**Question:** Ten years ago, Shimon borrowed $10,000 from Binyamin. The loan was due one year after the date of the loan. When the loan came due, Binyamin asked Shimon for the money, and Shimon responded that he was aware of the debt, but he simply did not have the money yet. Binyamin was patient and understanding. Every six months thereafter he would check in with Shimon asking for payment of the loan. Each time Shimon would simply say that he did not have the ability to pay back the loan. After years of no payment, and as the Yamim Noraim were approaching, Binyamin decided that he was uncomfortable with Shimon having to face the days of judgment with such a large debt, reasoning that the failure to pay may impact Shimon’s din in Shamayim. Therefore, on Rosh Hashana, just before davening, Binyamin said, “I am mochet the debt that Shimon owes me. Hashem, just as I have forgiven Shimon, please forgive me for anything I may have done improperly.” After Yom Tov, Binyamin was going through the mail that had arrived over the last few days, and found an envelope sent by Shimon that contained a check for the full amount of the debt. Binyamin asked if he may deposit the check, or if he must inform Shimon that he had already forgiven the debt.

**Answer:** When I first received this shaila, I presented it to Moreinu v’Rabbeinu, Rav Hershel Schachter shlit”a, and also to Rav Yitzchak Zilberstein shlit”a (who subsequently published his response in Sefer Chashukei Chemed on Nedarim daf 65b).

In order to answer this question, we must discuss two topics. First, it is important to understand whether the mehilah (forgiveness) granted by Binyamin, without ever being expressed to Shimon, is in fact binding. Second, even if we were to ascertain that the mehilah is in fact binding, it is possible that we will still allow Binyamin to deposit the check, if we can be certain that Shimon wants Binyamin to do so.

**Mehilah b’Lev**

The Shulchan Aruch (Choshen Mishpat siman 12) discusses whether one must perform an act of kinyan to effect a mehilah. The Ketzos Hachoshen cites the Misgeres Hashulchan who holds that even a mehilah b’lev, forgiving a loan in one’s mind, is a valid and binding mehilah, even if the fellow still has a shtar (loan document). The Smag proves this position to be correct based on a Gemara (Kesubos 104a) that says that a woman who never asked for kesubah payment, even many years after her husband’s passing, is assumed to be mochel at a certain point, apparently even if she never said she was mochel. This Gemara seems to indicate that she was...
only mochel b’lev and it is nevertheless binding.

The Ketzos disagrees and says that we never find that mechilah works with just machshava (our thoughts). As far as the Gemara in Kesubos, perhaps when it is abundantly obvious that the person is mochel, there is no need for a mechilah. Therefore, according to the Ketzos, in our case the mechilah would be invalid.

Moreinu HaRav Schachter shl”a paskened like the Misgeres Hashulchan because the Nesivos Hamishpat paskens this way, and we would therefore view this mechilah as binding. In our case, though, Binyamin actually verbalized his mechilah, thereby making the entire discussion of mechilah b’lev moot.

Verbal Mechilah

More relevant to our discussion is whether a verbal mechilah is binding. It would seem from the preceding discussion that it certainly is binding. However, in a case where there is a loan document that the lender still possesses, the discussion is further complicated.

The Rama (Choshen Mishpat 241:2) writes that if somebody verbally forgives a debt, the verbal forgiveness is binding, even if the lender is still holding on to the loan document. However, the Shach (s”k 4) writes that whether a verbal mechilah is binding is subject to a dispute in the Talmud Yerushalmi and therefore remains an unresolved issue. The Sm”a (ibid 21) rules that so long as the borrower still has the loan document, the mechilah is not binding, even if it were verbally expressed to the borrower. Only a full-fledged kinyan would affect a binding mechilah. Indeed, the Nesivos Hamishpat (ibid 14) writes that since this is an unresolved dispute, the fellow who owes the money may say that he will abide by the opinion that holds the mechilah is binding (kim li).

However, in our case, it is possible that all would agree that the mechilah is not binding, even though Binyamin had verbalized it. The Aruch Hashulchan (Choshen Mishpat 241:4) writes that if the borrower had not received word of the mechilah, even if it were already verbalized to others, the mechilah may still be retracted. Since Binyamin did not express his mechilah to anyone other than Hashem, he can be confident that Shimon did not know about it. Consequently, Binyamin still has the right to cancel his mechilah.

Mechilah b’Taus

Another mitigating factor in our case is that the mechilah may have been made based on a false premise, which would make it no longer binding (see Rama, Choshen Mishpat 241:2). Moreinu HaRav Schachter pointed out that had Binyamin known at the time of the mechilah that the check was already in the mail, he would not have been mochel, and it is therefore a mechilah b’taus. If, however, the mechilah happened a few days before Yom Tov, then the mechilah is binding and the fellow may not cash the check. Rav Yitzchak Zilberstein, though, said that there is still room for leniency, for many reasons:

First, Binyamin did not really forgive the debt, just the punishment that Shimon would have received on account of this debt. Clearly, Binyamin’s persistently and diligently asking for repayment of the loan over many years, and the timing of his mechilah (during davening on Rosh Hashana when Shimon wasn’t even present), indicate that Binyamin was interested in getting paid back, but simply didn’t want to be the cause of Shimon’s negative judgment in heaven.

Second, Rav Yitzchak Zilberstein argues, it was a mistaken mechilah even if the mechilah preceded the writing of the check, because Shimon must have been working toward saving such a significant sum for some time. Had Binyamin known that Shimon was working toward paying back the loan, he would never have forgiven the loan.

The Borrower’s Desire to Pay

Even if the mechilah was binding, Rav Zilberstein presents two additional reasons that Binyamin may deposit the check.

First, Rashi, Kesubos 86, says that paying back a loan is a mitzvah because a person must keep their word. Therefore, Shimon has a mitzvah to pay the money back in order to fulfill his obligation to be honest and keep his word.

Second, even if the mechilah was binding, we may assume that Shimon wants to pay back the loan in order to maintain his good name in business. The Gemara (Bava Metzia 15a) suggests that even in particular situations in which the halacha would suggest that there is no binding transaction, the desire for a person to maintain his good reputation will allow a transaction to be binding.

Halachic Ruling

As a matter of practical halacha, Moreinu HaRav Schachter shl”a ruled that Binyamin may deposit the check since we can be certain that had he been aware that the check had already been written at the time of his mechilah, he never would have forgiven the debt.