

OVERVIEW of the Daf

1) Prosbol (cont.)

Two explanations of the term Prosbol are presented.

R' Yehudah in the name of Shmuel asserts that orphans do not require a Prosbol.

2) The Prosbol's land requirement

A Mishnah is cited that teaches that the borrower must own land, or receive any amount of land, for the Prosbol to be effective.

R' Chiya bar Rav in the name of Rav explains the intent of the Mishnah when it writes that the borrower must have "any amount" of land.

R' Yehudah notes that the borrower is not even required to own land and if he has land on loan it is sufficient.

This ruling is unsuccessfully challenged.

A related incident is recorded.

The rabbis of R' Ashi's yeshiva taught that a formal document is not required.

A Beraisa is cited that further elaborates on the land requirement for a Prosbol.

3) The cancellation of loans

A Mishnah is cited that rules that Shemittah cancels loans whether in a note or not.

Rav and Shmuel offer one interpretation of the Mishnah and R' Yochanan and Reish Lakish offer another explanation.

Two Beraisos are cited that support R' Yochanan's and Reish Lakish's explanation.

A related incident is recorded.

A Mishnah is cited that rules that one who loans on collateral or submits his loans to Bais Din does not relinquish these debts during Shemittah.

Rava offers one explanation why loans on collateral are not cancelled in Shemittah.

Abaye challenges this explanation thus forcing Rava to reformulate his explanation.

4) Paying back a loan that was cancelled

(Overview...Continued on page 2)

Distinctive INSIGHT

How is the rule of Rabbi Nosson different than other obligations?

דתניא רבי נתן אומר מנין לנושא בחברו מנה וחברו בחברו מנין שמוציאין מזה ונותנין לזה, תלמוד לומר ונתן לאשר אשם לו

In our Gemara we find that Rabbi Nosson rules that if Reuven owes money to Shimon, and Shimon owes that amount to Levi, we may take the money from Reuven and have it paid directly to Levi. In the Gemara in Kiddushin (15a) we find that the Rabanan disagree with Rabbi Nosson, and that we may only take money from a person to pay the one from whom he borrowed, and not to someone from whom someone else borrowed.

Rashba notes that the halacha is that שיעבודא דאורייתא—the assets of the borrower are subjugated to the lender. Included in this commitment are the debts which others owe the borrower. Once we consider these obligations to be part of the financial assets of the borrower, why should the Rabbanan disagree with Rabbi Nosson and say that the lender may not collect directly from either the borrower or his debtor? Furthermore, Rashba asks why Rabbi Nosson needs to cite a verse to teach his halacha that Reuven may collect from Levi directly (לאשר הוא לו), rather than relying on the logic of the rule of שיעבודא דאורייתא.

Rashba explains that the regular rule of שיעבוד teaches that the actual assets of the borrower are subject to collection. This does not include, however, money owed to him or items he has yet to collect. Just as a person may not consecrate money owed to him for a loan, so, too, the Torah does not extend his control over money he has not yet collected, although it is owed to him. This is why Rabbi Nosson needs a special verse to teach that Levi may collect from Reuven, who owes Shimon, who borrowed from Levi. ■

REVIEW and Remember

1. Why do orphans not need a Prosbol to collect the debts owed to them?
2. Name two cases where Shemittah will not cancel a loan?
3. What is the essence of the conversation between the borrower and lender to pay back a loan that was cancelled by Shemittah?
4. What is the disagreement between Abaye and Rava?

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HALACHAH Highlight

Are Gemach's and banks required to make a Prosbol?

דר' גמליאל ובית דינו אביהן של יתומין

For R' Gamliel and his Bais Din are the fathers of the orphans

A practical question that arises regarding Prosbol is whether banks or free-loan funds - a Gemach - are obligated to make a Prosbol in order to collect the money that is owed to them following the Shemittah year. Rav Ovadiah Yosef¹ begins his discussion of this question by citing our Gemara. The Gemara rules that orphans are not required to make a Prosbol since Bais Din is considered to be their "father." In other words, if people owe orphans money, regardless of whether it is a debt the orphans inherited from their father or whether it is a loan made on their own, they are not required to make a Prosbol since Bais Din acts as their father and it is perceived as if the loan documents were given to Bais Din and thus the loans are not cancelled by Shemittah. Based on this Rashba² wrote that someone who owes money to a tzedaka fund (קופת צדקה) is obligated to pay back that loan after Shemittah because it is considered as if Bais Din is the authority that oversees the tzedaka fund. This ruling is codified in Shulchan Aruch³ as well but nevertheless, it is recommended that the administrator of the fund includes the outstanding loans of the tzedaka fund in his own personal Prosbol.

Banks, however, are a different matter and they are obligated to make a Prosbol to collect outstanding debts after Shemittah. Even if the bank has many shareholders a Prosbol must be filled out but it is sufficient for the bank to fill out one Prosbol rather than have each shareholder fill out a separate Prosbol. At first glance this ruling seems at odds with the Mishnah in Shevi'is⁴ which states that if one person borrows from five people each one must make his own Prosbol. Seemingly, the case of the bank is the same other than the fact that there are many more shareholders who are making the loan. Rav Ovadiah Yosef⁵, however, explains that the Mishnah in Shevi'is refers to a case where each of the five

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A Mishnah is cited that describes the procedure for paying back a loan that was cancelled by Shemittah.

Rabbah teaches that a debtor who agreed to pay back a loan can be forced to make the necessary declaration to permit repaying the loan.

Abaye unsuccessfully challenges this assertion.

A related incident is presented.

5) "I lost my Prosbol"

R' Yehudah in the name of R' Nachman teaches that a person is believed if he claims that he had a Prosbol and it is lost.

Rav's practice in this regard is recorded.

This ruling is challenged and the Gemara answers that the matter is subject to a debate amongst Tannaim.

6) **MISHNAH:** The Mishnah presents a discussion about who has the right to a slave that was ransomed from captivity.

7) Clarifying the Mishnah

The Gemara expresses uncertainty regarding the case discussed in the Mishnah.

Abaye offers an explanation for the Mishnah.

Rava offers an alternative explanation for the Mishnah.

Rava's explanation is unsuccessfully challenged.

It is explained, according to Rava, how the second master acquires the slave.

8) Acquiring the labor of a captive

Reish Lakish's teaching that a captor acquires the labor of his captive is cited. ■

lenders took some of his own money and lent it to one borrower. This is different than the case of a bank that loans out money that is jointly owned by the bank's shareholders. In such a case only one Prosbol is necessary for all the loans made by the bank. ■

1. שו"ת יחווה דעת ח"י"ד סי' ס"ד.
2. רשב"א בחידושו לבי"ק ל"ו :
3. שו"ע חו"מ סי' ס"ז סעי' כ"ח.
4. מס' שביעית פ"י מ"ה.
5. שו"ת יחווה דעת שם. ■

STORIES Off the Daf

The Questionable Prosbol

"רבנן דבי רב אשי הסרי מלייהו להדדי..."

One year, a certain simple man saw a small group of talmidei chachamim enact a Prosbol by reciting an informal text to one another to turn over their loans to their ad hoc beis din. After witnessing this, he figured that one need not write a Prosbol; he presumed that anyone could just commit his loans to a few friends with reciting the correct text and secure them. On Erev Rosh Hashana of the eighth year, he gathered

together a few friends and did just that. After the holidays were over, he went to his one of his debtors with the document to request that he pay his loan.

"Did you make a Prosbol?" asked the debtor. "Because if not, I am not halachically required to return the loan. Of course, I would like to—but I am going through hard times just now, so if I don't have to pay you back I will not."

"Do you think I am foolish? Of course I made a Prosbol!" He then described what he had seen and done.

"If I remember correctly, that is only permitted by talmidei chachamim, like the case in the Gemara in Gittin 37. It's really

too bad, but I don't believe I am actually required to pay you back since nowadays, midirabbanan, shmittah erases any loans unless a kosher Prosbol was written. If business picks up I will definitely pay you..."

When this question was brought before the Mahari Asaad, zt"l, he ruled that the loan was not erased by shmittah. "It is true that the Rambam and Shulchan Aruch both rule that giving a loan over to another only works with talmidei chachamim since they know the inner workings of this halachah. However, the Rosh does argue this point. Post facto, in this case, we rely on the Rosh."¹ ■

¹ שו"ת מהרי"א אסאד, ח"ב, ס' קע"ט