

Bankruptcy,
companies and
individuals alike.
sadly enough there

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Bankruptcy, today, is a very common thing among companies and individuals alike. Sadly enough there were as many bankruptcy cases filed in federal courts, as there were all other cases.

The American bankruptcy law allows people to avoid paying their debts, by offering the debtors a discharge, which eliminates all their legal responsibilities. However, bankruptcy is a controversial issue amongst religious members of the Jewish population, for one must question whether it is morally correct to avoid paying a debt by filing for bankruptcy. According to the torah, a debt is an obligation that must be fulfilled. Consequently, if a bankruptcy discharge is invoked, under the strictness of Jewish law, one is still required to pay back the money no matter how long it may take him.

According to Bais Din the debtor must hand over his property, with a few exclusions, to the creditor, and if this does not cover what he owes the creditor, then every time the debtor acquires new assets, he pays the creditor until he no longer owes him anything. According to Halacha there is a way for the debtor to be discharged. This is through "Yeush". This term denotes that this is the point where a person no longer believes he will recover the object he has lost. In this case, the creditor loses hope of being paid back the money the debtor owes him.

Therefore the debtor is free from his obligation to pay the creditor. According to some poskim, yeush does not discharge the debtor, unless the circumstances, such as where the debtors fields are ruined by a flood, the debtor is in, makes the creditor lose hope of ever being paid back According to others, yeush can discharge the debt if the debtor becomes impoverished

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only and not because he didn't want to pay back his debt. If the debtor does not become discharged through the creditors yeush, there is one of two ways to obtain a bankruptcy discharge through halacha. The first way is through liquidation.

This is where the debtor hands over all his property, with keeping some exempt property, and this covers his debt to the creditors and he is now free of his obligation to pay them. The second way is through reorganization. The debtor makes a plan to repay his creditors over a number of years, with a minimum payment required for each year. When he has finished with these payments, even though he may not have paid back the creditor in full, he is discharged. The discharge may be obtained without the consent of the debtor's creditors or through the debtors' creditors forcing him to choose one of those two options. A discharge of debt can be obtained through a majority of creditors, even if there are a minority are not in agreement with this. Halacha recognizes the fact that commercial transactions are in agreement with secular customs or agreements. This means that if both parties, when making the agreement, agreed that the debtor may file for a bankruptcy discharge, it is halachacilly acceptable.

There are two reasons that are connected to each other. The first based on "Minhag Hasocharim", and the second based on the fact that the parties made their agreement based on secular law. The source for Minhag Hasocharim is based on the Mishna of Hasochar es HaPoalim (Bava Metzia 83a): " One who hires laborers and tells them to come early or stay late: in a place where the custom is not to come early or stay late, the employer is not

allowed to force them (to do so)All (such terms) are governed by local custom". In fact minhag supersedes Halacha in this case. These local customs do not have to be established by halacha nor by a Jew .

Rather, they are the custom of the time and age. In many cases the secular law may have the same effect as a minhag, and may be used even if Dina D'malchusa Dina (explained below) doesn't apply. If business is done in the United States, there is a strong argument that that means that the parties automatically follow the secular laws and this means the bankruptcy discharge law is included. Secular law is also