

# HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

## 228 - SHEMITA 5782: PART 4 - OTZAR BEIT DIN AND OTHER 'SHEMITA SOLUTIONS' OU ISRAEL CENTER - SUMMER 2021

- We have begun to examine over the previous shiurim some of the challenges of Shemita in the modern world. In particular, we spent two shiurim looking at the historical, halachic and hashkafic impact of the Heter Mechira.
- Before moving on to look at Otzar Beit Din and the other 'Shemita solutions', it may be helpful to revisit the challenge through the eyes of Rav Aharon Lichtenstein, who made aliya just before Shemita 5733 (1972-73).

1. The simple fact is that the shemittah year of 5733 constitutes a halakhic tragedy. It is not pleasant to hear this - and even less pleasant to say it - but it is the cold bitter truth, and there is no escaping it except through deception. .... Obviously, the subject of shemittah is first and foremost a body of Halakhah covering several areas ... But the halakhic rules regarding shemittah reflect a multitude of values and serve to inculcate them in the body politic of K'lal Yisrael ... What remains for us today of this enchanting vision? Nothing but a hollow shell! The transition from an agricultural economy to an industrial one has taken most of the prohibitions of work off the agenda for nearly everyone...

What options are available to the people who are anxious to observe the kedushah of shemittah with careful attention to all the details? They can rely on the legal fiction that - woe to the ear that hear this! - the fields of Eretz Yisrael, from Lebanon to Egypt and from the Mediterranean to the Jordan, have been sold or leased to non-Jews. I have no intention of questioning the halakhic validity of this sale, or the ability of a non-Jew's purchase to release the land from its kedushah. Let us assume that those who permitted this were correct in doing so; it is the phenomenon itself that we should examine. Those who do not wish to rely on this heter have the option of going to the trouble of importing produce from abroad. If they are willing to rely on the ruling of the Bet Yosef that the kedushah of shemittah does not apply to produce grown by a non-Jew, even if the non-Jew's purchase cannot release the land from its kedushah, they may purchase produce from fields cultivated by Arabs.

But what of this running to a lone fruit and-vegetable seller in order to pay exorbitant prices for produce grown by non-Jews, when the people doing so are annoyed by the bother of the trip and the expense, on the one hand, and half-proud of themselves for their great righteousness, on the other? What has this to do with the biblical rule that "you may eat whatever the land produces during its Sabbath"? Is there any recognizable connection between this (perhaps overweening) pride and the feeling of man's subservience and the Creator's supremacy that lies at the heart of the mizvah of shemittah, and is engendered by performing it? Among those who are punctilious about observing the prohibition on uncultivated produce, how many of them accept and live the shemittah year in simple joy, as opposed to the many who are waiting, with all but bated breath, for it to end?

I do not want to give the wrong impression; I am not criticizing those who rely on the heter of selling the land or the Chief Rabbinate for implementing it. If I were chief rabbi, I would most probably do the same... On the other hand, I am not suggesting, God forbid, that we should ignore our halakhic obligations, however unpalatable they may seem to us... The reality is that there is no practical solution that can quiet our consciences... We take medicine - but without a berakhah. We must not be seduced into believing that the bone stuck in our throats is actually candy. Perhaps there is no alternative - but that is precisely the problem! That is the root of the halakhic tragedy.

POSTSCRIPT: 5754

As I reread the preceding article, three *shemittin* later, I naturally ask myself: What has changed in the interim? Very much - and very little..... I am not at all certain that I would instinctively write 'Thoughts about Shemittah' today. This is ... simply because the pain is less acute. Three *shemittin* have served, if not as anesthetic then, at least, as analgesic. It has all become so routine. From the abyss of our normalization, I look back with envy to the early years of the Yishuv, when the halakhic issues were thrashed out anew with every shemittah, in 5649 and again in 5656 when any ground was given grudgingly. I recall a time when Rav Kook's reservation, in the preface to *Shabbat Ha-Aretz*, that the *mekhirah* be confined to a critical *she'at ha-dehak*, had vital meaning.

Three *shemittin* later, that is perhaps the saddest change in this halakhic tragedy - the assuaged pain, the muted cry, the pallid response. .... *Ribbono shel Olam*, .... Let us, at least, realize the ability to feel the loss, to commiserate with the Torah, bereft of the realization of so wondrous a *mitzvah* .... If we are indeed destined to be spectators - nay, in part actors, in this halakhic tragedy, give us, at least, the power to recognize our role and to respond accordingly.

R. Aharon Lichtenstein, *Leaves of Faith* Vol. II (New Jersey: Ktav 2003) p 179-188<sup>1</sup>

1. Originally published as a Hebrew article in 1973, translated as 'Thoughts About Shemittah', and updated in 1994.

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## A] THE OTZAR BEIT DIN

### A1] THE MODERN INNOVATION

- As we saw in Part 2 of this series, the concept of Otzar Beit Din was introduced in 5679 (1908-9) by Rav Kook<sup>2</sup>, who proposed this in combination with the Heter Mechira<sup>3</sup>.
- Rav Kook proposed that the farmers should transfer their fields to the Beit Din, which would then appoint agents to harvest the produce and tend to it. The most sensible and qualified agents were the farmers themselves and they were appointed by the Beit Din. The food could then be harvested, gathered in and distributed to the public. The money paid by the public would NOT be for the produce itself, but would be a reimbursement of the costs of tending, supervising, harvesting, storing and distributing the produce.
- On that basis the FOOD would have K7 but the money would NOT have K7.
- Rav Kook wrote to R. Chaim Berlin who was pleased with the proposal. However, R. Dovid Wilowsky - the Ridvaz - did NOT accept it.
- After Shemita 5670 (1909/10), the Otzar Beit Din project lapsed, but was reintroduced by the Chazon Ish for Shemita 5705 (1944-45) and even more so in 5712 (1951-52).
- More recently, Otzar Beit Din was promoted strongly in Shemita 5768 (2007-08) and 5775 (2014-15). However, for the coming Shemita of 5782, R. Zev Weitman, a senior posek who previously promoted Otzar Beit Din, has decided NOT to support it.

### A2] SOURCES IN CHAZAL

2. הלכה א בראשונה היו שלוחי בית דין יושבין על פתחי עיירות. כל מי שמביא פירות בתוך ידו נוטלין אותן ממנו ונותן לו מהן מזון שלש סעודות, והשאר מכניסין אותו לאוצר שבעיר. הגיע זמן תאנים שלוחי בית דין שוכרין פועלין - עודרין אותן ועושין אותן דבילה וכונסין אותן בחביות ומכניסין אותן לאוצר שבעיר. הגיע זמן ענבים שלוחי בית דין שוכרין פועלין - בוצרין אותן ודורכין אותן בגת וכונסין אותן בחביות ומכניסין אותן לאוצר שבעיר. הגיע זמן זתים שלוחי בית דין שוכרין פועלין - ומוסקין אותן ועוטנין אותן בית הבד וכונסין אותן בחביות ומכניסין אותן לאוצר שבעיר. ומחלקין מהן ערבי שבתות כל אחד ואחד לפי ביתו. ....

תוספתא מסכת שביעית (ליברמן) פרק ח

*The Tosefta brings a number of important rulings: (i) There was a system of Beit Din collection of food whereby small amounts for immediate consumption were given out to people but the rest was stored in communal storage; (ii) At harvest time, the Beit Din would hire agents to reap, gather and process the crops and then store them in communal storage.*

- What exactly is this Tosefta discussing? At first glance, it seems to be in direct conflict with an explicit Mishna in Shevi'it!

3. תאנים של שביעית אין קוצין אותן במוקצה אבל קוצה אותם בחרבה. אין דורכין ענבים בגת אבל דורך הוא בעריבה. ואין עושין זיתים ביד ובקוטב אבל כותש הוא ומכניס לבודידה. ....

משנה מסכת שביעית פרק ח משנה ו

*The Mishna state that figs, grapes and olives may NOT be harvested and processed in the normal manner, but only with some kind of shinui - deviation from the normal practice.*

- Based on this direct contradiction, some mefarshim<sup>4</sup> explain that the second part of the Tosefta must be talking about produce from the SIXTH year, even though the first part is clearly referring to Shemita produce.

4. ושנו בתוספתא (שביעית פ"ח), בראשונה היו שלוחי בית דין מחזרין על פתחי עירות. .... ועשו להם תקנות מדצריהם, בראשונה היו בית דין עושין אולר ככל עיר ועיר. מתחילת יציאת הפירות היו נוטלין אותם מיד מציאייהן ומכניסין אותן לאולר. וכשיצא זמן לקיטת כל אותה המין כגון שזא זמן של קיץ ועת הצליר הגיע, צ"ד שוכרים פועלים וצולרין ומוסקין ולוקטים כל אותה המין ודורכים ומוסקין בגת וצזית בצד כדרך שאר השנים, וגותנים לאולר שלהן. ואלו הפירות המכונסים לאולר בית דין אינן לריכין ציעור אחר שכבר מצוערין הם מן הצית. ואחד ענייט ואחד עשירים מותרין לאחר הציעור לקבל מהם מיד צ"ד ולאכלן. וכל זו התקנה והטורח של צ"ד, מפני חשד שלא יצאו לעכבס או לעשות מהם סחורה.

רמב"ן ויקרא כה:ז

*The Ramban clearly understands that the Tosefta IS dealing with Shemita produce and sees the Otzar Beit Din system as a way to permit mass harvesting and distribution.*

2. See Igrot Ra'aya 1:311, 313.

3. Rav Kook held a number of stringencies in Shemita which other poskim did not. For instance, he did not permit rabbinic melacha in order to save the crop, only to save the trees. The Otzar Beit Din system would not allow such work, but the Heter Mechira would. The Chazon Ish however permitted rabbinic melacha to save the crop, and thus the Otzar Beit Din alone would suffice without recourse the Heter Mechira. Some poskim argue that Otzar Beit Din could work today without the Heter Mechira, even according to Rav Kook.

4. See Rash Sirilio (Yerushalmi Shevi'it 9:6 s.v. *ve-ani omer*, s.v. *aval ha-emeti* and 9:4 (end) s.v. *chazon*). R. Shlomo Sirilio (1485-1554) wrote a commentary on Yerushalmi Seder Zeraim and Shekalim.

- The Chazon Ish<sup>5</sup> understands that the basis of the heter is as follows. The Torah prohibits reaping by the OWNER as an private owner. However, the Beit Din is acting as a collective and can therefore harvest and process in the normal manner<sup>6</sup>.
- Alternatively<sup>7</sup>, the Otzar Beit Din may be seen as the representative of the poor. Since the poor are permitted to enter the field and take for their own needs, the Otzar Beit Din can do so more efficiently on their behalf.
- Similarly, the produce (which has K7) can be distributed to consumers since this is not a 'sale' but a distribution. The money will not have K7. Some poskim also permit the produce to be weighed and measured in the normal manner since this is not done in connection with a sale<sup>8</sup>.
- In theory, the price of Otzar Beit Din produce should be lower than the regular food price since the costs are only for distribution etc. In fact, the Chazon Ish<sup>9</sup> argued that the farmer should always receive LESS than the regular market value of the produce to make it evident that the payment is not for the produce. If the price simply stays the same, the special Shemita element, and the mitzva, may be forgotten<sup>10</sup>.

### A3] WHAT IS THE HALACHA?

- One of the key halachic concerns regarding the Otzar Beit Din is that most of the classic Rishonim do NOT bring this as the halacha! In particular, it is NOT mentioned by the Rambam.
- Many of the Acharonim saw this omission as clear proof that the Rambam did NOT accept the Otzar Beit Din concept as halacha.<sup>11</sup>
- Others read the omission as communicating that the Tosefta is good advice but not halachically required or prohibited<sup>12</sup>.
- Rav Kook and the Chazon Ish<sup>13</sup> both ruled that the Otzar Beit Din is a valid practical option.
- One of the biggest Otzar Beit Din operations in the coming Shemita will be Otzar Ha'Aretz. It's Beit Din includes: R. Aharon Abovbol, R. Yehuda Amichai, R. Ya'akov Ariel, R. Shmuel Eliyahu, R. Eliezer Igrah and R. Dov Lior.<sup>14</sup> There will be Otzar Ha'Aretz stores around Israel serving religious neighborhoods. They also have a loyalty club and voucher system.

### A4] PROS AND CONS OF THE OTZAR BEIT DIN SYSTEM

#### PROS

- WILL enable large scale harvesting and distribution.
- WILL avoid any problems of *shamur*- guarded produce and *ne'evad*- worked produce, since the produce is not worked.
- Halachically less problematic than Heter Mechira<sup>15</sup>. Wider halachic support for the concept across communities.
- Produce has K7 - opportunity to engage with K7 (for those who see this as pro).
- Money has no K7 since payment is for the labor, transportation, distribution etc and not the produce itself.
- Supports Israeli agriculture.
- SHOULD BE cheaper than regular produce since the costs are labor etc only.

#### CONS

- Not halachically perfect - some of the major classic poskim (eg Rambam) did not mention it. Some poskim oppose it.
- Hard to supervise on a large commercial scale.
- Halachically complicated to set up correctly. Must be done properly and cannot be a sham.
- Since the money is only recouped on final distribution of the produce to the customer, the Otzar Beit Din project is financially risky for the producers. In past Shemitot, producers have lost millions of shekels because customers were reluctant to buy it. To alleviate this, the Otzar asks customers to sign up in advance for vouchers. In that way, some money is received up front<sup>16</sup>.
- Only helps with harvesting and distribution but does NOT allow planting and tending. Thus it will most effective for fruit but only works for vegetables at the beginning of the Shemita year since they were planted in the 6th year

5. Shevi'it 12:6.

6. Based on this idea, the Chazon Ish (12:5) even has a leniency that the prohibition of reaping as an owner only applies to the actual owner of the field. But if a neighbor come in to reap and gather, this could be done in the normal manner! Most poskim disagree with this leniency.

7. Shu't Rashba 298.

8. Other poskim are strict on this since they understand the prohibition on weighing and measuring K7 produce to be independent of selling it.

9. Igrot Chazon Ish 2:73.

10. Other poskim argue that there are halachic grounds to permit a higher price as long as it is clear that the produce is Shemita Otzar Beit Din

11. The Radvaz (Hilchot Shemita 7:3) brings this as his first explanation. In recent times, this approach has been taken by many of the Sefardi poskim, such as R. Ben-Zion Abba Shaul and R. Mordechai Eliyahu. They rule that the Otzar Beit Din can only be relied on in a situation of great need. R. Ovadia Yosef initially opposed the Otzar but then set up one of his own with strict guidelines.

12. The Radvaz gives a second answer which implies this. He writes that the Beit Din used to follow this procedure but stopped. Rav Rimon makes a number of suggestions as to how this fits with the sources.

13. Shevi'it 11:7.

14. See <https://en.toroland.org.il/> and <https://otzar-haretz.co.il/>

15. Although this is itself a debate - R. Ovadia Yosef preferred the Heter Mechira in some respects over Otzar Beit Din!

16. My wife and I have just paid 1,300 shekels for membership of Otzar Ha'Aretz. In that way, some of the financial risk of the Otzar is spread to the consumer.

**B] HETER MECHIRA - PROS AND CONS**

- We looked in depth at the specific issues of the Heter Mechira in the last two shiurim. Here is a brief list of some the pros and cons:

**PROS (if it works!)**

- No concerns of sefichin, shamur or ne'evad.
- No K7 (if that is a pro).
- Supports the Israeli economy.
- Plentiful supply at good prices.
- Halachically acceptable solution for non-religious consumers and traders who would otherwise ignore Shemita entirely.
- Protects overseas contracts and long-term economy.

**CONS**

- It is based on many disputed halachic positions - in particular that Shemita today is all rabbinic, that land owned by a non-Jew may be worked during Shemita and that the produce of such land has no K7. All of these are mainstream halachic positions but they are all disputed.
- If it does not work, farmers are involved in many breaches of Shemita prohibitions.
- If it does not work, the vegetable produce will according to most poskim be prohibited to eat as sefichin<sup>17</sup>. However fruit will not be prohibited as sefichin and could be eaten even if one does not accept the Heter (although it would be K7).
- If it does not work, the produce may have K7.
- Even if does work, many Jewish farmers ignore the rules and perform melacha.
- Selling land in Eretz Yisrael to a non-Jew is itself halachically problematic.
- Is the sale a legally binding 'real' sale or simply a 'legal fiction'.

**C] 'SHISHIT'**

- Produce from the 6th year or before.

**PROS**

- No halachic concerns of K7.

**CONS**

- Limited availability as the Shemita year progresses, especially with fresh vegetables.
- Shishit is often stored for long periods and can be poor quality.

**D] 'YEVU CHUL' - IMPORTED PRODUCE**<sup>18</sup>

- Can be imported from all over the world, but is often brought in from neighboring Arab countries - Egypt, Jordan and Gaza.

**PROS**

- No K7 issues (if you see that as a pro).

**CONS**

- Causes damage (often long-term) to the Israeli agricultural sector - now worth billions of dollars per year.
- Expensive - transport costs etc
- Unreliable supply.
- Political/economic concerns of funding economies of Arab entities which are potentially anti-Israel.

**E] 'YEVUL NOCHRI' - PRODUCE BY NON-JEWS IN ISRAEL**

- Produce from non-Jewish (usually Arab) farmers in Israel grown on land owned by non-Jews (eg in the Yehuda and Shomron, Galilee and other areas in Israel).
- There is a major halachic debate as to whether land owned by non-Jews within the Eretz Yisrael boundaries still has K7. The minhag in Yerushalayim and most places in Israel is to treat such produce as regular, NON-K7<sup>19</sup>. The minhag in Bnei Brak is to treat such produce with K7<sup>20</sup>.

17. There are other minority positions which may permit *sefichin* even if the Heter does not work. These question whether the prohibition of *sefichin* (which is a penalty - *knas*) applies to produce which was planted intentionally, whether it applies to non-observant farmers, and whether it applies to produce which obviously could not have grown on its own.

18. Sometimes incorrectly called *yevul nochri*, which more properly refers to produce grown on land owned by non-Jews in Israel.

19. Based on the psak of the Beit Yosef, which is followed by the Bedatz Eida Charedis. This ruling was also followed by the Pe'at Hashulchan (23:12), Rav Kook (Shabbat Ha'Aretz Intro Chap 11, 4:29), R. Shlomo Zalman Auerbach (Ma'adanei Aretz 2 s.v. hinei) and many others.

20. Based on the psak of the Mabit, which was followed by the Chazon Ish (20:7, 9:18).

- This debate has major implications. According to the Chazon Ish, *yevul nochri* produce has K7, may not be traded, and the money paid for it will also have K7!

### PROS

- No concerns of K7 (if you see that as a pro!), although this is not at all clear, and some authorities DO treat this with K7.

### CONS

- Some unscrupulous Jewish producers have been caught selling their produce to Arabs to be sold on as *yevul nochri*.
- Some land used by Arabs has been illegally acquired and is actually legally owned by Jews. In halacha, this would still have full K7.
- Some of the producers live in hostile areas, endangering mashgichim or making hashgacha impossible.
- Strengthens Arab land ownership in Israel. Water allocations are increased and extra land can be appropriated. There are Arab organizations which seek to buy back Jewish land in Israel to try and strengthen Arab presence to create a future Arab State. This has possibly negative short-term economic and longer term political and security impact.
- Causes damage (often long-term) to the Israeli agricultural sector - now worth billions of dollars per year.

## F] 'MATZA MENUTAK' - PRODUCE GROWN INDOORS & DISCONNECTED FROM GROUND<sup>21</sup>

- Produce grown in beds detached from the ground and also inside an enclosed building.
- Modern technology has enabled food to be mass produce in beds which are detached from the ground - מצע מנותק. According to almost all poskim this does not have K7<sup>22</sup>

### F1] PRODUCE GROWN INDOORS

5. רבי יוחנן בשם רבי ינאי - אילן שנטעו בתוך הבית חייב בערלה, ופטור מן המעשרות. דכתיב (דברים יד:כב) עֲשֶׂהְךָ תַעֲשֶׂהְךָ אֶת כָּל-תְּבוּאֹת זְרַעְךָ הַיֵּצֵא הַשָּׂדֶה. ובשביעית צריכה (פני משה - ולענין שביעית מספקא לן ולריכא למינעי) דכתיב (ויקרא כה:ב) וְשָׂבְתָה הָאָרֶץ שְׁבֹת לָהּ; וְכָתִיב (שם ד) שָׂדֶךְ לֹא תִזְרַע וְכַרְמֶךָ לֹא תִזְמַר.

תלמוד ירושלמי (וילנא) מסכת ערלה פרק א הלכה ב

*The Yerushalmi raises an unanswered question as to the status of Shemita produce grown inside a building, rather than outside in a field. On the one hand, the Torah requires the entire Land to rest; on the other, it refers specifically to fields.*

- The poskim differ on the practical psak. Some are lenient<sup>23</sup> on the basis that the laws of Shemita are today rabbinic according to most authorities. Others are stringent<sup>24</sup>.

### F2] PRODUCE GROWN IN POTS

6. עציץ נקוב הרי זה כארץ.....

משנה מסכת דמאי פרק ה משנה י

*The Mishna discusses (for agricultural laws) the implications of plants grown in pots. It draws a distinction between a plant pot WITH a hole (which is halachically considered to be the same as the ground) and one without a hole.*

7. .... התולש מעציץ נקוב חייב ושאינו נקוב פטור ...

משנה מסכת שבת פרק י משנה ו

*So too, in hilchot Shabbat, to detach a plant from growth in a pot WITH a hole is a Torah prohibition. For a pot WITHOUT a hole it would be a rabbinic prohibition.*

- Although the halachic position for terumot, ma'aserot and kilayim is clear, the position for Shemita is not ruled explicitly in the Rishonim! Again, some poskim are lenient<sup>25</sup> and are less willing to apply Shemita restrictions (at least in principle) to plant pots without holes. Others are strict<sup>26</sup>.

8. .... עציץ נקוב אינו מכשיר את הזרעים, ושאינו נקוב מכשיר את הזרעים. כמה הוא שיעורו של נקב? כדי שיצא בו שרש קטן.

משנה מסכת עוקצין פרק ב משנה י

*The Mishna defines the size of a plant pot hole as 'one that would allow through a small root'.*

21. Also known as 'Gush Katif' since this technology was pioneered by the farmer of Gush Katif before they were expelled from Gaza

22. But there are many other conditions eg non-Jewish ownership of the beds, which melachot may be performed by Jews/non-Jews - see below.

23. Pe'at HaShulchan 20:52.

24. Chazon Ish 22:1; 26:4. The Chazon Ish argues that the Yerushalmi may only question the Torah law, but agrees that there is a rabbinic prohibition in any event.

25. See Minchat Shlomo 41:4, where R. Shlomo Zalman Auerbach inclines towards leniency, although is reluctant to rule this way in practice.

26. Chazon Ish 20:5; 22:1.

### F3] PRODUCE GROWN BOTH INDOORS AND IN POTS

- When dealing with produce grown both indoors AND in pots without a hole, most poskim<sup>27</sup> are lenient.
- For these halachot, most poskim define 'indoors' a roofed area with a roof at least 80 cm (10 tefachim) high. Some also require walls of at least 10 tefachim.<sup>28</sup>
- A 'hole' in the pot is halachically relevant even when very small<sup>29</sup>.
- In private homes, most poskim are lenient regarding plants which are EITHER:
  - kept indoors on a tiled floor which is an upper (not ground) floor.
  - kept indoors on a tiled floor on top of a (non-clay) plate even on the ground floor<sup>30</sup>.
- For commercial farmers, some poskim have been lenient<sup>31</sup> and even permit planting with *matza menutak*. Others are stringent.
- In practice, many poskim permit *matza menutak* where (i) the pots are indoors; (ii) have no holes; (iii) are detached from the ground; (iv) are owned by non-Jews; (v) all Torah work is done by non-Jews.
- Most poskim rule that the produce has NO K7.



### F4] MATZA MENUTAK - PROS & CONS

#### PROS

- No concerns of K7 (if you see that as a pro).
- Producers are able to plant, tend to and harvest the crop in a normal manner.
- Supports Israeli agriculture and technology.
- Bug free.

#### CONS

- Expensive.
- Limited supply.
- Not all poskim agree with the halachic leniencies.

### G] PRODUCE FROM THE SOUTHERN ARAVA

- Produce from the Southern Negev and Southern Jordan Valley which is outside the areas of K7.
- Often grown in combination with the Heter Mechira.

### G1] WHICH PARTS OF ISRAEL HAVE KEDUSHAT SHEVI'IT?

9. שלש ארצות לשביעית: (1) כל שהחזיקו עולי בבל מארץ ישראל ועד כזיב - לא נאכל ולא נעבד. (2) וכל שהחזיקו עולי מצרים מכזיב ועד הנהר ועד אמנה - נאכל אבל לא נעבד. (3) מן הנהר ומאמנה ולפנים נאכל ונעבד.

משנה מסכת שביעית פרק ו משנה א

The Mishna identifies 3 different areas for the purposes of K7. Shemita applies in full to the area of the 'Olei Bavel'. It applies less to the greater area of the 'Olei Mitzrayim'. It does not apply at all beyond those borders (even in areas which may be part of 'Biblical Eretz Yisrael', which was promised to Avraham).

- This map shows the approximate boundaries of the Olei Bavel - those Jews who came back to Eretz Yisrael with the permission of the Persians in the 5C BCE to re-build the Second Temple
- Today's kedusha of Eretz Yisrael for K7 is dependant on this area, which covers most of modern Israel except the Southern Negev. All laws of Shemita apply fully here.
- As such, produce from these areas will have K7, but food grown in the 'Southern Arava' region - towards Eilat and the Jordan Valley south of the Dead Sea - will not have K7



27. Even the Chazon Ish (22:1; 26:4) is lenient in this case due to multiple levels of safek, and the likelihood that the general prohibition is rabbinic.

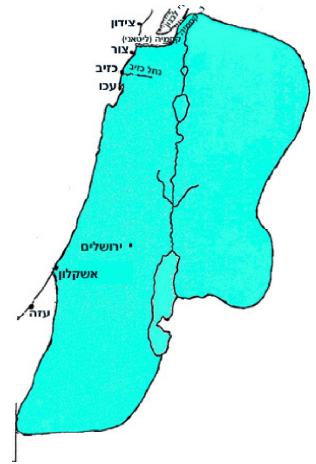
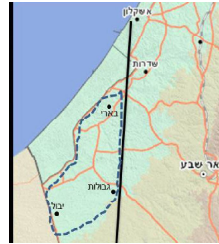
28. See Chazon Ish 21:1 who is uncertain whether walls are required. R. Tzvi Pesach Frank was lenient on this but R. Wosner was strict and required walls.

29. Rav Rimmon rules that any hole of 1mm or more is halachically relevant.

30. Some poskim rule that it is preferable that the leaves of the plant do not overhang the pot/plate.

31. R. Shmuel Wosner (Shevet HaLevi 8:246) was initially lenient for Gush Katif in Gaza ONLY due to the combination of multiple factors of leniency - indoor planting; in a pot with no hole; Shemita being derabbanan today; a question of whether the Gush Katif areas has full sanctity; the work was performed by non-Jews. However, in a later teshuva (Shevet HaLevi 9:237) he ruled stringently. R. Yitzchak Weiss (Minchat Yitzchak 10:116) also ruled stringently on the basis that this form of farming was no longer uncommon and could be considered the equivalent of a 'field'. Rav Eliashiv was inclined to rule stringently unless the pots were ALSO sold to a non-Jew. However, R. Shlomo Zalman Auerbach (Minchat Shlomo 3:158:7) was lenient.

- This map shows the approximate larger area of Olei Mitzrayim - those Jews who came to conquer Eretz Yisrael with Yehoshua after leaving Egypt in the 14th century BCE.
- The biggest difference is that it includes much of Jordan, most of the Golan and some of Syria.
- Shemita applies partially in these areas - there is no issue of *sefichin* but work on the land is restricted.
- The Southern Arava area down to Eilat is still excluded and produce from there will certainly not have K7.
- Interesting halachic questions arise in the Western Negev.



## G2] ARAVA PRODUCE - PROS AND CONS

### PROS

- No concerns of K7 (if you see that as a pro).
- Supporting Israeli farmers and economy in Southern Israel.
- Planting and supply all year round.

### CONS

- Significant halachic debates as to precisely where these areas are - especially in Northern and Western Negev.
- Patchy and limited supply of certain vegetables.

## H] WHAT DO RELIGIOUS COMMUNITIES IN ISRAEL DO IN PRACTICE?

Here is a VERY generalized summary of how religious communities in Israel prioritize the different options (1 is high).

### CHAREDI COMMUNITY<sup>32</sup>:

1 - Yevul Nochri/Shishit/Imported; 2 - Arava; 3 - Matza Menutak; 4 - Otzar Beit Din<sup>33</sup>; 5 - Heter Mechira<sup>34</sup>

### RELIGIOUS ZIONIST COMMUNITY:

1 - Otzar Beit Din; 2 - Arava/Shishit/Imported; 3 - Matza Menutak; 4 - Heter Mechira<sup>35</sup>; 5 - Yevul Nochri<sup>36</sup>; or

1 - Otzar Beit Din; 2 - Arava/Shishit/Imported; 3 - Matza Menutak; 4 - Yevul Nochri<sup>37</sup>; 5 - Heter Mechira; or

1 - Heter Mechira<sup>38</sup>; 2 - Arava/Shishit/Imported; 3 - Matza Menutak; 4 - Otzar Beit Din; 5 - Yevul Nochri.

32. It is clear that many people in the Charedi community are also driven by hashkafic pressure to reject 'solutions' proposed by the Zionist communities. This can sometimes be extreme, given the actual halachic issues involved.

33. Permitted by most poskim but looked on with some suspicion by many as 'unfamiliar'. Also, many in the Charedi community do not wish to risk the possible halachic prohibitions of misuse of K7.

34. Regarded by many people in the Charedi community as totally unacceptable. Some poskim take the view that Heter Mechira also prohibits the pots and pans. However other Charedi poskim permit the Heter Mechira in situations of need eg when eating with parents.

35. Many in the Religious Zionist community regard the hashkafic and possibly halachic problems of not supporting the Israeli economy and supporting Arab farmers as more serious than the halachic problems raised by the Heter Mechira. This is Rav Rimon's position.

36. At the same time it is clear that some in the Religious Zionist community are driven by political considerations which sometimes have little to do with real hashkafic or halachic concerns. This can sometimes be extreme, with people indignantly refusing to buy Arab produce during Shemita, which they are prepared to buy in other years!

37. In recognition of the widespread concerns as to the halachic weakness and unacceptability of the Heter Mechira

38. Some poskim in the Religious Zionist community see the Heter Mechira as a critical institution in supporting Yishuv Eretz Yisrael and a long-standing heter by great halachic figures. This is Rav Aviner's position.