

1. *Yeraim* (164) rules that *shmittah* does not automatically cancel loans; there is a mitzvah for the lender to formally forgive the loans, but until he does so, the borrower is obligated to repay any outstanding loans. However, most rishonim disagree and assume that *shmittah* automatically cancels loans (see *Or Zarua Avodah Zarah* 108, *Mordechai Gittin* 378). R. Shlomo Zalman Auerbach (*Minchas Shlomo Shviis* 10:8) entertains the possibility that even though we do not accept the *Yeraim's* position, if a *baal teshuvah* previously collected loans that should have been canceled by *shmittah* he need not return the funds, as he can claim that he holds like the *Yeraim*.

2. Since a *pruzbul* is only effective for loans extended prior to its issuance, one should sign a *pruzbul* as close as possible to Rosh Hashanah. Rosh (*Gittin* 4:20) is of the opinion that one should execute a *pruzbul* at the end of the sixth year of the *shmittah* cycle, since even though *shmittah* cancels loans at the end of the *shmittah* year, the prohibition of *lo yigos*, of attempting to collect loans, applies from the beginning of the *shmittah* year. This appears to be the position of Ibn Ezra (*Devarim* 15:1) as well. However, most rishonim (see Rambam *Shmittah* 9:4, Ramban *Devarim* 15:1) believe that the prohibition of *lo yigos* also does not apply until the end of the *shmittah* year. This is recorded in *Shulchan Aruch* (*Choshen Mishpat* 67:30) and this is the basis of our practice of writing *pruzbuls* at the end of the year. *Shulchan Aruch HaRav* (*Halva'ah* 36) recommends writing two *pruzbuls*, one at the end of the sixth year and one at the end of the seventh year, to account for all opinions.

3. Rashi, *Gittin* 32b s.v. *Mosreini* and *Tosafos* 36a s.v. *Mi* dispute whether the institution of *pruzbul* was simply an application of *moser shtarosav l'beis din* or a new mechanism. See *Toras Zeraim* (*Shviis* 10:3).

4. Rishonim struggle to justify what appears to have been a widespread practice in many communities over centuries to ignore the laws of *shmitas kesafim* and continue to collect loans even without a *pruzbul*. See Rosh *Gittin* 4:13, *Shu"t Rosh* 64:4, *Terumas Hadeshen* 304, and Rema 67:1.

5. The Gemara goes on to refer to the beis din of Rav Ami and Rav Asi. Rav and Shmuel were first

generation amoraim and Rav Ami and Rav Asi were third generation amoraim.

6. Ritva (36b s.v. *Din*) is explicit that even a beis din of *hedyotos* who have no proficiency in the subject matter is sufficient.

7. See R. Moshe Shtunrbuch (*Moadim U'zmanim* 6:18), who suggests that the Rema's leniency does not apply in Eretz Yisrael.

8. Rabbenu Tam (*Tosafos Gittin* 36b s.v. *D'alimi*, *Sefer Hayashar* 138, and Rosh *Gittin* 4:13) appears to have initially held that there was no beis din in his generation that was empowered to oversee a *pruzbul*, and later adopted the position that even according to Shmuel a sufficiently competent beis din in every generation may do so.

9. *Shach* (67:5) quotes Mabit that if one uses an ad hoc *beis din*, the *pruzbul* would be invalid even post facto. See R. Moshe Mordechai Karp, *Mishmeres HaShviis Shmitas Kesafim* Chapter 3 ft. 23.

10. See R. Yechiel Michel Tukitzinsky, *Sefer HaShmittah* Chapter 13. It is not necessarily clear whether the *pruzbuls* were more typically signed by the standing beis din or by an ad hoc beis din. In a smaller community it is more feasible to have people appear in front of a standing beis din of three to execute a *pruzbul*. In a collection of documents from the beis din of Rav Shmuel Salant and later Rav Zvi Pesach Frank (*Pincas Beis Hadin Hachurva* 2 p. 111) the editors included Rav Zvi Pesach Frank's own *pruzbul* from 1924 signed by three dayanim that the editors identified as not being part of the standing beis din. The Yeshiva University Museum is in possession of a 1910 *pruzbul* from the beis din of Yerushalayim signed by three dayanim including Rav Zvi Pesach Frank himself.

11. Rav Asher recommends that the authorization of the beis din should be signed by three witnesses and not just two, so that it could also work according to those opinions that require an authorization in front of a beis din in person. R. Moshe Mordechai Karp (*Mishmeres HaShviis Shmitas Kesafim* Chapter 3 ft. 32) records that this was the practice of Rav Elyashiv.