



BANKRUPTCY IN HALACHAH

Credit is the lifeblood of modern economies. Home loans, car loans and business loans allow the consumer, individual businessman and corporation to finance purchases and investment, which spurs demand, creates jobs and allows economies to grow.

However, a careful balance is required. Too little credit will slow an economy down and cause a recession, while too much credit can lead to inflation, housing bubbles and borrowers taking on more debt than they can afford. This was evidenced by the implosion of the real estate market and the surge in the foreclosure rate at the end of the last decade. When companies or individuals find themselves unable to service their debt, they commonly have no choice but to resort to bankruptcy.

Chapters 7 and 11

In previous times, a debtor incapable of repaying a loan was thrown into debtors' prison. Nowadays, most countries have some form of court-supervised bankruptcy proceedings. In the United States, the most common forms of bankruptcy are Chapter 7 and Chapter 11. Chapter 7 allows for a corporation or individual to submit all his assets to the court, which liquidates the assets and distributes the proceeds to the creditors. Chapter 11 allows for the debtor to remain an ongoing concern by reducing the amount of the debt to be repaid and/or extending the maturities of the debt. In either case, the process absolves the debtor from any additional liability, even if he subsequently recovers financially and has the wherewithal to pay the debt in full.

The underlying theory of bankruptcy is that while individual creditors stand to lose when bankruptcy is declared, the net result of these laws is beneficial to society. If a debtor would remain liable for his overwhelming debts, he might be unable to recover and become reliant on government help, rather than starting anew and (hopefully) becoming a productive member of society. Chapter 11 bankruptcy enables a company to remain a going concern, which tends to preserve jobs and allows it to recover or be sold, which benefits the economy.

Repaying Loans in Halachah

Repaying a loan is a Torah imperative,¹ and refusing to repay may involve a violation of a negative precept as well.²

While the Torah is sensitive to a borrower who does not have the means to repay a loan, *Halachah* has no bankruptcy mechanism that would discharge one's debts. As such, it would seem that although civil law may allow a debtor to discharge his debt, this would not absolve a Jew of his halachic obligation to repay his loan.

Dina d'Malchusa Dina

Dina d'malchusa dina is an oft-quoted but poorly understood term. To complicate matters, the varying opinions and the parameters of the law are hard to clarify. Simply put, it loosely translates as "the law of the land is the law." This means that a king or any sovereign entity has the right to enact laws or collect taxes that are necessary. Therefore, a Jewish citizen who violates these laws is in violation of *Halachah* as well. The question, of course, is, how expansive is *dina d'malchusa*? In regard to this matter, there are essentially three principal views as to how broadly *dina d'malchusa* can be applied:

1. It is limited strictly to areas critical for a government to function, such as taxes, currency regulation, import and export regulations, etc. Therefore, any evasion of taxes by a Jewish citizen is not only a violation of federal law, but is also a violation of *Halachah*. This more limited view is adopted by the *Mechaber*.³

2. It applies to any legislation that aids in the smooth functioning of society. This more expansive view is codified as *Halachah* by the *Rema*.⁴

3. The *Shach*⁵ limits *dina d'malchusa* to areas where it does not directly contradict an existing *halachah*.

Dina d'Malchusa and Bankruptcy

Bankruptcy laws are not a critical requirement of government. Therefore it would seem that *dina d'malchusa* would not be applicable according to the view of the *Mechaber*. Similarly, permanent discharge of loans is in direct contradiction to Torah law; therefore relief under bankruptcy laws would not be permissible according to the opinion of the *Shach*. However, since these laws were enacted for the benefit of society, it would seem that bankruptcy could be valid halachically according to the *Rema*.

