

Shemittah

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In the last 200 years, as Jews have once again settled *Eretz Yisroel*, we have once again had the opportunity to fulfill the *mitzvos* of *shemittah*, the Sabbatical year.¹ Most of the halachos of *shemittah* relate to farmers in Israel and those who use their produce, and this document will focus on those parts of *hilchos shemittah* which relate to those living out of *Eretz Yisroel*.

When is shemittah

The next *shemittah* year will be in the Jewish year 5768² which corresponds with September 13, 2007 to September 29, 2008. On a number of occasions this document will refer to "*shemittah* produce" and the *Gemara* (*Rosh Hashanah* 13b) tells us that the defining point as to whether an item is considered produce of the *shemittah* year depends on whether one is discussing a vegetable, grain or fruit. For vegetables the defining point for vegetables is harvest, which means that a pepper harvested after September 13, 2007 is considered a *shemittah* pepper even if it was planted and grew before *shemittah*. The defining point for grains is when they reach 1/3 of maturation, and most fruits are judged by when they reach *chanatah* (an early stage in the fruit's development).

As such, fresh *shemittah* vegetables will be on the market at the very beginning of 5768 but *shemittah* fruits won't be for sale until later in 5768 and into 5769. Processed foods, with an extended shelf life, such as wine and canned goods, will be on the market well into 5769 and possibly even beyond that point. As such, although the *shemittah* year lasts for one year, it affects consumers for longer than that.

General Halachos

The following is a brief overview of the basic *halachos* of *shemittah*:

1. Working the ground

One may not plow, plant, prune, water or otherwise cultivate items growing in *Eretz Yisroel*.³

* Unless otherwise noted, all references to *Rambam*, *Ra'avad* and *Derech Emunah* are in *Hilchos Shemittah V'Yovel*, and all references to *Mishnah* and *Chazon Ish* are in *Shevi'is*.

¹ Most *Poskim* hold that nowadays, the *mitzvah* of *shemittah* is *d'rabannan* since there is no *mitzvah* of *Yovel* (see *Tur* towards the beginning of Y.D. 331 with *Beis Yosef* ונשבעית ד"ה *Chazon Ish* 3:7-8, and the many opinions cited in *Derech Emunah*, *Tziun HaHalacha* 10:53-57).

² The first *shemittah* was shortly after the Jews entered *Eretz Yisroel* approximately 3,280 years ago, and has occurred every 7 years since then. Coincidentally, the year of *shemittah* is always divisible by 7 without a remainder (i.e. 5768 / 7 = 824).

³ These halachos are delineated in chapters 1-3 of *Rambam*.

2. Rights to the produce

Produce of the *shemittah* year is free for anyone to take, and the owner of the land may not restrict others from doing so.⁴

Contemporary *Poskim* rule that if someone works the ground on *shemittah* or restricts others from taking *shemittah* produce, the produce itself remains permitted in spite of the person's violation of the halacha.⁵ Therefore, an American visiting Israel must be careful to not violate these halachos, but these two prohibitions are of little consequence for consumers purchasing Israeli products abroad. In contrast, the coming three halachos are quite relevant even in the USA.

3. Kedushas shevi'is

Fruits, vegetables, grains, herbs and spices which are *shemittah* produce are endowed with a holiness known as "*kedushas shevi'is*" and therefore cannot be wasted, used for an atypical purpose, transacted in the traditional manner or taken out of *Eretz Yisroel*.⁶ [See the footnote as to whether these halachos apply to flowers].⁷ In the event that food with *kedushas shevi'is* is sold, the money used in the transaction also acquires *kedushah* (and the food retains its original *kedushah*).⁸

4. Biur

Once there is no more of a specific type of *shemittah* produce (e.g. grapes, figs) left in the field for animals to eat, one may retain 3-meals worth of that type of food for each member of their family and the rest must be declared

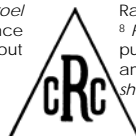
⁴ *Rambam* 4:24.

⁵ *Chazon Ish* 10:6 (and *Tzitz Eliezer* VI:39:3), *Iggeros Moshe* O.C. I:186 and *Minchas Shlomo* I:44 מבוחר ד"ה מבוחר, accepting the opinion of *Rambam* 4:15 & 8:12 as opposed to *Ra'avad* 4:15 and *Rabbeinu Tam* (cited in *Tosfos*, *Succah* 39b ד"ה במה דברים אמורים), who are respectively *machmir* on these two issues. [See *Derech Emunah*, *Tziun HaHalacha* 4:316 for others who agree with *Rambam* and in 4:188 & 4:312 for other *Rishonim* who follow the strict approach].

⁶ These halachos are delineated in chapters 5-6 of *Rambam*.

⁷ [Much of the following is based on *Chazon Ish* 14:9]. *Mishnah* 7:6-7 says that there is *kedushas shevi'is* on flowers that are used to impart taste into foods. *Yerushalmi* 7:1 questions whether the same applies to spices which have a fragrance but no taste, and as *Yerushalmi* doesn't resolve the issue, it is generally accepted that one should treat them with *kedushas shevi'is* (see end of *Chazon Ish* *ibid*). Contemporary *Poskim* debate whether the aforementioned *Yerushalmi* is limited to spices whose primary use is for fragrance or even includes the many decorative flowers that happen to have a pleasant fragrance (see *Mishpatei Eretz* 14:2 and there in footnote 10 citing Rav S.Z. Auerbach as taking the former position and Rav Elyashiv as accepting the latter).

⁸ *Rambam* 6:1, 6 & 7. The money with *kedushas shevi'is* must be used to purchase food items, at which point the *kedushah* transfers off the money and onto the foods (and those foods must be treated with *kedushas shevi'is* as outlined in the text) (*ibid*).



hefker/ownerless.⁹ This procedure is known as '*biur*'. [*Biur* is done differently by *Sephardim*, see the previous footnote]. Once *biur* is done, anyone – including the original owner – may take possession of the food and eat or use it as before, with *kedushas shevi'is*. Rabbinic groups in Israel produce lists of when the time of *biur* occurs for each type of fruit.

If one did not perform *biur* at the correct time, the food becomes forbidden and must be destroyed.¹⁰ There is a disagreement as to whether this last strictness applies even if *biur* wasn't performed due to a mistake or something out of the person's control,¹¹ and one should consult their Rabbi if they are faced with this question.

5. Sefichin

Chazal found that people were planting vegetables during *shemittah* and claiming that they had grown on their own, and therefore the Rabbis decreed that all items that are replanted annually – including vegetables, grains, herbs and spices – which grow during *shemittah* are forbidden.¹² This far reaching prohibition potentially affects many of the foods exported from Israel.

In summary, *Shemittah* obligates the land-owner not to work his field and to allow anyone to take his produce, but if he neglected to do either of these the produce remains permitted. There are special halachos relating to the consumption of *Shemittah* produce, including not wasting it, taking it out of the country or doing business with it, and at a certain point there is also a *mitzvah* to declare the fruits *hefker*. In practice, these halachos are limited to fruits, as most annual produce grown during *Shemittah* – including vegetables, grains, spices and herbs – are completely forbidden as *sefichin*.

⁹ The halachos of *biur* are delineated in chapter 7 of *Rambam*. There are 3 opinions as to what the *mitzvah* of *biur* entails (see *Chazon Ish* 11:6-8 & *Derech Emunah* 7:17 for more details):

- *Ramban* (*Vayikra* 25:7) holds *biur* merely requires the person to declare the food *hefker* on the given day, and only if he doesn't do so does the food become forbidden.
- *Rambam* (7:3) holds that all food (other than 3 meals worth per person) must be destroyed on its respective day of *biur*.
- *Ra'avad* (ad loc.) holds that there are two forms of *biur*, an earlier one (when the food is unavailable in the cities) which is like *Ramban*, and a later one (when the food isn't available in the fields) where the *mitzvah* is as described by *Rambam*.

On this matter, *Ashkenazic Poskim* generally follow *Ramban's* position (see for example *Chazon Ish*, *Seder HaShivi'is* point #1 (reprinted after chapter 26 of *Chazon Ish*, *Hil. Shevi'is*), while *Sephardim* accept *Rambam*.

¹⁰ *Ramban* *ibid*.

¹¹ Among the *Poskim* who've expressed opinions on this matter are *Chazon Ish* 14:13, who is strict regarding someone who *בשוגג* or *באינוס* didn't perform *biur*, and *Minchas Shlomo* (1:51 point 15 or 16 depending on the print) who is lenient.

¹² *Rambam* 4:1-3.

Clearly, most of these *halachos* are limited to those who reside in or visit *Eretz Yisroel*. However, much to the surprise of many consumers, the fresh herbs or vegetables found in their local American grocery are possibly of Israeli origin,¹³ such that some of the halachos of *shemittah* apply to Jewish consumers in all countries. Towards this end, we must first consider how Israeli farmers and companies confront the aforementioned halachos of *Shemittah*, and then see if and how they apply to those of us who reside in other countries.

Israeli Farmers and Companies

Israeli farmers and companies take 5 basic approaches to the restrictions of *shemittah*:

1. Disregard the halacha

Unfortunately, many Jews living in Israel aren't religious and completely ignore the halachos of *shemittah*. As noted above, foods grown by such farmers isn't ipso facto forbidden, but vegetables, grains, spices and herbs would be forbidden as *sefichin*, and fruits would have *kedushas shevi'is* and be subject to *biur*.

2. Heter mechirah

A century ago, Rabbonim of great stature permitted the land of *Eretz Yisroel* to be sold to a non-Jew for the duration of *shemittah*, to help struggling Jewish farmers avoid financial ruin. Since then there has been much heated debate as to whether this sale – known colloquially as the *heter mechirah* – is valid, if and how it should be performed and what it permits the farmers (and consumers) to do. The Israeli Chief Rabbinate has traditionally supported the *heter mechirah*, but has taken a somewhat stricter stance for *shemittah* 5768. Rav Y.D. Soloveitchik zt"l suggested that the entire discussion of the *heter mechirah* is predicated on a financial need which doesn't apply to American consumers, and he therefore recommended that they not rely on it.

The strict position is almost uniformly accepted by the mainstream *hashgachos* in the United States, and by many Israeli kosher certifications. As a result of this, some Israeli items such as wine will lose their regular *hechsher* for an entire year, as the company chooses to rely on the *heter mechirah* but the

¹³ See for example <http://www.arv.co.il/eMall/shopDepartment.asp?sc=1760&id=51430&fid=11170>, <http://www.israflora.com/fresh-produce.htm>, <http://www.israflora.com/fresh-herbs.htm>, <http://www.israflora.com/fresh-herbs2.htm>, and <http://www.agrexco.co.il/home.asp> (in Hebrew) where 3 of Israel's export companies describe the vegetables, herbs and fruits that they export to Europe and North America, and which times of the year those products are available.

hashgachah doesn't accept it. Therefore, consumers should be particularly vigilant to check labels for proper kosher certification during this time, as products that they are used to buying may temporarily not be certified.

3. Purchase ingredients from Arab farmers

There are manufacturers who choose to buy their ingredients from Arabs who own and farm land within the halachic borders of *Eretz Yisroel*. As the security situation in the West Bank and Gaza has deteriorated, this type of setup – which, among other things, requires *Mashgichim* to ensure that the “Arab” produce isn't actually Jewish produce diverted to Arab lands – has become less practical.

A common thread between the previous two methods is that any leniency is based on the land belonging to non-Jews. In this regard, *Beis Yosef* and *Mabit* had a fundamental disagreement; the former held that such produce doesn't have *kedushas shevi'is* and the latter argued that it does.¹⁴ According to *Mabit*, it would be forbidden to sell the produce commercially or to export it from Israel (among other restrictions noted above). The custom in *Yerushalayim* and most communities is to accept the lenient opinion, while in *B'nei Brak* and some other areas they follow *Chazon Ish* who defended and promoted the strict position.¹⁵ [All agree that the prohibition against *sefichin* doesn't apply to produce of a non-Jew's field].¹⁶

4. Otzar Beis Din

Farmers who participate in an *otzar Beis Din* do not do any prohibited work on their fields and allow public representatives to harvest any fruits that grow on their own. These fruits are sold to the public for the minimal cost needed to compensate the people who harvested and delivered the fruit to the market. The public representatives are appointed by a Jewish court (*Beis Din*), and in many cases the owner of the field is chosen to serve as the representative so as to provide him with some income during *shemittah*. Items distributed via *otzar Beis Din* have *kedushas shevi'is*.¹⁷

5. Use non-*shemittah* produce

Some companies make arrangements during *shemittah* to purchase ingredients from foreign countries or from parts of the State of Israel

that are outside the halachic borders of *Eretz Yisroel*. A modern variation of this is to grow products in specially built greenhouses that are located in the borders of *Eretz Yisroel* but are technically considered to not be “produce of the land”. Others, stockpile ingredients or finished goods from before *shemittah* so they'll be able to produce and service their customers during the *Shemittah* year.

Shemittah for Americans

Having seen the many issues relating to *shemittah* produce, **it is prudent for consumers in the United States to be alert for such produce and preferably avoid purchasing it.** This is most important for fresh produce (peppers, tomatoes, dates, grapes, herbs etc.), and is also relevant to processed foods where consumers should be more careful to check for proper kosher certification than they are during other years. If someone already bought *shemittah* produce, they should consult with their local Rabbi for detailed instructions as to whether those foods are forbidden as *sefichin*, how to treat the food with *kedushas shevi'is*, and when and how to perform *biur*.

Americans who visit *Eretz Yisroel* during the *shemittah* year will have many more issues to confront – both relating to the foods they eat, and in making sure that they don't violate the intricate halachos of ‘working the land’; details of those halachos are beyond the scope of this article.

End of shemittah

As noted above, the restrictions of *shemittah* produce commonly apply even after *shemittah* ends, particularly relating to fruits – where *shemittah* produce doesn't come to market until well into the *shemittah* year or the year after – and packaged goods with an extended shelf-life. This issue is particularly relevant to Jews in the diaspora who choose to use an *Esrog* from *Eretz Yisroel* for *Succos* 5769, and consumers are encouraged to seek guidance from their local Rabbi in dealing with this issue.

Lastly, there is one *mitzvah* of *shemittah* which applies to Jews in all parts of the world – *shemittas kesafim*. Briefly, this *mitzvah* requires that once *shemittah* ends, no one may claim a debt from anyone who owes them, unless the creditor has written a *pruzbul* before the end of *shemittah*.¹⁸ The details of this *mitzvah* are deserving of a separate treatment which is beyond the scope of this article.

¹⁴ See *Avkas Rochel* 22:25 and *Responsa Mabit* 1:11, 21, 217 & 396. See also *Responsa Maharit* 1:42-43 (by the son of *Mabit*) who claims that *Beis Yosef* changed his mind later in life.

¹⁵ See *Pe'as HaShulchan* 23:12 and *Chazon Ish* 3:25 & 20:7 who respectively defend the lenient and strict opinions.

¹⁶ *Rambam* 4:29.

¹⁷ The halachos of *Otzar Beis Din* are based on *Tosefta, Shevi'is* 8:1-3 (cited in *Ramban, Vayikra* 25:7) as clarified by the later *Poskim*; see many details in *Derech Emunah* 6:19.

¹⁸ The halachos of *shemittas kesafim* and *pruzbul* are delineated in chapter 9 of *Rambam*.

