

הלכה ברורה Halacha Berurah

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SHMITTAH — AND — THE DALED MINIM

What the Consumer Should Know

Reviewed by Horav Yisroel Belsky

The Mitzvah of Shmittah

The Torah commands us regarding the land of Eretz Yisroel, “*Veshovsah ha'aretz Shabbos laHashem - The seventh year shall be a complete rest for the land - a Shabbos for Hashem.*”¹

This mitzvah invokes a fundamental aspect of *emunah*. It requires one to recognize that Hashem is the Source of all the abundance that one merited for the past six years. Once in seven years, one is required to remove his ownership, return his land to Hashem, and partake only in its fruit. One is thus considered a guest, eating Hashem's produce in Hashem's home.² The Torah gives a *bracha* that if one will heed the *mitzvos* of *Shmittah* to their fullest, one will merit that his field will produce an abundant crop in its sixth

year which will nourish him for *Shmittah*, the seventh year.³

During the last few *Shmittah* years, Eretz Yisroel has seen a radical change in the number of farmers being *moser nefesh* to rise to the challenge and resist from cultivating their crops. The entire year of *Shmittah* presents a major challenge for all the *Yidden* living in Eretz Yisroel who have to adapt to an entirely new lifestyle and are suddenly governed by a whole new set of *halachos* that must be taken into consideration every time they purchase and eat food, dispose of their leftovers, and water their gardens and plants. The applicable *halachos* affect many other aspects of their daily lives as well.

In *chutz la'aretz*, much of the study of *Hilchos Shmittah* has been neglected and forgotten, unfortunately, as they are rarely relevant to those living in the Diaspora. Most *kashrus* organizations are very scrupulous regarding these *halachos* and careful not to accept *Shmittah* produce from Eretz Yisroel, primarily because people in *chutz la'aretz* would not be familiar with all the *halachos* regarding

treating *peiros Shmittah* with the proper sanctity.

The time when these *halachos* are most relevant for those in *chutz la'aretz* is prior to the *Yom Tov* of *Sukkos* following a *Shmittah* year, when *Arbah Minim* imported from Eretz Yisroel becomes a major concern. In addition to the regular *halachos* of *Shmittah* that apply, *Arbah Minim* present a whole host of complexities regarding *Shmittah* that must

be carefully analyzed and dealt with.

In this article, we will begin by discussing the basic *halachos* of *Shmittah* and then lead up to the focal point of our discussion, namely, *Arbah Minim* that come from Eretz Yisroel. Additionally, we will discuss the recent tumult in Eretz Yisroel concerning certain *esrogim* and *lulavim* that some *rabbonim* forbade using.

The Observance of Shmittah Nowadays

The first *Shmittah* year was observed in 2509, the 21st year after *Klal Yisroel* entered Eretz Yisroel, during the time of Yehoshuah Bin Nun.

The *mitzvos hateluos ba'aretz*—*mitzvos* which are dependent on the land of Eretz Yisroel—are only obligatory *Min HaTorah* when Eretz Yisroel possesses an additional level of *kedushah*. When *Klal Yisroel* entered the land of Eretz Yisroel during the time of Yehoshuah, it took them seven years to conquer it. It is this conquest that imbued the land with *kedushah*.

Please Note: Due to the intricacy of the material discussed in each issue, and the brevity of its treatment, a Rov should be consulted for a final psak halacha. In addition, this publication does not intend to be *מכריז* on issues that are a *machlokes haposkim*. Although we have usually brought the dissenting views in the footnotes, we have selected for simplicity sake to incorporate into the main text the views of the *Mishnah Berurah*, *R' Moshe Feinstein*, *R' Shlomo Zalmen Auerbach* and several other preeminent *poskim*. Please send all questions and comments to 1341 E. 23rd Street, Brooklyn, NY 11210 or email to hbinfo@thekosher.net

There is an additional component needed to attain the full *kedushah* to obligate *Klal Yisroel* in the *mitzvah* of *Shmittah*, and that is for Eretz Yisroel to be divided amongst the *shevatim*. This was needed so that it would be possible to say, “This is *your* field,” or, “This is *your* vineyard.” This division took an additional seven years. After this initial fourteen-year period—seven years for the conquest and seven years to divide the land—*Klal Yisroel* began counting the seven-year cycle of *Shmittah*.⁴

There is a dispute amongst the *Tannaim*, *Gaonim* and *Rishonim* whether this *kedushah* still remained after the destruction of the first *Bais Hamikdosh*, when *Klal Yisroel* went into exile.⁵

According to those who maintain that the *kedushah* was nullified, the land became re-sanctified when *Klal Yisroel* returned and began reconstructing the *Bais Hamikdosh* during the days of Ezra. This second *kedushah* was not established by means of conquest, but due to *chazakah*, meaning that it was reestablished by the Jews resettling there.

According to the *Rambam*, this second *kedushah* was established to last forever (a *kedushah* known as “*kidsha le’osid lavo*”). There is, however, a dispute as to whether this renewed *kedushah* obligated *Klal Yisroel* in the *mitzvos ha’aretz* on a *Mide’oraisadike* level.⁶

Concerning *Shmittah*, there is another aspect one must take into account.

The Torah commands *Klal Yisroel* to count 49 years. In the fiftieth year, states the Torah, we are to observe *Yovel*. Thus, for two consecutive years—the 49th year of *Shmittah* and the 50th year of *Yovel*—there is a cessation of work on the land.

There are two conditions needed for *Yovel* to apply:

1. All of *Klal Yisroel*, or, according to some *shitos*, a representation of each of the *shevatim*, must be living in Eretz Yisroel.
2. The land must be inhabited in the same manner as it was designated at the time of the division of the land.

There is a *machlokes Tannaim* whether, in the absence of *Yovel*, there

exists a commandment *Min HaTorah* to observe *Shmittah*. This is a *machlokes Rishonim* as well.

It appears that most *Rishonim* and later *poskim* maintain that the laws of *Shmittah* nowadays are *Miderabonon* and not *Mide’oraisah*. Nonetheless, this is only taken into consideration in certain unique cases. In general, all the *halachos* of *Shmittah* apply.⁷

The Torah Prohibitions

During a *Shmittah* year, the Torah forbids four distinct agricultural *melachos*:

1. *zeriah* - sowing
2. *zemirah* - pruning
3. *ketzirah* - harvesting
4. *betzirah* - picking

Chazal note that *hilchos Shmittah* is unlike *hilchos Shabbos*, which consists of *avos* and *toldos*. For example, in *hilchos Shabbos*, pruning and picking are included in the prohibition of sowing and harvesting. From the fact that the Torah chose to specifically list certain *melachos*, despite their similarities, *Chazal* deduced that only these agricultural *melachos* are forbidden by the Torah during *Shmittah*. *Chazal*, however, enacted a set of additional forbidden *melachos*, such as watering the ground, placing natural manure and chemical fertilizer, removing pebbles and stones, and spraying the produce.⁸

Plowing is forbidden *Min HaTorah*, but is not forbidden through a *lav*—an explicit negative commandment—and therefore one does not incur a penalty of *malkos* for violating these prohibitions. Planting—which means propagating a branch into the ground to stimulate growth, instead of the use of seeds, which is called sowing—although not mentioned in the Torah, is considered the same as sowing and is forbidden *Min HaTorah*.⁹

Melachos Needed to Preserve a Crop

Chazal state that *melachos* that are forbidden *Miderabonon* may be performed during *Shmittah* if one’s intention is to prevent one’s trees from getting ruined and thereby causing one a loss. However, if one’s actions are being performed to enhance the trees and increase their value, they are forbidden.

A common application is the act of watering to prevent a field from drying out and getting ruined.¹⁰

Although the *Gemara* discusses acts performed for the preservation of trees, the *Chazon Ish* writes that acts done for the preservation of the produce itself are included in this *heter*. Therefore, in a case where a tree can withstand the lack of irrigation but the produce will die, one would be permitted to water the produce.¹¹

Acts Performed Unintentionally

Another application where there is a distinction between *melachos Derabonon* and *De’oraisah*, according to many *poskim*, is with regard to acts performed unintentionally. For example, if one is mopping the floor of his house and he pushes water onto his porch and over the ledge (as is commonly done in Eretz Yisroel), according to many *poskim*, even though the water will pour down onto his garden, it is permitted. This is because the act of watering the garden is a *melacha Derabonon* and, in this case, is being done unintentionally. Additionally, if one has plants in a closed porch and he wants to open the roof for the sake of placing *s’chach* there for a *sukkah*, many *poskim* permit doing so even though the act of opening the roof will benefit the growth of the plants.¹²

Fields to Which the Issur of Shmittah Apply

There is a discussion in the *Gemara* whether land in Eretz Yisroel acquired by a non-Jew retains the *mitzvos* that previously applied to that land. This is discussed further by the *Rishonim* and later *poskim*.¹³

The *minhag* in Yerushalayim has always been to be lenient in regard to its *Shmittah* produce (i.e., the produce does not have *kedushas shvi’is*). [As for Jews working the land, that is an entirely separate discussion which is beyond the scope of this article.] For this reason, the *Eidah Hachareidis* in Yerushalayim has certified fruits and vegetables grown in fields owned by Arabs. Strict and extensive supervision is put into place to monitor the produce of the Arabs and to ensure that all produce labeled as coming from non-

Jewish owned land is indeed what the labels claim it is. The supervisors verify that the wholesalers and retailers are not purchasing produce from Jewish owned land and then reselling it as produce from non-Jewish owned land.

During the current *Shmittah* year, due to safety concerns involved in having *mashgichim* frequent and staying overnight in certain fields in Arab territories, hi-tech monitoring, including satellite cameras, was put into place.

Regarding this issue of produce from land owned by a non-Jew, the *Chazon Ish* was *machmir*; he considered such produce to have *kedushas shvi'is*. Therefore, although it is permitted to be eaten, one must be careful to treat it properly as produce that has *kedushas shvi'is*. The *minhag* in Bnei Brak is to follow this ruling of the *Chazon Ish*. More recently, a number of people living in Yerushalayim have adopted this stringent view as well.¹⁴

Heter Mechirah

It is beyond the scope of this article to provide a full and comprehensive treatment of the complex issue of *heter mechirah*. We will present a summary, with some brief details.

At the turn of the century, most people in Eretz Yisroel were very poor. The primary income came from agriculture. If farmers were going to be prevented from earning a living—such as during *Shmittah*—it presented a serious question of possible *pikuach nefesh*.

At the time, there were some *rabbonim* who permitted the *Yidden* in Eretz Yisroel to sell their field to Arabs, thereby removing the *kedushah* of the land and permitting work to be done there. This has become known as “*heter mechirah*.” The *gedolim* in Europe to whom this *shailah* was posed and who permitted it included Rav Shmuel Mohliver, *rov* of Bialistock; the *Yeshuas Malko*, *rov* of Kutna; and Rav Shmuel Zanvil Klepfish, a leading *rov* in Warsaw. Leading this group of *rabbonim* was the Kovno *Rov*, Rav Yitzchok Elchonon Spector. In Eretz Yisroel, Rav Shmuel Salant, Rav Yehoshuah Leib Diskin and the *Aderes*, al-

though initially opposed to it, permitted it as well under certain conditions. In Europe, the question was also posed to the *Netziv* and the *Beis Halevi*, who vehemently opposed selling land to Arabs to allow work to be done during *Shmittah*.¹⁵

At the time, the *Netziv* wrote that selling land to a non-Jew in Eretz Yisroel violates the prohibition of “*lo seichoneim*.” One definition of this *lav* given in the *Gemara* is “*lo sitan lohem chaniyah b'karka*,” that one may not give them a dwelling in the land of Eretz Yisroel.¹⁶

Rav Yitzchok Elchonon Spector disagreed with the *Netziv* and maintained that this *lav* applies only to a perpetual sale and not to a short-term sale.¹⁷

During the *Shmittah* years that followed, as the conditions in Eretz Yisroel improved, all the *rabbonim* forbade the sale of land. The *rabbonim* at that time included the *Ridbaz* and Rav Chaim Berlin.¹⁸

Rav Avrohom Yitzchok Kook defended the *heter mechirah* even in the later years. However, even he stressed that certain conditions had to be met. He also delineated a number of restrictions on the farmers. Unfortunately, while some people point to Rav Kook's ruling permitting the *heter mechirah*, those same people often ignore the restrictions he put in place. It is highly questionable whether Rav Kook would permit the *heter mechirah* in contemporary times.¹⁹

The final ruling on this matter was issued by the *Chazon Ish*, the *posek hador* and the foremost expert and authority on *hilchos Zeraim*. He maintained that there is an absolute prohibition to sell the land. Furthermore, he said that since there are agents used in the process of the sale and there is a principle in *halacha* of “*ain shliach l'davar aveirah*”—one cannot appoint an agent to perform a forbidden activity—the sale is thus null and void. Additionally, the *Chazon Ish* was of the opinion, as we mentioned in the previous section, that even fields of non-Jews possess *kedushas shvi'is*.²⁰

Over the years, the *heter mechirah* became less common, as many members

of the *Rabbanut* also opposed the practice.

An interesting incident occurred during the negotiations of the Oslo Accords in the early 1990s, when a person approached the Israeli government and claimed that Israel had no authority to give away the northern portion of Israel to the Arabs, as that year was *Shmittah* and Israel had sold that land as part of the *heter mechirah*. It therefore did not belong to them, contended this individual. The issue was debated at length and the Knesset ruled that the sale is considered merely a religious one and not a legal one. This conclusion by the government—blatantly claiming the illegitimacy of the sale—led many members of the *Rabbanut* to no longer rely on the general *heter mechirah* and to conduct only smaller, private sales of land.

Currently, none of the upper echelon *hechsheirim* in Eretz Yisroel or the United States relies on the *heter mechirah*.²¹

Fruits and Vegetables

There is much discussion in the *Gemara*, *Rishonim* and later *poskim* as to the determining factor for a crop to be considered a seventh-year crop, which is subject to *kedushas shvi'is*. Crops that are determined to be a seventh-year crop are referred to as *peiros shvi'is* and are permitted to be eaten provided that the guidelines listed in the next section are adhered to.

Fruits are designated by the time when *chanatah* takes place, i.e., when it becomes edible or the blossoms fall off and the fruit becomes discernible.²²

Vegetable plants, whose fruit die every year and re-grow each year, are designated by the time they are picked.²³

Olives are governed by the time they reach the first third of their growth.²⁴

There is not much practical relevance to this determining factor of vegetables. *Chazal* forbade the consumption of vegetables that grew during *Shmittah*, which are called *sefichin*. Generally, vegetables can grow on their own without being planted. *Chazal* feared that unscrupulous individuals will plant vegetables during

Shmittah and claim that they grew on their own and are therefore permitted to be eaten as long as one treats them with *kedushah*. Chazal therefore forbade them altogether.²⁵

There are some exceptions, however.

According to many *poskim*, if the vegetables sprouted before *Shmittah*, the *issur* of *sefichim* does not apply, and one need not treat them with *kedushah* unless they were picked during *Shmittah*. This is generally the case for vegetables that arrive on the market before the winter sets in.²⁶

Although bananas are *halachically* considered to be vegetables, nonetheless, the *issur* of *sefichin* does not apply to them, since they take a while to grow. Therefore, if bananas are available during *Shmittah*, they must have been planted during the prior year.²⁷

In addition, even according to those who are stringent concerning foods grown on fields owned by non-Jews and maintain that they must be treated as having *kedushas shvi'is*, the *issur* of *sefichin* would not apply to such vegetables. These vegetables, though, have to be eaten with *kedushas shvi'is* if they are picked during *Shmittah*.²⁸

Correct Treatment of *Peiros Shevi'is*

The Torah permits one to consume *peiros shevi'is* provided that they are eaten in their normal manner and are not destroyed. Foods that are normally cooked must be eaten cooked, and foods normally eaten raw may not be cooked.²⁹

Leftovers, including food that is fit for human or even animal consumption, according to some *poskim*, may not be disposed of in a destructive manner. Disposing leftovers together with one's other garbage causes them to rot and deteriorate quicker. In Eretz Yisroel, *Yidden* have a special bin called a "*Pach Shmittah*," which is a receptacle where they leave the leftover food until it spoils on its own and can then be thrown out. Some store the leftovers from each day separately, because putting them together might cause a transfer of bacteria and

thereby quicken the rate at which the food will rot.³⁰

Mitzvas Biur - Renouncing Ownership

The Torah commands us to cease eating the produce at a time when there is no more of that produce available in the fields for the poor people or for the animals. This commandment is referred to as the *mitzvah* of *biur*. This teaches us that, on a given date, when the season is over and the fields are barren, each type of produce must be removed from people's houses and rendered ownerless.³¹

Lists are circulated in Eretz Yisroel with the exact cut-off dates indicating until when various types of produce are permitted to be in Jewish homes. This applies even if the produce was altered from its original state, such as if it was dried, pressed, pureed, etc.³²

One is permitted to leave for himself and for each member of his household three meals worth of each particular produce. Prior to the time of *biur*, one may also give his neighbors and his family three meals worth of each particular produce. Anything in excess of that amount that is in one's house at the time of *biur* must be made ownerless.³³

At that time, one must declare that produce ownerless in front of three people. All those who are present then take from that produce and bring it to their homes. Once the three people are given the opportunity to take the produce for themselves, the original owner may reacquire it and bring it back to his house.³⁴

The *mitzvas biur* is not applicable to fruits that do not rot in the field and are available all year round on the trees.

Shomer Vine'evad - Crops that Were Guarded or Cultivated

During the *Shmittah* year, the Torah forbids one to guard his field or perform any *melacha* that resembles actions performed by an owner. One must declare his field ownerless and may only pick its fruit in a manner that is permitted to everyone else. Picking produce that has *kedushas shvi'is* may only be done in a manner that is for personal use (e.g., by

hand or with a simple utensil) and in small quantity. Mass picking in a manner done for commercial use is forbidden.³⁵

If the owner guarded his field and did not allow others to enter freely, or if he cultivated the produce, there is a *machlokes* amongst the *Rishonim* whether the produce is forbidden to be eaten. Some are stringent even with regard to *hana'ah*—deriving pleasure from it—but most permit having *hana'ah*.³⁶

The *Chazon Ish* ruled that such produce is permitted to be consumed, but that if other produce is available, one should consume the other produce. Many people in Bnei Brak rely on the *Chazon Ish's* leniency, while the old *minhag* in Yerushalayim is to be stringent.³⁷

ARBAH MINIM - THE FOUR SPECIES FOR SUKKOS

Esrog

There is a discussion in the *Gemara* whether an *esrog* is to be compared to a fruit, whose *kedushas shvi'is* is determined by the time it blossoms, or to a vegetable, whose *kedushas shvi'is* is determined by the time it is picked. The *Rambam paskens* that it has the stringencies of both, because although an *esrog* should be considered a fruit since it grows on a tree, nevertheless, since it requires both irrigation and rainwater like a vegetable, it must be compared to both of them. However, even according to the *Rambam*, it does not have the *din* of *sefichim*, the added stringency placed on regular vegetables.³⁸

Practically speaking, *esrogim* that grow either in the 6th or 7th year are picked the same year as their *chanata*. This is because the *esrogim* of the sixth year (i.e., *esrogim* whose *chanata* took place during the sixth year) are generally picked right away, prior to the *Rosh Hashanah* of the seventh year, to avoid issues of *Shmittah*. The *esrogim* of the seventh year are generally picked that year and have *kedushas shvi'is*. By the time *Rosh Hashanah* of the 8th year comes around, almost all the *esrogim* trees are

already barren, as virtually all *esrogim* have been picked.³⁹

Cultivating an Esrog

Cultivating *esrogim* has been a much discussed topic amongst contemporary *poskim* and has made headlines recently.

There are generally 6 activities that must be performed to prevent *esrogim* from getting ruined while they are growing:

1. Watering
2. Spraying of pesticides - The *esrogim* are sprayed to prevent insect infestation which ruins the quality of the *esrogim*.
3. De-thorning - The thorns that extend from the *esrog* tree must be removed to prevent them from making holes in the *esrogim*.
4. Fastening - The branches are fastened with string to prevent the *esrogim* from being blown around by the wind and banging into the other parts of the tree.
5. Removal of leaves - The leaves near the *esrog* must be removed to prevent them from making 'bletlach,' or marks, on the *esrogim*. Also, the larger leaves prevent the pesticides from reaching all parts of the *esrogim*.
6. Spraying the *pittim* - The *esrogim* are sprayed to prevent their *pittims* from falling off.

A number of these activities are not considered *avodas karkah*, forbidden agricultural work. For example, most *poskim* do not consider de-thorning and fastening to be *melachos*. These acts are not performed on other types of trees, they do not directly improve the quality of the fruit, and they are only performed on *esrogim* trees to prevent the *esrogim* from getting blemished. The other activities, however, are considered standard agricultural acts which are generally forbidden *Miderabonon*.⁴⁰

We mentioned above that *Chazal* permit the performance of *melachos Derabonon* to prevent a tree from getting ruined. The *Chazon Ish* writes that this permission also applies to activities that prevent the fruit itself from getting ruined.

Rav Yosef Shalom Elyashiv is of the opinion that these acts are permitted only to protect the fruit so that one can eat it. However, if one's intention is for a *mitzvah*—i.e., to be able to use the *esrog* for *Arbah Minim*—no such *heter* exists.⁴¹

Rav Nissim Karelitz and Rav Shmuel Vosner both rule that even if one is performing these acts to protect the fruit so that it will be fit to be used for a *mitzvah*, it is still permitted. However, they stress that it is only permitted to enable the actual performance of a *mitzvah*. This does not permit activities done for *hiddur mitzvah*, the enhancement of the *mitzvah*.⁴²

Types of Work Permitted

Rav Karelitz and Rav Vosner permit acts 1-5 (listed above) to be performed. However, they forbid spraying an *esrog* to cause it to retain its *pittim*, since a *pittim* that falls off while an *esrog* is growing does not *pasul* the *esrog*. Spraying in order to retain the *pittim* would therefore be considered an act done for *hiddur*, which, as we mentioned, is forbidden.⁴³

The *Eidah Hachareidis* in *Yerushalayim*, however, permits spraying an *esrog* based on the assertion of their *poskim* that retaining the *pittim* is much more than *hiddur*, since, in their circles, people would not use an *esrog* that does not have a *pittim*.⁴⁴

Using an Esrog On Which Forbidden Work Had Been Performed

We mentioned above that produce that had work performed to it is subject to a *machlokes Rishonim* as to whether one is permitted to consume it. The *Chazon Ish* was lenient in this regard, while the *minhag* in *Yerushalayim* is to be *machmir*.

The Torah tells us that an *esrog* must be "lochem"—it must belong to you for the *mitzvah* to be fulfilled. Included in "lochem" is that the *esrog* must be fit for you to eat.⁴⁵ According to many *Rishonim*, an *esrog* that is forbidden to be eaten may not be used to fulfill the *mitzvah* on the first day(s) of *Yom Tov*. According to the minority of *poskim* who rule that it is forbidden *behana'ah* as

well, it would be forbidden all days of *Yom Tov*.

There is a concept that "*mitzvos lav leihanos nitnu*," which teaches us that *mitzvos* were not meant to derive pleasure from. Therefore, one is permitted to use an item that is forbidden *behana'ah* for the performance of a *mitzvah*, since one need not be concerned about deriving benefit from it. Nonetheless, Rav Elyashiv *shlit"a* and, *lhbcl"c*, Rav Shlomo Zalman Auerbach *zt"l* maintain that this only applies if one is performing the *mitzvah* completely *l'sheim Shomayim*. However, if one derives personal pleasure from walking into *shul* with a beautiful *esrog* or *lulav*, it would be forbidden to use the *esrog* or *lulav* if they are forbidden *behana'ah*.⁴⁶

The *Chazon Ish*, who was more lenient concerning using an item that was *shomer vine'evad* (guarded or cultivated), is quoted as saying that if one can obtain an inferior *lulav* which was not *shomer vine'evad*, that is preferred, rather than obtaining a nicer *lulav* that was *shomer vine'evad*.⁴⁷

Rav Elyashiv recently commented that although, due to his strict standards of which *melachos* may be performed on an *esrog* tree, he would not give his approval on any *esrog* distributed in Eretz Yisroel during *Shmittah*, nevertheless, if an *esrog* is distributed under the *hashgacha* of Rav Vosner or Rav Karelitz, who are more lenient and allow certain additional activities to be performed, it would be permitted to use. Rav Elyashiv explained that the prohibition to use produce that was *shomer vine'evad* serves as a *k'nas*, penalty, for those who violate *Shmittah*. However, if the farmer acted in accordance with the *p'sak* of a *rov*, the *k'nas* would not apply, even for those who disagree with the *rov's* reasoning.⁴⁸

The basic custom is to be lenient in this regard. The *esrogim* generally distributed in Eretz Yisroel during *Shmittah* are either approved by the *Badatz* of the *Eidah Hachareidis*, Rav Karelitz, or Rav Vosner.

Rav Elyashiv, himself, does not use such *esrogim*.⁴⁹

Lulav

The *Gemara* derives from a *posuk* that the only kind of produce subject to *kedushas shvi'is* is that which provides benefit at the same time that it is consumed. This excludes firewood, for example. Since it is first changed into charcoal and then used for baking, it only provides benefit after it has been destroyed.⁵⁰

The *Gemara* mentions that a *lulav*, although it is mainly wood, has *kedushas shvi'is*. *Tosafos* wonders why this is so, since most wood is used for making coals to be used for baking. A *lulav*, therefore, should not be subject to *kedushas shvi'is*. *Tosafos* answers that since many people use *lulavim* as brooms, they offer immediate benefit and therefore possess *kedushas shvi'is*.⁵¹

There is much discussion amongst the later *poskim* as to the *halachic* status of *lulavim* nowadays, since it is not common practice to use them as brooms.

Rav Yehoshuah Leib Diskin was stringent in this regard. It is said that although the *Chazon Ish* maintained that *halachically* a *lulav* does not have *kedushas shvi'is*, he still conducted himself stringently in this regard.⁵²

The accepted *p'sak*, however, is that a *lulav* does not have *kedushas shvi'is*.⁵³

Agricultural Work Performed on Lulavim

Despite the accepted *p'sak* that a *lulav* does not have *kedushas shvi'is*, forbidden agricultural work may not be performed on a *lulav* tree.⁵⁴

The *poskim* discuss whether the concept of *shomer vine'evad* applies to items that grow in Eretz Yisroel but do not have *kedushas shvi'is*.⁵⁵ Rav Elyashiv, Rav Karelitz and Rav Vosner are stringent in this regard. The *Chazon Ish*, however, writes that such produce is completely permitted. It is quoted that the Steipler Gaon ruled this way as well.⁵⁶

Deri Lulavim

Recently, there was a major commotion in Eretz Yisroel concerning the permissibility of using Deri *lulavim* for *Arbah Minim* during *Shmittah*.

Rav Elyashiv, Rav Karelitz and Rav Vosner all issued letters discouraging the use of Deri *lulavim*.

The issue with the Deri *lulavim* revolved around the fact that fertilizer was used in their growth. To simplify the discussion, the question basically boiled down to whether the fertilizer only had an effect on the growth of the palm dates on the *lulav* tree or if it had an effect on the *lulavim* as well.

Rav Elyashiv issued a letter discouraging the use of Deri *lulavim* based on his opinion that if it does have an effect on the *lulav*, the *lulav* would be considered *shomer vine'evad*, as in his opinion *melachos* may not be performed for the purpose of fulfilling a *mitzvah*.

Even Rav Karelitz and Rav Vosner, who permit *melachos* performed in order to prevent the loss of produce even when it is done for a *mitzvah*, discouraged people from using these *lulavim*. What is more stringent concerning *lulavim* than *esrogim* is the fact that a *lulav* to which no *melacha* was done (e.g. fertilization) will still be kosher, though perhaps not as *mehudar*. Performing *melachos* in the interest of *hiddur* is forbidden according to everyone.⁵⁷

Rav Meir Bransdorfer of the Eidah Hachareidis issued a letter this year on behalf of the Eidah permitting the use of Deri *lulavim*. His rationale was as follows. Produce that is *shomer vine'evad* is subject to a *machlokes*, although the *minhag* Yerushalayim is to be stringent. Perhaps, though, *shomer vine'evad* does not apply to produce that does not possess *kedushas shvi'is*. Additionally, those who perform the work on them rely on the *heter mechirah*. Thus, even though the Eidah Hachareidis and others don't recognize the *heter mechirah* as being valid, still, since the people who are performing the work rely on it, the *k'nas* placed on *shomer vine'evad* produce would not apply.⁵⁸

After all these letters were issued, a number of agricultural specialists stepped forward and confirmed that the fertilization directly affects only the palm dates and definitely has no immediate effect on the *lulavim*. The long-term ef-

fect of the fertilizer has not yet been determined conclusively.

Once these reports were presented to Rav Elyashiv, he said that the fact that it has no immediate effect suffices to permit their use.

In North America, many of the leading *poskim*, including Rav Yisroel Belsky and Rav Shlomo Miller, recently issued letters permitting the use of the Deri *lulavim* based on these reports.

There are *lulavim* available on the market which are exported from other countries. Two famous types of *lulavim*, both from Egypt, are the El Arish *lulavim* from the northern Sinai, not far from the Gaza Strip, and the Waltner *lulavim* from Alexandria. They are generally not as beautiful as the Deri *lulavim*.⁵⁹

Hadasim

Hadasim are considered flowers and their status is therefore dependent on whether flowers have *kedushas shvi'is*. Some *poskim* maintain that flowers have *kedushah* if they are fragrant. Others maintain that they are *kadosh* only if they were planted for their scent.⁶⁰

Most *poskim* maintain that *hadasim* do not possess *kedushas shvi'is*. A reliable *hashgacha* is still required for *hadasim* for several reasons, including the fact that *hadasim meshulashim*—the much sought after three-leafed *hadasim*—are produced by cutting the stem and burning it in a certain manner. Obviously, this may not be performed to produce grown in Eretz Yisroel during *Shmittah*.⁶¹

Aravos

Aravos have no *kedushas shvi'is* according to all opinions, since they are considered wood.⁶²

Selling Esrogim

Halacha forbids doing any business with *peiros shvi'is*. There are several methods that people utilize to receive payment for their work and for *peiros shvi'is*.

1. Otzar Bais Din

The most common method of selling *esrogim* and fruit in general in Eretz Yisroel during *Shmittah* is via a method

known as *otzar bais din*. *Otzar bais din* is a concept mentioned by the *Tosefta*. The *Tosefta* states that when people would enter a city with their produce, the *bais din* would allow them to keep three meals worth and the rest was stored in a *bais din* warehouse and distributed to the public.

The *bais din* is permitted to hire workers to cut the produce, pay for storage facilities, and pay for the distribution costs. The *bais din* is entitled to charge the consumer for the cost to provide the produce. The *bais din* is not charging for the produce, but rather collecting reimbursement for the cost involved in making this product available.

The *bais din* may even hire the farmer himself to cut the produce, but the farmer may not receive more money than a fixed salary that is not dependent on the amount of produce sold.

Once the *bais din* annexes a field, it can prevent people from entering the field to pick the produce. The people would have to wait for the *bais din* to distribute the produce. The cutting of the produce may be performed in the normal manner, but the *otzar bais din* does not permit any forbidden agricultural activities to be performed on the field.

The *otzar bais din* approach is simply a method to help people by acting as their *sheluchim*, doing the work for them and providing them with produce. As mentioned, the *bais din* is permitted to collect reimbursement for its work, but since no profit is being made, the charge must be minimal.

This is the common procedure for distributing *esrogim*. The *bais din* cannot charge a different price for each *esrog* depending on its beauty, as that would be considered doing business with *peiros shvi'is*. The *poskim*, however, do permit separating the produce into a few categories based on quality and charging a small difference in price depending on the category. For example, it is permitted to have three grades of *esrogim*, one for \$20, another for \$30, and a third for \$40.

The *esrogim* should be in closed boxes and separated only by category so that it does not resemble normal retail

practices. It is very unfortunate that this *heter* is abused and some sellers convince *botei din* to allow them to charge as much as \$95 for their highest category. The distribution price of *esrogim* should not be that much more than the distribution of oranges. Obviously, there is more supervision and work involved, which accounts for a higher price, but that price must still be reasonable, for otherwise it is clear that significant profit is being made, which is tantamount to doing business with *peiros shvi'is*.⁶³

A disgraceful incident occurred this past *Shmittah* year. A certain *esrog* seller arranged with one *bais din* to serve as his *otzar bais din*. The *bais din* invested a large amount of money to process the *esrogim* in a manner that would be most *lechatchilah*. The *esrogim* were not to be sold in stores but in central distribution houses. The *bais din* insisted that, based on the costs involved, the *esrogim* in the superior category should not be sold for more than \$40 each. In middle of the year, the *esrog* seller found a different *bais din* that permitted him to charge \$95 for that highest category. This seller denied the original *mashgichim* access to his field and turned it over to the other *bais din*. This was in pure violation of *sechorah b'peiros shvi'is*, doing business with *Shmittah* produce, and perhaps a violation of *shomer* as well, by guarding his produce and taking it away from the first *bais din*.

Consumers must be certain about the moral standards of the people they purchase *esrogim* from. Even if the name of a reputable *hashgacha* is printed on the box, it is vital, this year especially, to purchase Israeli *esrogim* only from honest and trustworthy sellers.

2. Paying for the Lulav

The *halacha* is that money used to purchase *peiros shvi'is* acquires *kedushas shvi'is*. If one uses that money to buy a bottle of water, for example, the *kedushah* is transferred to the water. The *Gemara* states that if one sells an *esrog* during *Shmittah*, he should have the buyer pay for one of the *Arbah Minim* that does not have *kedushas shvi'is* (such as the *lulav*) and give the other *minim* for

free. With this method, known as *havla'ah*, the money does not acquire *kedushas shvi'is*. Many *poskim*, however, point out that *havla'ah* does not permit one to do business with *peiros shvi'is*. It is only an option where one is permitted to sell the produce (e.g., such as in a small quantity) that one is permitted to rely on *havla'ah* so that the money received should not acquire *kedushah*.⁶⁴

Moreover, it must be stressed that this method obviously cannot be performed with *otzar bais din esrogim* since the *esrogim* do not belong to them. They are only acting as emissaries to pick and distribute the produce and request reimbursement for the labor and expenses involved. Therefore, a person cannot mandate that he will not give you such an *esrog* unless you purchase a *lulav*. Secondly, the money received from an *otzar bais din* sale does not acquire *kedushah* anyway, as the seller is not being paid for the produce itself, but for the work involved. Therefore, *havla'ah* would not serve any advantage.⁶⁵

3. Selling in Small Quantity

If a person bought an *esrog* and changes his mind about his purchase, he is permitted to privately sell the *esrog* to a friend. This is not called *sechorah*, which is limited to commercial and retail business. The money received for the purchase, though, does acquire *kedushas shvi'is*.⁶⁶

4. Buying on Credit

Many *Yidden* in Eretz Yisroel have the custom to only purchase *peiros shvi'is* with a credit card. Buying *peiros shvi'is* on credit prevents the money received for the purchase from acquiring *kedushas shvi'is*. However, this solution does not obviate the problem of performing *sechorah* with *peiros shvi'is*. In Eretz Yisroel, it is only done when the purchaser relies on a *heter* not to consider the produce *peiros shvi'is* while the consumer is *machmir*, such as in a case where the consumer is stringent concerning produce originating from fields owned by non-Jews while the retailer relies on the *minhag* Yerushalayim to permit it.

According to many *poskim*, the *issur* of *sechorah* is only on the seller. Generally, a consumer may not participate in such a transaction, because it is considered a violation of *lifnei iver lo sitein michshol*. However, if the retailer is relying on a *heter*, there would be no concern of *lifnei iver*. This would generally not apply when purchasing *esrogim*, since *esrogim* are all grown on Jewish owned properties and are therefore considered *peiros shvi'is* according to all opinions.⁶⁷

Exporting to Chutz La'aretz

It is forbidden to take *peiros* of Eretz Yisroel and bring them to *chutz la'aretz*. Some *Rishonim* write that the reason this is forbidden is based on the *mitzvah* of *biur* discussed above. At the end of the season, one has to make the produce ownerless and take it out of one's home. *Le-chatchilah*, this should be performed in Eretz Yisroel.⁶⁸

An *esrog* may not be exported from Eretz Yisroel. If one is traveling to a place where he won't otherwise have access to an *esrog*, the *poskim* consider it an extenuating circumstance and permit him to take an *esrog* with him on the condition that he has a plan for bringing it back prior to the time of *biur* in Eretz Yisroel. *Biur* of *esrogim* takes place around *Chanukah* time during the year following *Shmittah*.⁶⁹

Many *poskim* permit an *otzar bais din* to export *esrogim*, because while the *esrogim* are in the hands of *bais din*, they are considered ownerless and are therefore not subject to the *mitzvah* of *biur*. Thus, there is no reason to forbid exporting and distributing them in *chutz la'aretz*. Once people in *chutz la'aretz* receive them and acquire them, they have already been exported.⁷⁰ When *Sukkos* is over, however, they would be required to be treated as having *kedushas shvi'is*. If one plans on eating the *esrogim*, he must adhere to the *halachos* of *peiros shvi'is* mentioned above.⁷¹ If a person has only one *esrog*, then it is less than the amount needed for three meals and would therefore be exempt from *biur*.⁷²

There are some *poskim* who are stringent and maintain that even an *otzar bais din* may not export *esrogim*, but the *minhag* in *chutz la'aretz* has always been to be lenient in this regard.⁷³

1. ויקרא כהב.
2. עי' חינוך מצ' פד, כתב סופר, וכלי יקר.
3. ויקרא שם כ"בא. ועי' חזו"א סי' יח.ד. שאפשר שיגרום החסא לקפחה, והיחיד (אפילו הוא צדיק) יכול ללקות בגלל חבירו (הרשע), לדעת הסמ"ע בח"מ סי' סז ס"ק ב אין ברכה זו אמורה אלא בזמן ששמיטה נוהגת מן התורה, אך עי' חזו"א שם, וחידושי הר"ם גיטין לו.
4. עי' דברי הרמב"ם בהל' בית הבחירה וט"ז, בהל' תרומות פ"א, ובהל' שמיטה ויובל י"ב, ועי' אריכות בזה בספר על שמיטה מר' דוד מרצ'נט שליט"א בשפת אנגלית, בסוף הספר.
5. עי' עירכין לב', רמב"ם שם. ועי' תוס' יבמות פב. ד"ה ירושה.
6. עי' רמב"ם בהל' תרומות א"ה. אכן עי' רש"י במס' גיטין לו.
7. עי' מור"ק ב', גיטין לו, ועי' ריטב"א שם, ובחינוך מצ' פ"ד ותע"ה, ועי' טור וב"י י"ד סי' של"א, בית הלוי ג"א, חזו"א שביעית ג"דח, הפאת השלחן סי' כג ס"ק כג, שו"ת אחיעזר ח"ב י"ד סי' לט.
8. עי' מור"ק ג', שביעית פ"ב, ועי' רב"ד פ"א.
9. חרישה נאסר מכה עשה בחריש ובקציר תשובות, עי' מור"ק שם, ובענין נטיעה עי' מס' גיטין נ"ג שנלמד מק"ו דומיה בכלל זריעה וכ"ש נטיעה.
10. עי' מור"ק שם דלאוקמי אילנא שרי אבל לאברויי אסור. ועי' רמב"ם פ"א ה"ח וה"י.
11. עי' חזו"א סי' כא: ד"ה, ועי' קובץ תשובות מהגר"ש אלישיב שליט"א ח"א סי' רלא ס"ק ב שפסק של החזו"א נתקבל.
12. עי' תוס' מור"ק יג ד"ה נטייה, דגבי שביעית לא בעינן מלאכת מחשבת, ועי' חזו"א סי' יח סוף אות ו', ובסי' יט אות ב' ד' ו"ד, ועי' קובץ תשובות סי' רל.
13. עי' מס' גיטין מז', ועי' תוס' שם סב. ד"ה אם עודרין, ועי' רמב"ם ה"ל תרומות א"י.
14. במקור הדברים הוא מ"ח גדולה בין הב"י בשו"ת אבקת רוכל סי' כד ושו"ת המבי"ט ח"א סי' יא, ועי' בחזו"א שביעית ג"כה, ועי' ברכי יוסף י"ד שלי"א סי' ה', ועי' מהר"ט סי' מג, ועי' ספר התרומה בהל' א"י ועי' ביהגר"א שלא ס"ק ו' וכ"ח, ועי' ספר השמיטה מר' יהיאאל מיכל טוקצ'נסקי זצ"ל בענין מנהג ירושלים.
15. עי' אריכות הדברים בספר השמיטה שם.
16. עי' שו"ת משיב דבר סי' נ"ו.
17. באריכות הדברים עי' ספר השמיטה שם, שו"ת ציץ אליעזר ח"ו סי' לב, שו"ת הר צבי אר"ח ח"ב סי' מו וי"ד סי' כג, שו"ת מנחת יצחק ח"ח סי' צו, שו"ת ישועות מלכו י"ד סי' נרנז.
18. ספר השמיטה שם.
19. שם.
20. חזו"א שם.
21. כן שמעתי ממורי הוראה בא"י.
22. עי' מס' ר"ה יג, רמב"ם ה"ל שמיטה ויובל ה"ט, ועי' שו"ע י"ד שלי"א קכ"ה.
23. עי' מס' ר"ה יג. ועי' רמב"ם שם י"ב. אכן עי' תוס' שם שתלוי בגמר פרי, ועי' חזו"א שביעית י"ט.
24. עי' מס' ר"ה יב"ג, רמב"ם שם ה"ט חזו"א ז"ט. ובענין ענבים וקטניות עי' חזו"א שם שהוא שליש אכן שמעתי מהגר"י בעלסקי שליט"א שדבר קשה לומר כן, ומצינו בחז"ל שהאריך בזמנים שונים בענבים ולא הזכיר כלל מזה.
25. שביעית ט"א, רמב"ם שם ד"ב.
26. הכרעת החזו"א ט"ז ד"ה ירק כדעת הר"ש והרמב"ן.
27. עי' שביעית בהלכה פרק לו דף קע"ז, ועי' דרך אמונה פ"ד ס"ק פה.
28. עי' רמב"ם שם ד"ב. ועי' חזו"א סי' כ"ז.
29. עי' רש"י יומא פו, ר"ש וגר"א בשנות אליהו שביעית ח"ב, רמב"ם שם ה"ג.
30. עי' מס' פסחים נב, ועי' חזו"א ד"י, ועי' ספר שמיטה הכלתה ג"ג שהאריך בהענין, והוראת הפוס' שאם כורכה בניר פלאסטיק הוי רק גרמא, מ"מ אין להניח באשפה רגילה שזה נחשב בזיון.
31. שביעית פ"ט, רמב"ם ז"א.
32. פיה"מ להרמב"ם שביעית ט"ב, ובהל' שמיטה ויובל ז"ב.
33. שביעית ט"ח, ועי' דרך אמונה ז' י"טו.
34. עי' ר"ש ורע"ב שם, ועי' חזו"א סי' כו בסדר השביעית א"ד.
35. עי' חזו"א שביעית ג' כ"ג ד"ה שם, ועי' שו"ת מהר"ל דיסקין סי' כ"ז: שנות אליהו שביעית ח"ו, ועי' חזו"א שם כ"ז: ד"ה ירקות.
36. עי' ר"ת בתוס' סוכה לט, ועי' רמב"ן רשב"א וריטב"א ביבמות קכב. ועי' בערוך לנר שם שהנאה מותר, ועי' מנחת שלמה כ"א. כג. ועי' ספר פירות שביעית.
37. עי' חזו"א סי' י ס"ק ה' ו', ושמעתי בשם הגר"ח קניבסקי שליט"א שמרן התיר רק כשאין בו פירות אחרים, ומנהג ירושלים להחמיר בזה.
38. עי' רמב"ם ה"ל שמיטה ויובל ד"יב, ה"ל מעשר שני א"ה.
39. מדרישה אצל מומחים.
40. עי' קובץ תשובות מהגר"ש אלישיב שליט"א סי' רל"א, ועי' שו"ת שבת הלוי בח"ט.
41. עי' קובץ תשובות שם.
42. עי' שבת הלוי שם, וכן שמעתי בשמם.
43. מדרישה אצל מומחים.
44. שם.
45. עי' מס' סוכה לט. ועי' תוס' שם, אכן עי' מג"א סי' תרמ"ט ס"ק כ' שבשית השו"ע והרמב"ם פסול כל ז', ועי' מ"ב שפסק כן, מ"מ עי' אג"מ א"ח ח"א סי' קפ"ו שבשמו נועבר דהוי ספק איסור שגם המג"א יודה שאף למחמירים פסול רק ביר"ש ראשון, ועי' שו"ת מנחת שלמה נ"א. כג. בענין הנאה.
46. עי' מנחת שלמה שם, מ"מ איהו גופא סבר שמותר בהנאה, וכן שמעתי בשם הגר"ש אלישיב שליט"א.
47. כן שמעתי בשמו.
48. כן שמעתי בשמו.
49. כן שמעתי מתלמידיו.
50. עי' מס' סוכה מ. ובב"ק ק"א, ועי' רש"י שם.
51. עי' רמב"ם ורע"ב במס' סוכה פרק ג' משנה י"א, ועי' ר"ן שם לט, ועי' תוס' בב"ק קב.
52. עי' ספר ה"ל שביעית קונטרס ארבעה מינים א"ו.
53. עי' שו"ת מנחת שלמה נ"א. כג, ועי' אג"מ ח"א סי' קפ"ו. פשוט.
54. פשוט.
55. עי' חזו"א סי' ט"ז, ועי' אורחות רבינו ח"ב עמ' שמ"ד שמד, ועי' דרך אמונה פ"ד ציון קפ"ח שנשאר בצ"ע, ולכאורה השאלה תלוי אם שומר ונאבד הוא קנס דליכא סברא לחלק או אם הוא דאורייתא ואכמ"ל.
56. שם. וכן הוציא בכרוז בענין לולב דרי.
57. כן נדפס בקול קורא שהוציא.
58. שם.
59. שם. ומדרישה אצל מומחים.
60. עי' בספר פירות שביעית שהביא דיעות לכאן ולכאן.
61. כן שמעתי מפוסקי זמנינו.
62. שם.
63. עי' תוספתא שביעית ח"א, ועי' רמב"ן ריש בהר שהאריך בזה. וכן שמעתי מפוסקי זמנינו.
64. עי' מס' סוכה מ', ועי' דרך אמונה פ"ח בשם החזו"א לאסור סחורה, וכן מוכח מפשטות הסוגיא והראשונים, וכן שמעתי מהגר"י בעלסקי שליט"א אכן יש שמביאים בשם המהר"ל דיסקין שמקיל, וצ"ע.
65. כן שמעתי בשם הגר"ש אלישיב שליט"א, ולכא"ו פשוט.
66. עי' רמב"ם שם ו"ב.
67. עי' מס' ע"ז סב. ותוס' שם ד"ה יאות, ושמעתי מהגר"י בעלסקי שליט"א שג"כ אסור בסחורה, וכן איתא בהרבה ספרי א"י על ה"ל שמיטה.
68. עי' מס' שביעית ו"ה, ורמב"ם שם ה"יג. ועי' בר"ש שהטעם שאסור שיש לבער בא"י לכתחילה.
69. כן שמעתי מפוסקי זמנינו.
70. עי' בית רידב"ז, והגהות משמרת הבית לבית. ועי' אג"מ שם וכן בח"ד סי' סו שיש מקור לסמוך אף בלי אוצר ב"ד.
71. פשוט.
72. עי' פ"ה הנ"ל.
73. כן שמעתי מקצת רבני א"י ועי' קובץ תשובות סי' רל"א.

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Rabbi Elli Bohm

Publisher; Author

Rabbi Yitzchok Hisiger

Managing Editor

Mordechai Goldburd

Typeset & Design

Avrohom Goldberg

Technical Manager

Tzvi Geller

Zeirei Liaison

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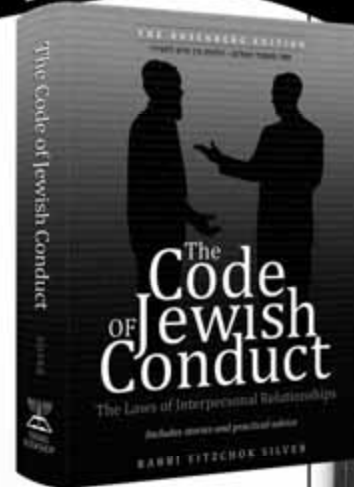
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