



The Kosher
Consumer's
Guide to
SHEMITA

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”והיתה שבת הארץ
לכם לאכלה”

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PREFACE

Beginning with Rosh Hashana 5775, the Jewish People will have the privilege of observing the commandment of *Shemita*, the Sabbatical year. Observing this mitzva has always been a challenge for the Jewish People, and as a result sometimes Jews unfortunately view it as a burden. Nevertheless, I believe that meeting this challenge is a unique privilege, one that is available to us only once every seven years, and only in the Land of Israel.

Because special laws apply during this year, and because some of these laws are the subject of *machloket* (dispute) among rabbinic authorities, the kosher consumer has to make certain decisions that don't apply in other countries or during other years. I've written this short booklet in order to help make the laws and concepts of *Shemita* more understandable and accessible to the English-speaking public. It's my hope that by investing a few minutes to read about and understand the various options available, the reader will not only be able to ask informed *halachic* questions and understand what he or she is buying and eating, but will also be inspired by the great opportunities modern *Shemita* observance provides.

Much of my interest in and love for this mitzva, as well as much of my knowledge of its laws, comes from the classes I've attended by Rabbi Yosef Zvi Rimon, the rabbi of my community in Alon Shvut. I also want to thank the various students I taught about *Shemita* before, during and immediately after the last *Shemita* year in 5768. Their questions, comments and insights helped shape my understanding of the topic in many ways. Finally, I want to thank my wife Monica and my children Sara, Batsheva, Moshe, Tzvi and Elchanan for sharing in my passion for this mitzva, and for Torah in general, and for encouraging and supporting this and all of my efforts.

In the merit of our efforts to observe the mitzva of *Shemita*, may we be worthy of the Torah's promise: "I will command My blessing upon you" (*Vayikra* 25:21).

Alan Haber
Alon Shevut, Elul 5774

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INTRODUCTION

"כי תבאו אל הארץ אשר אני נתן לכם ושבתה הארץ שבת לה: שש שנים תזרע שדה ושש שנים תזמר פרמך ואספת את תבואתה: ובשנה השביעית שבת שבתון יהיה לארץ שבת לה' שדה לא תזרע וכרמך לא תזמר: את ספיח קצירך לא תקצור ואת ענבי גזירך לא תבצר שנת שבתון יהיה לארץ: והיתה שבת הארץ לכם לאכלה לך ולעבדך ולאמנתך ולשכירך ולתושבך הגרים עמך: ולבהמתך ולסוה אשר בארצך תהיה כל תבואתה לאכל:" (ויקרא כה:ב-ז)

Anyone living in or visiting Israel from September 2014 until at least the summer of 2016 (in other words, for almost two full years) will likely encounter agricultural produce grown during the *Shemita* year. According to *Halacha* (Jewish law) this produce may have special status and various laws may apply. There will be notices posted in grocery stores and on the *kashrut* information panels of products using special terms that may be unfamiliar, and many observant Jews will be discussing and debating which products are acceptable and which are not. Some people may conclude that the kosher status of various products, eating establishments, or even private homes that are acceptable in other years, are not acceptable during *Shemita*.

Particularly for those who grew up outside of Israel, where the laws of *Shemita* have only minimal impact, this entire topic can seem confusing, daunting and even frightening. However, in reality, it's not that complicated! With only a bit of effort, one can easily grasp the basic concepts. And once one becomes familiar with the various principles and consults with his or her rabbi regarding which of the various opinions to follow, it turns out that is not very difficult at all to observe *Shemita*! Additionally, many people find that learning about the *Shemita* year and observing it can bring many spiritual benefits.

This short booklet is designed to help by explaining the most important concepts and terms in clear English, so that you can know what it all means. It will also give you a short explanation of the most important contemporary disagreements relating to *Shemita*, with a summary of the arguments on both sides, to help you arrive at an informed decision.

NOTE: This booklet does not contain any *piskei halacha* (legal rulings). You should consult with a *halachic* authority in order to determine which positions to follow. But reading this booklet first will enable you to ask informed questions and to understand and implement the guidance you receive.

SHABBAT HAARETZ

Before getting to the laws, we'll begin with a brief analysis of some of the philosophical ideas behind *Shemita*, in order to understand the messages that the Torah seeks to teach us through this unique mitzva.

Shemita is based on the fundamental truth that we do not own the Land of Israel – Hashem Himself does. This point is made crystal-clear in the Torah, at the end of the section dealing with *Shemita*: “The land shall not be sold in perpetuity, because the land is Mine.” (*Vayikra* 25:23) Because of that, all agricultural land is made ownerless during *Shemita*. Nevertheless, Hashem allows us to eat the produce of the *Shemita* year (*Vayikra* 25:6).

In a 1959 article that was reprinted in the book *Katif Shvi'it* (Ashkelon: *Machon HaTorah VeHa'aretz*, 2007), Rav Shaul Yisraeli suggested that *Shemita* combines a number of fundamental Torah principles into one mitzva.

On one hand, it creates obligations to other people and to society in general (known in Hebrew as *bein adam lechavero*). *Shemita* creates a social equivalence between wealthy and poor people, since all agricultural land is ownerless during *Shemita*. Also, the law of *shemitat kesafim*, which cancels debts at the end of the *Shemita* year, provides a chance for those who have built up large debts to start afresh. An even greater equalization takes place after every seven *Shemita* cycles, as all land returns to its original owners during *Yovel*, the Jubilee year (see *Vayikra* 25:8-16).

However, *Shemita* also contains powerful tools to improve our relationship with our Creator (making it a mitzva *bein adam lamakom* as well), as it requires us to believe in Hashem and trust that He will take care of our needs even if we don't work the land, just as He promised in the Torah (*Vayikra* 25:20-22). And in doing so, it also contains tools for self-development and personal growth (sometimes described as “*bein adam le'atzmo*”). By placing one's trust in Hashem and following His laws even though one appears to risk starvation, one uncovers inner strengths he may not have known he had, and achieves levels of spiritual understanding he may have thought impossible.

For these reasons, the produce of *Shemita* is holy. It must be treated with special care to reflect this holiness, as will be explained below. It is a rare opportunity to be able to eat holy fruits and vegetables that are given to us, as it were, as a special gift directly from Hashem.

Although this special sanctity imposes additional obligations upon us, we should welcome these responsibilities – they're the result of the very special relationship we have with Hashem. And the fact that this mitzva applies only in the Land of Israel shows us that this unique relationship can exist in its fullest sense only in that land.

BASIC *SHEMITA* PRINCIPLES

PROHIBITED LABORS IN THE FARM AND GARDEN

There are two aspects to *shemitat karka*, the laws of *Shemita* relating to working the land. The first aspect are the prohibited labors (*melachot*). These delineate various activities that a Jew in Israel is prohibited from performing in his field, vineyard, orchard or garden during the *Shemita* year.

There are four primary *melachot* which are prohibited by the Torah itself (*mide'oraita*): planting, pruning trees, harvesting crops and harvesting fruits (some authorities also include plowing in this list). Additionally, there are some 22 other *melachot* that are prohibited on the level of rabbinic law (*miderabbanan*). There is an important difference between the two categories, a leniency that applies to those *melachot* prohibited by rabbinic law: in cases where refraining from these activities would cause damage, and the *melacha* is performed simply to prevent this damage (the *halachic* term is "*le'ukmei ilana*"), the *melacha* is permitted.

These laws, of course, do not have much practical relevance for those who do not own land in Israel.

KEDUSHAT SHVI'IT

The second aspect, though, affects all Jews in the Land of Israel. As mentioned above, all agricultural land is made ownerless (*hefker*) during the *Shemita* year. The produce that grows on this land can therefore be taken by anyone, theoretically free of charge. This produce has special sanctity, known in *halacha* as *kedushat shvi'it*.

Contrary to a somewhat common misconception, it is not prohibited to eat produce with *kedushat shvi'it*! As mentioned above, the Torah specifically grants permission to eat *perot shvi'it*, the produce of the seventh year (*Vayikra* 25:6). In fact, according to the Ramban, eating *perot shvi'it* may constitute fulfillment of a mitzva. While other authorities (such as the Rambam) disagree with that assertion, it would seem that all agree that eating *perot shvi'it* is a great privilege.

Because of the unusual sanctity of *perot shvi'it*, there are special rules governing the use of this produce. It may only be eaten in the ordinary way (items normally eaten only raw may not be cooked, items normally eaten only cooked may not be eaten raw, etc.). There are also restrictions on marketing and trading in such fruits. Additionally, it is prohibited to do anything that would actively destroy *perot shvi'it*. (For example, if one has wine or grape juice with *kedushat shvi'it* and uses it for *havdalla*, he may not follow custom of spilling some wine out and using it to extinguish the *havdalla* candle. He also should not waste drops of such wine while reciting the ten plagues at the Passover Seder.)

Extra care must be taken to avoid ruining *Shemita* produce or anything made from it. If there are leftover pieces of such produce that will not be eaten, they should be placed in a special receptacle set aside for *kedushat shvi'it*, where they should remain until they have become inedible (if this is difficult or impractical, the leftovers may be placed into a closed plastic bag and then disposed of normally).

There is also a law known as "*biur*", which states that *perot shvi'it* may only be kept in the home as long as they are still available in the field, where wild animals can get to them. Once the time comes that any of a particular type of produce is no longer available in the field, there is an obligation to remove any of this type of produce that one still has in his home. It must be removed to the public domain and declared ownerless in front of three people. After that, it can be reclaimed and brought back into the house.

The laws of *kedusha shvi'it* require us to determine which year a particular product belongs to. Many items will begin growing in the sixth year, but will be

harvested during *Shemita*. There will also be items that begin growing during the *Shemita* year but will only be harvested in the eighth year. Do these products have *kedushat shvi'it*? The answer depends on which type of crop we're discussing.

Vegetables are classified as belonging to a particular *halachic* year if they are picked during that year. Therefore, vegetables with *kedushat shvi'it* may begin to hit the market already on *Tzom Gedalia* (the day after *Rosh HaShana*) of the *Shemita* year. However, fruits of trees are determined by the date they began to grow. Therefore, the fruits that are harvested during the fall and winter of *Shemita* (which began to form on the trees prior to *Rosh HaShana*) belong to the sixth year and have no holiness. Fruits with *kedushat shvi'it* only become available (in most cases) around Passover, and continue throughout most of the eighth year. Wine, and preserved products such as canned vegetables, can remain on the market for significant periods of time after *Shemita*.

ISSUR SFICHIN

Obtaining vegetables to eat during *Shemita* is much more difficult than obtaining fruit. This is because fruits grow on trees that exist from year to year, and do not need to be planted during *Shemita*. The farmer needs to change certain procedures and observe certain restrictions in the maintenance of his orchard or vineyard, but the fruits can be grown and made available during *Shemita* (see below for a description of the "*otzar bet din*" method of marketing such produce). However, vegetables and other annual crops would need to be planted during *Shemita*, and this is not allowed.

Furthermore, there is a rabbinic prohibition to eat vegetables that grew on their own during *Shemita*, **even if nobody planted them**. This law is called "*issur sfichin*", and the reason for it is because there was a phenomenon of people secretly planting seeds and then claiming the vegetables grew on their own (Rambam *Hilchot Shemita veYovel* 4:2).

Therefore, although as stated above it is fundamentally permitted to eat *perot shvi'it*, vegetables that have *kedushat shvi'it* are usually prohibited by rabbinic law because of the *issur sfichin*. However, there are some exceptions to this principle, most notably at the beginning of the *Shemita* year, when common practice is to follow the lenient opinion of the Rash (against the stricter view of the Rambam), who holds that vegetables that were planted before *Shemita* begins are not covered by the *issur sfichin*.

CHALLENGES OF *SHEMITA* IN THE MODERN ERA

Observing *Shemita* today is – unfortunately – far from a complete fulfilment of the Torah's vision. There are a number of reasons for this.

First of all, we do not observe the *Yovel* today since a majority of the Jewish people is still in exile. As a result, the prevailing *halachic* opinion is that the mitzva of *Shemita* nowadays applies only under rabbinic law.

Furthermore, modern agricultural techniques and economic realities create new challenges, (but also new solutions, as we shall see). In ancient times, the Jewish people lived in an agrarian society in which the great majority of the population operated small family farms using traditional methods to produce food for their own families and for sale in local markets. Today, however, we live in a post-industrial economy in which only 1% of Israel's population grows food agriculturally, mainly on huge commercial farms. Thanks to modern technology, this tiny percentage of the population, using only a small percentage of the land, is able to grow enough food to feed the entire country, and to export significant quantities as well.¹

These modern methods, though, are very dependent on constant maintenance. Leaving land completely untended for an entire year can result in permanent damage to the farm, not merely a reduction in a single year's produce. Furthermore, failure to provide produce for a single year can result in permanent loss of customers to competitors in other countries. And most significantly, whereas in ancient times the challenge of *Shemita* observance involved an overarching reduction of economic activity in a manner that was shared equally among the majority of the population, today the overwhelming majority of people can continue their regular jobs unabated. Almost the entire burden of *Shemita* observance could fall on the shoulders of a few farmers.

In addition to all of the above, we must also mention the unfortunate reality that the majority of Jews in Israel today – including of course many of the farmers and most of the consumers – are not fully committed to the observance of mitzvot. Although

¹ For a brief overview (in Hebrew) of the development of Israel's agricultural economy, see <http://lib.cet.ac.il/pages/item.asp?item=4131> (accessed Aug 24, 2014). This development is particularly remarkable in light of the history of this land – for many centuries much of the land was desolate swampland, with very little agricultural produce at all. Indeed, these developments seem to be a clear fulfilment of the messianic prophecy of *Yechezkel* (36:8), “But you, O mountains of Israel, you shall give forth your branches, and yield your fruit to My people Israel; for they are coming soon” (see also BT *Sanhedrin* 98a).

for a variety of reasons (religious, ideological, economic, political and others) these Jews are often willing to cooperate with the requirements of *halacha*, there is no question that observance of *Shemita* would be different if a much higher percentage of the population was willing to make the necessary sacrifices.

SO WHAT SHOULD I EAT??

For all of these reasons, it seems that we have no choice but to rely on various *halachic* loopholes and leniencies to avoid violating the laws of *Shemita*, but without fully observing the mitzva as the Torah envisioned it. Although there is significant disagreement among the rabbis as to which approaches are valid and to what extent various options should be implemented, it must be acknowledged that **none** of the approaches fully realizes the ideal described in the first section of this booklet. While there seems to be no choice but to choose from among these available options, we should not forget the ultimate ideal of *Shemita*, which is currently not fully realized. (For more on this, see the 1973 Hebrew article “*Hirhurei Shemita*” by *mori ve-rebbi* Rav Aharon Lichtenstein, *Alon Shvut* 4:1).²

As always when purchasing fruits or vegetables (or things made from them) in Israel, one must ensure that there is a *hechsher* (certificate or seal of kosher supervision) from a reliable rabbinic organization. This is particularly true during *Shemita*, when one must know whether or not he is eating products with *kedushat shvi'it*, and must also make sure not to eat food prohibited because of *sfichin*.

During *Shemita*, a number of different *halachic* options exist, and different organizations use different methods of providing produce. There are several areas of disagreement between them as to which of the various options are acceptable, which are preferable and which may be considered “*kosher lemehadrin*”. It's important to be aware of the *halachic* issues involved, and to understand the policies of each supervising agency in order to make informed choices about what to eat.

Below are brief descriptions of each of the major options. Again, it is not the purpose of this booklet to issue a *halachic* ruling, but rather to explain the issues involved in order that the reader can ask intelligent questions to appropriate authorities, and can then follow the *halachic* guidance he or she receives.

² Available online here: <http://rabbihaber.files.wordpress.com/2014/08/hirhurei-shmita.pdf>

OTZAR BET DIN

As explained above, during the *Shemita* year, all fruits and vegetables that grow in Jewish-owned land in *Eretz Yisrael* are made ownerless (*hefker*). While the owner of the field is allowed to harvest small quantities for his own personal use, others are also permitted to come in and take fruits as well.

However, as we also explained above, modern agricultural methods require a significant amount of work to be done in the orchards and vineyards in order for fruits to grow in the *Shemita* year (there are certain activities that are permitted during *Shemita*, although many things will need to be done differently than in an ordinary year.) The orchard will also need to be irrigated, and according to many authorities this is also permissible during *Shemita* with certain restrictions. However, since the crops of that year will be *hefker*, the farmer has no incentive (and certainly has no obligation) to invest money and labor in working the field. But if he does not do so, unlike in orchards cultivated with traditional methods, there may be almost no produce at all.

The modern *otzar bet din* method was developed by Rav Kook and endorsed by the *Chazon Ish*, based on a precedent in a *Tosefta* (*Shvi'it* 8:1). This method allows for farmers to observe *Shemita* fully and still earn a salary while the community is provided with *perot shvi'it*. The principle is that a *bet din* (rabbinic court) is set up which acts as a representative of the general community. That *bet din* signs a contract with the farmer, agreeing to rent his equipment and hire him as an employee of the *bet din* to manage the field on behalf of the community (following their *halachic* instructions), and when the time comes to harvest the crops (which are *hefker* and therefore belong to the community at large), package them and bring them to market in convenient locations. The *bet din* then hires grocery store owners or other individuals to distribute this produce for free, but charges a service fee to cover the costs of the rental and salary agreements they made with the farmers and distributors. In this way, the fruits are not sold, but the farmer earns a livelihood and *Shemita* is fully observed.³

³ In practical terms, the consumer may walk into the same grocery store, and pay at the same cash register, for *otzar bet din* products as for regular groceries. The *halachic* significance of this transaction is, however, different – one is not **buying** these products, but rather paying a **service fee** for the work involved in making sure that *perot shvi'it* grow and are available to the public. The handling and marketing of this produce should be supervised by the *bet din*, and the prices that are charged should be set by them and not by the market.

Although some rabbis require *otzar bet din* products to be cheaper than the market price for that particular type of produce, the reality is that producing and distributing *perot shvi'it* is not less expensive. In fact it is often more expensive, both as a result of the additional skilled labor required, and the costs of the rabbinical supervision itself. Therefore, the price for *otzar bet din* products may even be higher than the market rate.

Otzar bet din products have *kedushat shvi'it* and must be treated accordingly (see above). When available, many *halachic* authorities feel this is the best option to use – one is supporting Jewish farmers who are observing *Shemita* properly and are also not resorting to the option of selling their land to non-Jews (see below on “*heter mechira*”), and additionally one has the privilege of eating *perot shvi'it* (again, see above). Therefore, this would be the preferred option when available – typically for fruits, and for vegetables during the first few months of *Shemita*, before the *issur sfichin* begins.⁴

⁴ Vegetables marked “*otzar bet din*” were planted prior to the *Shemita* year and harvested during the first months of *Shemita*. According to the prevailing opinion, these vegetables, which have *kedushat shvi'it*, are permitted. However, as the *Shemita* year progresses these vegetables will be used up, and new ones will need to be planted. At that point, other methods must be used.

MATZA MENUTAK (GROWN IN SPECIAL GREENHOUSES)

As explained above, vegetables and other annual crops that need to be planted each year pose a particular problem during *Shemita* – both because the seeds cannot be planted and because of the *issur sfichin*. The *matza menutak* (meaning “disconnected surface”) provides a method of growing many such vegetables during *Shemita* in a *halachically* permissible way.

There is an unresolved doubt in the Jerusalem Talmud (*Orla* 1:2) as to whether or not it would be permitted to plant seeds in the ground inside of a house during *Shemita*. Although some authorities are lenient on this issue, the general practice is to prohibit it. There is a separate discussion regarding the potential permissibility of planting seeds in flower pots that are completely disconnected from the ground (*atzitz she'eino nakuv*) – it is not clear whether such flower pots would be covered by the prohibition of “working the land” in *Shemita*. Here as well, the general practice is to be strict.

However, the *Chazon Ish* wrote that if one combines both of these two potential leniencies by planting in a disconnected flower pot inside of a house, it can be allowed. Based on this, a method has been developed in Israel of growing certain types of vegetables (eg, peppers, cucumbers) in soil that sits on large plastic surfaces inside greenhouses, completely disconnected from the ground. According to most contemporary authorities, this method fulfills the criteria of the *Chazon Ish* and can be used to plant vegetables during *Shemita* without reservation (*l'chatchila*). *Matza menutak* is thus an excellent solution for vegetables once the initial period of *Shemita* is over and the *issur sfichin* begins. While vegetables grown in *matza menutak* do not have *kedushat shvi'it*, using them avoids problems of *sfichin* and also brings the benefit of supporting a Jewish farmer who is keeping *Shemita*.

NON-SHEMITA PRODUCE

During the *Shemita* year, one can get various types of agricultural products that are not connected to *Shemita*. While eating these products does not bring the benefits of partaking in *kedushat shvi'it*, it also guarantees no problems of *sfichin*, and there are no restrictions on the use and disposal of the food.

A common example of this category is *yevul shishit* (produce of the sixth year). During the first weeks of *Shemita*, some of the fresh vegetables being sold will have actually been harvested before Rosh Hashanah. In some cases, crops are grown extra early and high-tech storage techniques are used to preserve vegetables for longer periods. These vegetables have no *Shemita*-related issues.

Canned and frozen vegetables from the sixth year are available for a much longer period (they are often marked “*lo mishnat Shemita*” or “*l'lo chashash shvi'it*”). As mentioned above, fresh fruits, as well as wine and grape juice, are from the sixth year until the spring or summer of *Shemita* (tables are available that list the dates of *kedushat shvi'it* for each type of fruit and vegetable. One such list, in Hebrew, is available online at <http://tinyurl.com/shemita-list>).

Products imported from outside of Israel have no sanctity even if grown during *Shemita* itself. Certain types of products sold in Israel today (for example, wheat flour) are usually imported even during other years – these products also have no *Shemita* issues.

During *Shemita* there will be special imports as well, for those who do not want to rely on the *heter mechira* (see below). As will be explained, there are *halachic* reasons to prefer avoiding the *heter mechira*, and therefore imports may be a good option. On the other hand, it should be recognized that allowing additional imports into the Israeli market often creates competition for Israeli farmers that continues after *Shemita* as well. Farmers have reported that in past *Shemita* years, they lost a certain percentage of their market share to new competitors who maintained part of that market share in future years as well. This loss is not only relevant to the farmers' personal livelihoods, but has an impact on the entire Israeli economy, as well as on the struggle to settle Eretz Yisrael and build a Jewish society here.

Therefore, while from a certain perspective imports are preferable to *heter mechira* products, there are also significant *halachic* reasons to limit reliance on imports to a level that does not damage the Israeli agricultural economy.

HETER MECHIRA

Many of the disputes regarding *Shemita* today revolve around the *heter mechira*. The use of this *halachic* device (in one form or another) goes back several hundred years, as does the opposition to it. *Halachic* authorities of the highest caliber throughout recent generations (including Rav Yitzchak Elchanan Spektor, Rav Tzvi Pesach Frank, Rav Kook, Rav Yechiel Michel Takuchinsky, Rav Ovadia Yosef and others) have endorsed it. Authorities of equally great stature (such as the *Netziv*, the *Chazon Ish*, Rav Shlomo Zalman Auerbach, Rav Moshe Feinstein and others) have opposed it.

The principle of the matter is that farmers temporarily sell their land to a non-Jew for the duration of the *Shemita* year. According to the *heter*, following such a sale, as non-Jewish land the laws of *Shemita* (or at least some of them) do not apply. *Melachot de'oraita* are to be done only by non-Jewish workers, and the produce is then considered to have no *kedushat shvi'it*, according to the general practice regarding *yevul nochri* (see below). According to this approach, there is also no *issur sfichin*, because the land is owned by a non-Jew.

The *heter mechira* rests upon a number of *halachic* assumptions, and those who do not accept it may object to one or another of these assumptions. One major argument is that there is a prohibition, based on a biblical verse (*Devarim 7:2*), to sell land in *Eretz Yisrael* to a non-Jew, so that he not be given a foothold in the land of Israel. According to this, performing a *heter mechira* violates a biblical prohibition. Those who permit it defend the practice based on a number of factors: the sale is only temporary, the non-Jew involved is not an idolater and in any case already owns land in Israel, and most significantly: the ultimate purpose of this sale is to **strengthen** Jewish settlement and land ownership, ultimately **preventing** non-Jews from gaining more footholds in the Land of Israel.

Another argument against the *heter* says that even if the sale itself is allowed, it remains prohibited for Jews to actually work in fields owned by non-Jews. Although the *heter mechira* stipulates that *melachot de'oraita* are to be performed only by non-Jewish workers, this stipulation is sometimes ignored by farmers, and in any case the *heter* allows *melachot derabbanan* to be performed by Jews. The legitimacy of this permission is subject to dispute.

The above objections relate primarily to the farmer himself, and not to a person shopping in a local supermarket. Even if one holds that the farmer who utilized the *heter* and the rabbi who facilitated it violated these prohibitions, once it has been done,

the produce that grows in those fields would still be permitted. If this is the case, realizing that the farmers do have legitimate authorities upon whom to rely, there would be no problem using the produce after the fact (even for one who holds that an actual prohibition was violated by selling the land and/or working in it).

On the other hand, there are other objections that might prohibit the produce even after the fact (*bidieved*). The main objections in this category come from those who question whether the sale of the land actually has *halachic* validity. Some argue that the sale is done as a legal technicality, and none of the parties involved (Jewish landowner, non-Jewish purchaser and even the rabbi who supervises the sale) really intend to actually sell the land. Since everyone involved views it as a legal fiction, some rabbis feel the sale is not valid.

It should be noted that similar objections can be raised regarding the almost universal practice of selling large quantities of *chametz* to a non-Jew before Passover (and in that case the *halachic* issue is more severe: the prohibitions of *chametz* on Passover are biblical in nature, whereas the majority opinion holds that *Shemita* in our times is rabbinic). Nevertheless, because this sale involves real estate and not merely moveable property, some hold that this sale does not have *halachic* validity under the conditions mentioned above. If so, the field remains the property of the original Jewish owner, and vegetables grown there would be prohibited because of *sfichin*. For this reason, some authorities prohibit partaking of **vegetables** grown with *heter mechira* after the time that the *issur sfichin* begins for that type of vegetable (see the charts such as the one referenced above). Even according to this opinion, though, **fruits** grown in *heter mechira* fields are still permissible according to most authorities (but according to those who don't accept the *heter*, they must be treated with *kedushat shvi'it*.)

It should also be mentioned that the Chief Rabbinate of Israel (which is responsible for implementing the *heter mechira*) has made some significant changes in procedure over the past few *Shemita* cycles, and many of the problematic details of the sale have been addressed and improved, so that there is more reason to view the sale as legitimate at this time than in previous generations. Nevertheless, many rabbis are still strongly opposed to reliance on *heter mechira*.

Finally, it should be pointed out that even the biggest proponents of the *heter mechira* (such as Rav Kook) viewed it as a necessary evil, and urged Jews in each generation to seek out ways of minimizing – and eventually eliminating – the need to sell parts of Eretz Yisrael to non-Jews, in order to temporarily remove the sanctity from the land to avoid having to observe the laws of *Shemita*.

Therefore, if one is faced with a choice between *heter mechira* products and similar products grown by Jews who observe *Shemita* without reliance on the *heter mechira* (for example, *otzar bet din* or *matza menutak*), many authorities strongly prefer to avoid the *heter mechira*. However, if the only available options are *heter mechira* or non-Jewish produce (either from local Arabs or from special imports – see below), then the situation is more complex:

- Those who choose the *heter mechira* are certainly relying on valid *halachic* opinions.
- Those who choose in such cases to purchase non-Jewish products are also following valid authorities, and as far as the specific laws of *melacha* in *Shemita* and *issur sfichin* are concerned, are upholding stricter standards. On the other hand, there are significant *halachic* reasons to avoid giving additional business to non-Jewish farmers during *Shemita* (see above regarding imports and below regarding Arabs).
- There is also a third option which can be considered: simply avoiding that type of vegetable altogether, and instead waiting until later or consuming other types of produce that can be bought from Jews without *heter mechira*.

NEGEV AND ARAVA

Jewish settlement in the Land of Israel covered a larger area during the time of the first *Bet HaMikdash* than it did during the second (the law governing areas settled in the time of the second Temple is called *kedushat olei bavel*, whereas the areas settled only in the time of the first Temple are called *kedushat olei mitzrayim*). The Rambam (*Hilchot Shemita veYovel* 4:26) writes that whereas there is a prohibition of *melacha* in the areas settled only in the time of first *Bet Hamikdash* but not in the time of the second, the *issur sfichin* does not apply in these areas. There is also some disagreement as to the definition of these borders and their application to the borders of the modern State of Israel.

In practical terms, this gives a different *halachic* status to farms located in the Arava area (according to some, this means anything south of the Dead Sea and *Nachal Tzin*; according to others only areas further south). Some authorities apply these leniencies also to the northwestern Negev area.

Although planting in open fields in these areas may still be prohibited, there will be no *issur sfichin*. In order to avoid doubt, a *heter mechira* (see above) is performed for these farms, but because of the additional leniencies, many authorities who don't rely on "regular" *heter mechira* do accept produce grown in this way from the Arava and/or Negev.

YEVUL NOCHRI (NON-JEWISH FARMERS IN ISRAEL)

There is one other commonly available option for fruits and vegetables during *Shemita*: buying from Arab farmers who live in the land of Israel (known in Hebrew as *yevul nochri*). This is the preferred practice of most of the “*Badatz*” supervisions, and the most common option preferred in the *haredi* community in Israel.

There is a dispute between the *Bet Yosef* and the *Mabit* whether produce grown by a non-Jew in the land of Israel during *Shemita* has *kedushat shvi'it* or not. The custom in Jerusalem and most of the rest of the country follows the opinion that it does not. However, in Benei Brak, the custom is to follow the position of the *Chazon Ish* to treat *yevul nochri* with *kedushat shvi'it*. Even according to the *Chazon Ish*, however, there is no problem of *sfichin* with *yevul nochri*.

For this reason, as mentioned above, the common practice in the *haredi* community is to rely on *yevul nochri* (at least for vegetables) during *Shemita*. Here as well, however, one needs to consider the impact on the Israeli agricultural economy of giving additional business to Arab competitors (certain produce sold in Israel is from Arab farmers in other years as well – in these cases, where no additional market share is being created because of *Shemita*, this concern does not apply).

In the current political and military climate, this question also has implications that go beyond the economic. Some of the Arab farmers involved are affiliated with organizations like Hamas that are at war with the Jewish people. Additionally, in the past *Shemita* year, the Israeli government agreed to allow some imports from the Hamas-controlled Gaza strip in order to meet the demand for *yevul nochri* during *Shemita*, even though such imports had been banned in principle for security reasons. If so, it is possible that some of the money spent on vegetables during that *Shemita* helped fund Hamas and their terror activities. While it remains to be seen whether this phenomenon will be repeated, this is also a serious *halachic* concern.

A series of seven audio lectures on the laws of Shemita given in 2007 by the author of this booklet is available online here:

<http://www.yutorah.org/search/?teacher=81782&category=0,234074>

ABOUT THE AUTHOR



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