



# BUSINESS WEEKLY

Restoring the primacy of choshen mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

### PRELIMINARY PRUZBUL

Yisrael Silver sat with his father in shul, listening to the leining of Parashas Re'eh. He heard the word Shemittah a number of times. "When is Shemittah?" Yisrael asked his father when they finished the aliyah.

"This coming year!" replied Mr. Silver. "In less than a month, Shemittah 5775 begins in Eretz Yisrael."

"It's a shame that outside of Eretz Yisrael we can't do this mitzvah," said Yisrael. "Anyway, I thought that Shemittah was already addressed in Sefer Vayikra. What's it doing here?"

"We're leining now, and shouldn't be talking," Mr. Silver gently quieted his son. "At the Shabbos table we can discuss it at length."

At the Shabbos meal Yisrael asked his father, "Can you please tell me about Shemittah?"

"The mitzvah of Shemittah has two aspects," replied Mr. Silver. "One is to let the land rest and refrain from agricultural work, which applies only in Eretz Yisrael and was discussed in Parashas Behar. The other is to 'forgive' loans that are past due, which applies everywhere in the world, and that's what we read about this morning" (C.M. 67:1).

"You mean that if I lent someone money and he hasn't paid me back yet, he won't have to repay after Shemittah?" asked Yisrael. "I never heard of loans being canceled!"

"That's because Hillel instituted a form called pruzbul, whereby you give authority of the loan to beis din," explained Mr. Silver. "Then the loan isn't canceled and you're allowed to collect it even after Shemittah. A pruzbul is usually filed nowadays just before Rosh Hashanah."

"Can I come with you this year when you do it?" asked Yisrael.

"Sure," replied Mr. Silver. "I don't remember, though, whether the pruzbul filing is done this year, before the beginning of Shemittah, or next year — before the end of Shemittah."

"Oh," said Yisrael. "How can we find out?"

"We can ask Rabbi Dayan at Minchah," said Mr. Silver.

After Minchah, Mr. Silver and Yisrael approached Rabbi Dayan. "At the Shabbos table we were discussing Shemittah of loans and pruzbul," Mr. Silver said. "When should the pruzbul be written — this year or next?"

"Shemittah cancels loans only at the end of the Shemittah year, in our case at sunset of 29 Elul 5775," answered Rabbi Dayan. "The accepted practice is to file the pruzbul then, but some file a pruzbul also at the end of this year, 5774."

"What is this based on?" asked Yisrael.



## BHI HOTLINE

### ADVERTISING ON SHABBOS

I own a business that advertises in the newspaper and on the

radio. One of my friends alerted me to the possibility that it is prohibited for the ads to run on Shabbos.

**Q: Is it prohibited for me to allow the ads to run on Shabbos, or is it permitted since I am not actually doing anything related to the ads on Shabbos?**

**A:** There is a distinction between radio advertising and newspaper ads, as we shall explain.

Although radio ads are played on Shabbos, it is possible that they were programmed to run before Shabbos, so that no melachah is actually performed on Shabbos. On the other hand, print ads in a daily newspaper are almost certainly printed on Shabbos, as it is not standard to print advertisements before completion of the paper; so it is considered as though you instructed a gentile to perform a melachah on your behalf on Shabbos (kove'a melachto b'Shabbos) (Taz O.C. 244:5 and Pri Megadim).

Therefore, if you did not specify that they should run the ads on Shabbos, the advertising entities are contractors (kaban) rather than salaried workers (poel), since all you did was agree to pay them to perform a service at an agreed-upon price; if they decided to run the ad on Shabbos, it was their choice and the melachah is not traced back to you. However, if you specified that the ad should run on Shabbos, or if you paid them to advertise every day for a specified duration of time, that is considered as though you instructed them to perform melachah for you on Shabbos; and so you violated the prohibition of instructing a gentile to perform a melachah (amira

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## STORY LINE

"In Parashas Re'eh the Torah states: 'At the end of seven years you shall institute a remission ... Every creditor shall remit his authority over what he has lent his fellow,' replied Rabbi Dayan.

"Since the verse states 'at the end of seven years,' the loan is canceled only at the end of the Shemittah year," explained Rabbi Dayan. "So it doesn't seem necessary to draft a pruzbul until the end of next year. This is the ruling of the Shulchan Aruch, based on the Rambam" (C.M. 67:30-31).

"Why do I remember something about filing a pruzbul before Shemittah?" asked Mr. Silver.

"The Rosh (Gittin 4:18,20) cites a Tosefta that the pruzbul should be written 'the eve of Rosh Hashanah of Shevi'is,' i.e., before the Shemittah year begins," replied Rabbi Dayan. "He explains that Shemittah cancels the loan only at the end of the seven years, so that the borrower is still required to repay it during the Shemittah year; but since the creditor may not demand repayment during the Shemittah year, the Rosh maintains that the pruzbul should be filed before Shemittah" (SM"A 67:53).

"How do other authorities deal with the Tosefta?" asked Yisrael. "It's pretty explicit!"

"The Rashba writes that the Tosefta should really read 'Erev Rosh Hashanah of motzoei Shevi'is,' answered Rabbi Dayan. "Some manuscripts, in fact, have this version."

"The common practice is to draft the pruzbul only towards the end of Shemittah [for this cycle: in 5775]," concluded Rabbi Dayan. "The Chazon Ish and Rav Shlomo Zalman Auerbach, zt"l, did so. However, some prepare a pruzbul also before the Shemittah year, in 5774, in deference to the opinion of the Rosh." (See Pis'chei Teshuvah 67:5; Shemittas Kesafim U'Pruzbul, by Rav Zvi Cohen, 12:17[32-34].)



## MONEY MATTERS

### COPYRIGHTS AND PATENTS # 10

**Q: Does halachah also prohibit copying a program or book produced by public companies?**

**A:** In principle, the law of the land governs the ruling concerning copyrights. This applies as well to innovations of public companies.

The Shulchan Aruch rules that stealing from non-Jews is prohibited (C.M. 348:2; 359:1). Thus, according to the opinion that halachah recognizes ownership of intellectual property — and so, someone who copies illegally is stealing from the owner — the prohibition against copying clearly applies also to the intellectual property of public companies.

According to those who define copying as "benefiting" against the owner's will, such benefit is a subset of theft, and therefore prohibited.

Now according to the opinion that halachah does not recognize ownership of intellectual property, and that the prohibition to copy is based primarily on hasagas ge'ul (intrusive competition), this prohibition would not apply to public company works. [Many authorities maintain, though, that it does apply to a non-observant Jew.] Nonetheless, in practice it is still prohibited to copy illegally. Halachah recognizes the public company's rights in common law, based on dina d'malchusa and common commercial practice. Furthermore, copying illegally can lead to chillul Hashem. In addition, Jews may have shares in the company, so that the company's financial loss affects them too (Emek Hamishpat, Zechuyos Yotzrim, Intro. 3:51-54; ch. 35:206).



## BHI HOTLINE

l'akum) (O.C. 252:2).

[Poskim debate whether it is prohibited to contract one gentile to perform a melachah who will instruct another gentile to actually perform that melachah (amira d'amira). In this case, the advertising department instructs the printers to print the ad. However, one should not rely on the lenient opinion unless one faces a significant financial loss (M.B. 307:24).]

In view of what we said above, the following guidelines emerge: Whenever it is possible that a melachah will not be performed, it is permitted to contract with a business to run ads. Thus one may run ads in a newspaper or magazine that does not go to print daily, since it is possible for them to do the melachos before Shabbos. Running ads on the radio is also permitted, since technology allows for the melachah to be performed in advance of Shabbos. Similarly, if one did not instruct them to run the ad on Shabbos, it is permitted to contract with them to run ads. But if a paper is published daily, so that the melachah will have to be performed on Shabbos, it is prohibited to contract with them to run ads.

Up to this point we addressed the issue of amira l'akum. Another issue to consider when advertising in a newspaper is that the ads give the appearance of impropriety (mar'is ayin) (O.C. 243, 244 and 247). Since most businesses care that the ad should run on a particular day, people may think that the business owner specified that the ad should run on Shabbos (Vaya'an Yosef O.C. 85) [See Chelkas Yaakov O.C. 66 for a reason mar'is ayin may not apply in this case.] Also, even though running an ad may be technically permitted on Shabbos, it debases the kedushah of Shabbos (zilusa d'Shabbos) and therefore should be avoided (Chelkas Yaakov O.C. 66 and see Igros Moshe O.C. 4:60).

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