

HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

227 - SHEMITA 5782: PART 3 - THE HETER MECHIRA OU ISRAEL CENTER - SUMMER 2021

A] PRACTICAL CHALLENGES OF SHEMITA TODAY

• Observing¹ the mitzvot of Shemita in today's world presents a number of unique challenges² - both for the farmers and also the consumers. These include:

A1] GEULA AND ITS BERACHOT ARE NOT YET COMPLETE

1. ותקון רבנן דתשמט זכר לשביעית - והא דלא תקון נמי יובל זכר ליובול? משום דאין רוב לבור יבולין לעמוד בה ליחסר בעבודת קרקע שתי שנים רלופות.

תוספות גיטין לו:

The Rabbis instituted Shemitat Kefasim - release of loans - even when it does not take effect on a Torah level so that the Jewish people would not lose awareness of this mitzva. Tosafot explain that no Rabbinic remembrance of Yovel was enacted because most people would not be able to cope with two years without working the land. But, surely, the Torah promised explicitly that God would send special blessing to enable to the people to deal with this challenging mitzva!?

2. אבל חרישה וזריעה לא חסרו בשביעית ויובל כדי שלא תשתכח, שלא היו רוב הליבור יבולין לעמוד בו ליחסר בעבודת קרקע שתי שנים שביעית ויובל. כן כתבו החוס' צפרק השולח. דדוקא בזמן שהיה שמיטה ויובל נובג מן התורה היתה מקוימת בהן הברכה לגדל בשנה שישיית לשלש שנים.

סמ"ע סימן ס"ק ב

The Sm'a on Shulchan Aruch explains that the special beracha promised by the Torah only takes effect when the mitzvot of Shemita and Yovel are in full force.

- Although many gedolim encourage full observance of Shemita by not working the land and promise great beracha from that sacrifice, these berachot cannot be assumed³.
- The agricultural sector in Israel is now worth billions of shekels. Stopping work for an entire year involves a massive loss.
- Furthermore, the loss of valuable contracts to supply produce during Shemita year is very likely to extend beyond, since these contracts will be difficult to win back from others suppliers and producers after the Shemita year.

A2] MODERN FOOD CONSUMPTION

- In the conception of Shemita outlined by the Torah, people would have a simple diet during the Shemita year - eating fruit that was hefker on local trees and grains stored from the previous crop. Fresh vegetables were not a significant part of most people's diet.
- Today, people eat a far broader range of fruits and vegetables and it is not possible to glean these from hefker trees. People would need to travel for hours to find hefker fruit. Vegetables would be very difficult to obtain.
- Furthermore, most Israelis today are not observant and will not allow others to take from their trees and gardens

1. All references to the Rambam in this sheet are to Hilchot Shemita unless otherwise stated. All references to the Chazon Ish are to Shevi'it.

2. For more in English on the Heter Mechira see:

- A Brief Overview of Some of the Issues Related to the Heter Mekhira, R. Daniel Feldman (Tradition 47:3 (2014) p8-30

- Heter Mechira, R. Chaim Jachter: <https://www.koltorah.org/halachah/the-heter-mechira-part-one-by-rabbi-howard-jachter> and <https://www.koltorah.org/halachah/heter-mechira-part-two-by-rabbi-howard-jachter>

- Food Consumption during the Shemita Year in Israel and the Diaspora, R. Eli Ozarowski

<https://www.torahmusings.com/2015/01/food-consumption-shemita-year-israel-diaspora/> and subsequent 2 parts.

3. Nevertheless, there are stories of great berachot that have come to those who observe Shemita with emuna. See for instance - <http://ascentofsafed.com/cgi-bin/ascent.cgi?Name=546-36>

B] HALACHIC CHALLENGES OF SHEMITA TODAY

FOR THE FARMER:

- We saw in Part 1 that most agricultural activity is prohibited during Shemita - either on a Torah or Rabbinic level.
- Although some activities to prevent loss of the plants (or perhaps also the crops) are permitted, this will still not enable any planting or improvement of the crop.
- Commercial harvesting activity is prohibited - resulting in the inability to reap, sell and distribute the produce.
- Export of Shemita produce is prohibited.
- Using non-Jews or even (where possible) automation will not solve all of these issues, since the this may still be in breach of the positive mitzva for the Land to rest.

FOR THE CONSUMER:

- Even if the consumer is not involved in any prohibited agricultural activity, a number of significant halachic issue may still apply:

B1] SEFICHIN

- According to Torah law, although there are prohibitions on planting, working and commercial harvesting, all produce that grows from the ground on its own will have *kedushat shevi'it* (K7) and is permitted to eat.
- However, Chazal made an independent rabbinic prohibition⁴ on edible annual plants⁵ that do not NORMALLY grow on their own - eg vegetables and grains. This was to prevent people planting in breach of Shemita and telling others that the produce grew on its own.
- The prohibition of *sefichin* therefore includes many vegetables and grains which were either planted during the Shemita year or which grew on their own.
- The following produce is NOT subject to the prohibition of *sefichin*:
 - fruit which normally grows on its own.
 - perennial vegetables⁶ which normally grow on their own.
 - produce grown by non-Jews on land in Eretz Yisrael owned by non-Jews.
 - produce which does not have K7⁷.
 - produce grown outside Olei Bavel borders.
 - produce grown indoors.
 - Heter Mechira produce according to those who agree that the Heter is effective - see below.⁸
- *Sefichin* are prohibited to harvest and to eat, but not to sell or derive benefit from⁹.
- Vegetables which were picked before Shemita year are permitted and will not have K7 according to all opinions.
- Vegetables which started growing during the 6th year (or seed crops which reached a third of their growth before Shemita year) but are picked during Shemita will, according to most poskim, NOT be prohibited as *sefichin*¹⁰, but they MAY have K7¹¹. The prohibition of *sefichin* for any particular vegetable only begins at the point in the year that the vegetable grew entirely during the Shemita year¹².
- The prohibition of *sefichin* continues into the 8th year until the date that the relevant plant could have been planted in the 8th year, have grown and been picked.
 - There are fixed dates, based on the produce markets in Israel, from which specific vegetables become *sefichin*. We will include tables with these and other relevant dates in future shiurim.
 - From the date that *sefichin* applies, vegetables may not be bought from a store without a hechsher showing their origin¹³.
 - In practice, vegetables in the stores for most of the Shemita year will rely on one of the 'Shemita solutions', such as: - heter mechira, produce (no K7), otzar beit din (does have K7), *matza menutak* - produce grown in special beds disconnected from the ground (no K7), *yevul nochri* - local Arab produce (no K7 according to most views), imported produce (no K7), produce from the Arava etc (no K7).
 - Produce which does not have K7 will be labelled : ללא חשש [טבל ו]שביעית

4. The opinion of R. Akiva (Sifra Behar 4) is that *sefichin* is actually a Torah prohibition. The Sages disagree and rule that it is rabbinic. Most Rishonim rule that *sefichin* is a rabbinic prohibition (Rambam 4:1-2). The Smag (Lo Ta'ase 168) and the Yereim (158) rule like R. Akiva. The halacha in practice is that *sefichin* is regarded as a rabbinic prohibition.

5. Crops grown only for seed or as animal fodder will not normally be classified as *sefichin*.

6. Certain perennial plants which are halachically classified as vegetables will not be *sefichin* - eg pineapples, artichokes and bananas. As long as the roots of the perennial plant continues from year to year, the practice is to be lenient.

7. This is debated in the poskim. A minority view (Az Nidberu 4:3-5) regards the two issues of *sefichin* and K7 as unrelated since a farmer may covertly plant something which does not have K7. However, most poskim rule that only plants which have K7 are subject to *sefichin*. This will rule out unscented perennial flowers. Scented perennial flowers are permitted by many poskim but should preferably be bought with kashrut certification. Annual flowers are more problematic and require kashrut certification. Some poskim are more open to relying on the Heter Mechira for flowers, even when they do not for food produce.

8. The Chazon Ish also has a lenient position on some crops which are grown in deviation from a normal crop rotation schedule.

9. There is a major debate in the poskim as to whether benefit is permitted from *sefichin*. Rambam permits allowing livestock to go graze on *sefichin*, even though this is a benefit, but prohibits actively feeding livestock *sefichin*. R. Shlomo Zalman Auerbach (Minchat Shlomo 51:1.1) permits deriving benefit from *sefichin* when it is not the food's designated purpose. See also Shabbat HaAretz 4:3:1, 4:5:2, 6:2:3.

10. This point is subject to some halachic debate. According to Rambam, even if the plant began to grow during the sixth year, it is nevertheless considered *sefichin*. The Rash disagrees. The mainstream ruling is lenient, following the Rash and the standard practice is to follow this lenient opinion. This is position of the Chazon Ish, R. Ovadia Yosef and most poskim. Even though this goes against the psak of the Rambam, since the prohibition is rabbinic, most poskim are lenient.

11. This will depend on how and where they are grown, whether they are included in the Heter Mechira etc.

12. The Chazon Ish was event lenient in some cases where the roots had begun to sprout and spread underground, even though the shoots had not emerged above ground.

13. It is always (not just during Shemita year) recommended that fruit and vegetables should be bought from a store with a hechsher. Otherwise it is likely that terumot and ma'aserot will have to be taken by the consumer (at least out of doubt). The procedure for doing this is not complicated but must learnt and takes a little time to get used to. Most of the stores and supermarkets in religious neighborhoods have hechsherim. Contrary to what some people say, there is NO central processing plant for taking terumot and ma'aserot on all produce.

B2] SHAMUR AND NE'EVAD

- Aside from the issue of *sefichin*, Chazal created other rabbinic prohibitions in certain cases of:

SHAMUR - where crops were guarded in breach of the laws of Shemita, and not made hefker; and
NE'EVAD - where fruit trees were worked and tended in breach of the laws of Shemita.

- In practice, most poskim¹⁴ PERMIT (bedieved) fruit which is *ne'evad* ie fruit from trees that grew and were tended during Shemita as a result of prohibited actions, even on land which was owned by a Jew. However, vegetables that grew in a prohibited fashion are forbidden to eat due to the prohibition of *sefichin*.
- Similarly, according to most poskim¹⁵, it is PERMITTED to eat fruit that was guarded (*shamur*) and not rendered ownerless by the farmer, even on land that was owned by a Jew.¹⁶
- However, in both cases, it is forbidden to aid those who are in breach of Shemita¹⁷ and purchase their fruit that grew in a forbidden manner. As such, one may only buy fruit from growers who cultivate the fruit in permissible methods: eg Heter Mechira¹⁸, Otzar Beit Din or other methods that we will be'H examine.

B3] MONEY USED FOR SHEMITA PRODUCE

3. שביעית תופסת את דמיה שנאמר כי יוכל לומר קדוש תהיה לכם - מה קדש תופס את דמיו ואסור, אף שביעית תופסת את דמיה ואסורה.

סוכה מ:

The kedusha of Shemita produce transfers onto the money used to buy it, but the original produce remains kadosh.

- Money paid for K7 produce can itself become K7¹⁹. Then, other food bought with this money can become K7 in turn, even if not fruit or vegetables - eg one could have K7 meat or fish²⁰!
- The original Shemita produce will ALWAYS retain its K7 (unlike ma'aser sheni which can be fully redeemed with money). However, the secondary K7 will be removed once it is sold or redeemed and the K7 will pass down the chain.
- Money which has K7 may not be passed on to people who will not respect its kedusha. Such money may only be spent to buy food, which will itself have K7.
- Most of the 'Shemita solutions' that we will examine during this series avoid K7 entirely - eg *yevul shishit*, *yevul nochri* (according to most poskim), Heter Mechira (according to most poskim), imported produce, *matza menutak*, and produce from the Arava.
- Otzar Beit Din produce DOES have K7 but the harvesting and distribution method will mean that the money handed over does not have K7.

B4] SHEMITA PRODUCE - OTHER RESTRICTIONS

- There are other halachic restrictions²¹ on dealing with K7 produce, including:
 - (a) It must be hefker and belong to every Jew.²² It is also exempt from terumot and ma'aserot²³.
 - (b) It may not be ruined, spoiled or thrown in the garbage²⁴.
 - (c) It may only be used in the regular manner - ie cooked, squeezed or blended only when that is normal for this food²⁵.
 - (d) It may not be exported outside Israel²⁶.
 - (e) It may not be traded commercially²⁷.
 - (f) It may not be weighed or measured for sale²⁸ in the regular manner.

14. Chazon Ish 10:6. See also Shabbat HaAretz 4:1:1, 4:15:2, that some poskim are stringent even with fruit.

15. Many poskim attest that the custom in Jerusalem was to be lenient with guarded fruit. See also Shabbat HaAretz 4:1:2.

16. These heterim are based, in part, on the possibility that all the laws of Shemita are rabbinic today.

17. Rambam 8:14; Shabbat HaAretz 4:1:1; Chazon Ish 10:5, s.v. ubeito; 10:6, s.v. veyeish.

18. R. Shlomo Zalman Auerbach (Minchat Shlomo 44-45) rules that even someone who does NOT accept the Heter Mechira and who holds that a field sold to a non-Jew retains its Shemita sanctity, can nevertheless purchase fruit produced under the Heter Mechira, since the farmer and grocer are following their rabbi's guidelines.

19. The halachot which determine when money will become K7 are complex and beyond the scope of this shiur. It will depend how the sale was structured, whether other non K7 items were bought with the money, whether it was a sale or gift, whether cash or credit was used, and other factors.

20. Rambam 6:6.

21. There is a discussion in each case as to whether the prohibition is min haTorah or miderabanan. We will be'H deal with some of these issues in the coming shiurim.

22. Rambam 4:24.

23. Rambam Hilchot Matnot Aniyim 6:5. Shulchan Aruch YD 331:19.

24. Rambam 5:17.

25. Rambam 5:3.

26. Rambam 5:13. There is a question as to whether K7 produce may be taken out of Olei Bavel boundaries and even more so out of Olei Mitzrayim boundaries - eg to Eilat. In practice, most poskim are lenient with locations inside the State of Israel.

27. Rambam 6:1. Torah states explicitly that the produce is 'for you to eat' (Vayikra 25:6) from which Chazal learn that K7 produce is for eating, not for trade (*Avoda Zara* 62a).

28. Most poskim permit measuring in the normal manner when cooking, baking or preparing K7 food.

C] THE HETER MECHIRA SOLUTION

- As we saw in the previous shiur, the Heter Mechira was introduced around 140 years ago and was originally given by R. Yitzchak Elchanan Spector to enable the religious farmers in the new yishuvim to survive through the Shemita year.
- It still remains in place and remains almost as controversial as it was in 1888!
- Under the Heter Mechira, the farmer sells their land to non-Jew for two years, including the duration of Shemita. Since the land is now owned by a non-Jews, some agricultural work on the land can now be carried out by non-Jewish workers. Other activities may even be undertaken by Jews.
- We have set out below **12** different halachic, hashkafic and other issues which arise in connection with the Heter Mechira. We will look at them individually, examining the arguments in each direction.

C1] ISSUE 1: HOW IMPORTANT IS THE OBSERVANCE OF SHEMITA FOR THE SPIRITUAL SUCCESS OF THE YISHUV?

- The Torah is very clear that one of the main reasons for the Exile was non-observance of Shemita. So any hope of success for the Yishuv in Eretz Yisrael must include a 'proper' observance of Shemita.

Anti-Heter

- The Heter Mechira attempts to by-pass the entire purpose of Shemita - to leave the land fallow. It circumvents the spiritual essence of the mitzva and the need for mesirut nefesh that the Torah requires of us. By effectively wiping Shemita off the books it undermines the spiritual success of Israel.

Pro-Heter

- The Heter Mechira saves us from mass breach of Shemita. Most farmers in the country would not stop work for a year, so better to have the land sold to and worked by non-Jews than retained and worked by Jews without the Heter. The market would be flooded with prohibited produce.
- Non-violation of Shemita is seen as critical to maintaining general awareness/respect of the non-religious Yishuv for the halachic system, which is vital for the spiritual success of the Yishuv.
- The Heter Mechira is a halachically valid system, approved by some of the greatest Torah minds of the 19th, 20th and 21st Century. Living through the halachic process is exactly what we are meant to be doing and will hopefully work towards the success of our spiritual mission. It is in no way similar to the mass breach of Shemita referred to in the Torah and Chazal!
- Shemita is a rabbinic mitzvah today - see below. There are many central Torah mitzvot that we should focus on, and which will be'H be a zechut for the Yishuv.

C2] ISSUE 2: DOES THE HETER UNDERMINE KEEPING MITZVOT IN ERETZ YISRAEL?

- The purpose of settling Eretz Yisrael is so that the Jews can KEEP its special mitzvot. Does the Heter not undermine this?

Anti-Heter

- The Ridvaz strongly argued that the whole purpose of settling Eretz Yisrael is to have the opportunity to KEEP the special mitzvot which depend on the Land, like Shemita. If we effectively by-pass Shemita, what is the advantage over chu'l?
- Other poskim were concerned that Heter Mechira enable us to avoid entirely the 'mindset' of Shemita²⁹.

Pro-Heter

- Rav Kook countered that settling Eretz Yisrael and the treatment of Shemita are independent issues. Not every halachic issue dependant on Eretz Yisrael can be implemented at this stage (eg tumah/tahara, Mikdash etc).

29. This could also be argued to some degree to apply also to the practice of 'avoiding' Shemita by simply buying produce from non-Jews.
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C3] ISSUE 3: DOES THE HETER 'UPROOT' A TORAH MITZVA?Pro-Heter

- The Heter will not uproot the mitzva. It is a temporary ruling. It does not permit work which constitutes a melacha min haTorah.
- Some religious farmers (Charedi farms or those which are part of the Otzer Beit Din) do not follow the Heter, and observe Shemita in full by not working at all. Some people exclude a portion of their farm from the sale and leave it fallow to retain the original mitzva.
- Is the Heter so different to Prozbul (also now Rabbinic) which Chazal instituted to enable people to lend money through Shemita year? Those who wish to be strict for Shemita should be releasing their loans too and not relying on a Prozbul.
- The sale is comparable with the halachically valid procedures of selling Chametz or selling an animal about the give birth to a first-born to avoid the issues of bechor.

Anti-Heter

- The Heter, even if it works, causes mass ignorance of Shemita and effectively uproots and remove a mitzva, which is prohibited. The original mitzva will be forgotten.
- Any comparison with Prozbul is inappropriate (and perhaps arrogant) as Prozbul was instituted by Chazal who had much more authority in such matters.
- Comparisons with the sale of Chametz are inappropriate for many reasons (a) the sale of Chametz removes the chametz from one's possession, which is what the mitzva requires, whereas the Heter enables the farmer to work, which is the opposite of Shemita! (b) the sale of Chametz is more realistic than the sale of all that land to one non-Jew; (c) the seller would take the cash for the Chametz but not for the land! (d) with the Heter, the sale is effectively ignored by the seller.
- The Netziv understands the verse (Vayikra 25:24) - *geula titenu la-Aretz* - to mean that, if land in Eretz Yisrael is owned by non-Jews, it should be BOUGHT BACK for Shemita to enable it to rest!

C4] ISSUE 4: DOES SHEMITA APPLY TODAY ON A TORAH OR RABBINIC BASIS?

- The Heter relies heavily on the assumption that Shemita applies today only on a Rabbinic basis. We looked at this in more detail in the previous shiur. If Shemita applies min HaTorah, it would be extremely difficult to rely on the leniencies of the Heter.

Pro-Heter

- Most poskim rule that Shemita applies today *miderabbanan*³⁰. This is position of most Rishonim including (probably) the Rambam³¹.
- This is the position of most Acharonim and modern-day poskim, including Rav Kook, the Chazon Ish, R. Ovadia Yosef and indeed many others who in fact oppose the Heter in practice³².
- There is even a minority position in the Rishonim³³ that Shemita today is kept as a *middat chasidut*. In a time of pressing need, even a *da'at yachid* (sole opinion) can sometimes be relied upon.
- In any event the Heter only permits work by non-Jews or rabbinically prohibited work by Jews (hence two levels of *derabbanan*). Similarly, the prohibition of *sefichin* would today be two levels of *derabbanan*.
- There is a further debate as to which is in fact the correct year for Shemita. This can be joined into the halachic equation as a ground for leniency in a rabbinic law.

Anti-Heter

- There is a minority position in the Rishonim that Shemita applies today *Min HaTorah* - Ramban³⁴, Rosh³⁵, Ritva³⁶ and others.
- This is the position of some poskim, including the Sha'agat Aryeh (15), Beit HaLevi and the Netziv³⁷. The Beit HaLevi regards the doubt as to the correct Shemita year as a potential ground for stringency in other years!
- In practice much of the work is actually been performed by Jews, with little *hashgacha* to ensure that the work is *derabbanan*. This reality is now changing with the growing number of non-Jewish workers in Israel.
- The position that Shemita today is a *middat chasidut* is totally marginal and irrelevant and may indeed be referring to *shemitat kesafim* only.

30. This is either because (i) Shemita is linked to Yovel, which cannot apply until all the Tribes are returned to their ancestral lands; (ii) because the majority of Jews do not live in Eretz Yisrael; (iii) or because the sanctity of the Land created by the *Olei Bavel* lapsed after the Churban. The latter is a minority opinion in the Rishonim.

31. We saw in the previous shiur that the Rambam's position is complicated by different *girsat* in the text. Furthermore, even if the Rambam rules that Shemita today is rabbinic, this may not be due to its connection to Yovel but rather its connection to *terumot* and *ma'aserot*. If so, the Shemita may 'upgrade' to *deoraita* soon, once the majority of Jews are *be'H* living in Eretz Yisrael.

32. Such as the *Pe'at Hashulchan* 23:23.

33. *Ba'al HaMaor*. See *Sefer Haterumot* 45:4, Introduction to *Shabbat HaAretz* 6,7. This could be based on the understanding that Shemita is absolutely connected to Yovel and/or that the Shemita Year requires sanctification by the Sanhedrin.

34. *Sefer Hazechut Gittin* 36a.

35. *Tosafot Rosh Moed Katan* 4a, *Rosh Yoma* 8:14.

36. Cited by the *Or Zarua* 4:332 (end).

37. R. Moshe Stermbuch, who entirely rejects the Heter *Mechira*, considers this issue to be unresolved and thus requires stringency as a *safek deoraita*.

C5] ISSUE 5: IS THE SALE TO THE NON-JEW EFFECTIVE IN LAW?

- Clearly, the Heter can only be effective if a non-Jew actually acquires true ownership of the land. Does the Heter achieve this?

Anti-Heter

The sale is fictitious and bogus for a number of reasons (Chazon Ish):-

- The sale is a halachic violation of Lo Techonem (see below). It would nevertheless be valid bedieved if conducted directly between the farmer and the non-Jew, but it is not! The Chief Rabbinate acts as a shaliyach (since they do not own any of the land) and due to *ein shaliyach ledvar aveira* - a representative is halachically ineffective if asked to do a prohibited act - the sale is invalid.
- The sale is not registered at the Tabu³⁸ (the Israeli Land Registry) and is thus legally invalid in Israeli law. This makes it halachically invalid on the basis of *dina demalchuta dina* - the local civil law of the land is halachically binding. This is especially relevant since the establishment of the State of Israel³⁹.
- The sale is effectively a sham - there is no real *gemirut da'at* - full intention to sell. The sellers are often unlearned and/or non-religious and think that that they are only selling the land for 'religious' reasons. Even if the sellers fully understand the binding nature of the sale, this could make it worse, since they often do not really agree with it on political/philosophical grounds. The buyer has no real legal rights over the land and the seller continues to express full ownership in practice.

Pro-Heter

- The sale is NOT a halachic violation of Lo Techonem (see below). Even if it WERE a prohibited act, *ein shaliyach ledvar aveira* does not invalidate the sale, but merely places responsibility for the aveira on the shaliyach⁴⁰. Furthermore, *ein shaliyach* does not apply if the shaliyach is unaware of the prohibition or, as in this case, holds it not to be prohibited at all. Also, *ein shaliyach* does not apply where it is accepted and established⁴¹ practice that this agent performs the transgression, as here where the Chief Rabbinate relies on the Heter.
- The sale is now executed directly by the Israel Lands Administration and not by the Chief Rabbinate. Since the ILA has the rights to sell the land⁴², no shaliyach is involved.
- Non-registration in Tabu does not affect the legal validity of the sale, simply the willingness of the Israeli Government to recognize it.
- Non-registration in Tabu does not affect the halachic validity of a sale. Examples can be brought in connection with avoiding the Torah prohibition of interest, where property is sold to a lender (without registration) so that the lender can receive income/eat produce. Since this is valid for a Torah prohibition (interest), it certainly works for a Rabbinic one (Shemita)⁴³.
- Further, registration at Tabu is not legally required for a sale for 2 years. Also, the purpose of Tabu is to avoid fraud and collect taxes, neither of which are relevant here. Finally, in 1979 the Knesset passed The Land Transactions (Observance of Shemita) Law, giving legal validity to the sale of land through the Chief Rabbinate for the purposes of the Heter Mechira.
- The seller clearly intends the sale to be binding or he will be in breach of Shemita violations. Also, since the seller is signing a legal contract, there is less halachic concern has to their *gemirat da'at*.
- Furthermore, in the sale of chametz (which involves a Torah prohibition) even though the buyer should have control, if the seller retains full control the sale remains valid.
- Finally, in the 2007/8 Shemita changes and updates were made to the wording of the sale documents to ensure that the seller and buyer are fully aware of the binding nature of the transaction. Farmers are also encourage to consult with lawyers so that they can be fully aware of the legal implications of the sale.
- According to Rav Kook, the 'religious' nature of the sale helps since the regular registration process may be superfluous.

C6] ISSUE 6: IS THE SALE TO A NON-JEW OF LAND IN ISRAEL PROHIBITED AS 'LO TECHONEM'?

- There is a Torah prohibition to sell land in Eretz Yisrael to a non-Jew - Lo Techonem.

4. וְנִתְּנָם ה' אֱלֹהֶיךָ לְפָנֶיךָ וְהִפַּיְתָם הַחֲרָם תַּחְרִים אֹתָם לֹא-תִכְרֹת לָהֶם בְּרִית וְלֹא תִחַסּוּ.

דברים ז:ב

5. תְּנִיָּא נְמִי הַכִּי: לֹא תַחֲנַם - לֹא תִתֵּן לָהֶם חֲנִיָּה בִקְרָקַע

עבודה זרה כ.

*Chazal understand that the prohibition 'Lo Techonem' includes any act which enables non-Jews to settle the Land*⁴⁴.

38. The Chazon Ish originally ruled that registration in the Tabu was not required but later changed his position.

39. Ironically, often those arguing the relevance of *dina demalchuta dina* to undermine the Heter Mechira also question the application of this principle to many other areas of Israeli law.

40. This is an unresolved dispute on the issue of shelichut - see Aruch HaShulchan EH 141:139.

41. Rema CM 388:15. This is strongly disputed by the Shach CM 388:67.

42. The farmers assign their land in advance to the ILA.

43. So too, the sale of chametz before Pesach does not need to be enforceable in civil law to be binding in halacha.

44. The mitzva also includes a prohibition on extending gratuitous compliments or giving gratuitous gifts to non-Jews. The practical application of this mitzva is beyond the scope of this

6. וראיתי לגאון א' שכתב וליתר שאת יכולים למכור לישמעאל המכירו, אלא שאסור למכור שדות לעו"ג זא"י ... וז"ל דסומכין על מש"כ הט"ז ציו"ד (סי' קכ"ד סק"ד), דישמעאלים דינס כגר תושב. ... וז"ל דלא תחנם לא קאי רק על מאן דפלה לע"ג וה"ג לענין מכירה דנפקא לן מלא תחנם לא קאי עליהם וא"כ אפשר למכור לישמעאל המכירו ותהוי שביעית של עו"ג... עכ"ל. וזאמת הכ"ג הג"ל צרח מהזאב ופגע בו ארי! כי רולים להמלט מאיסור שביעית צזה"ז דרצנן לרוב הפוסקים ופגע באיסור מכירת קרקע לעו"ג זא"י שהוא איסור דאורייתא לכו"ע!

שו"ת משיב דבר חלק ב סימן נו

The Netziv ruled that the Torah prohibition of selling the Land to a non-Jew was far worse that the prohibition of working the land, which is rabbinic according to most poskim (although the Netziv himself held this to be deoraita).

7. ... והנה אמרתי בפשיטות שטוב להתיר למכור לנכרי. ואף על פי שאסור ליתן ולמכור קרקע זא"י, ביון שהוא לטובת היישוב פשיטא דאין כאן איסור דלא תחנם, צפרט כשמוכר ע"מ להחזיר ...

שו"ת ישועות מלכו חלק יורה דעה סימן נה

Those in favor of the Heter (here R. Yisrael Yehoshua of Kutna) rule that the prohibition of Lo Techonem only applies when the sale weakens the Jewish yishuv. The Heter Mechira achieve the opposite and strengthens the Yishuv.

Anti-Heter

- The Heter is in breach of this prohibition and is effectively 'jumping out of the frying pan into the fire!' To avoid a rabbinic prohibition, the farmer is now in breach of a Torah one!
- Selling to an monotheist does not remove the problem. Sale to a Ger Toshav is not possible at this point since it is only possible to have a status of Ger Toshav when Yovel is applicable.
- A temporary sale cannot be better than rental of land in Eretz Yisrael to a non-Jew, which is still prohibited. Furthermore, the more temporary the sale, the less likely it is to remove the sanctity of the Land (rental will not suffice).
- Many of those in favor of the Heter, still invoke the serious issur of Lo Techonem when opposing any political transfer of land to Arabs as part of a peace deal! Is this not hypocrisy!?!?

Pro-Heter

- Lo Techonem is only relevant when it weakens the Jewish yishuv in Eretz Yisrael. The purpose of the Heter is to strengthen it!⁴⁵ On the other hand, buying produce from Arabs during the Shemita year may not technically violate Lo Techonem but it DOES weaken the Yishuv, strengthens the commercial and political strength of the Arabs, and thereby violates the spirit of Lo Techonem.
- Even if there is a problem of Lo Techonem, this only affects the sale but not the produce. Even if the sale was prohibited, the produce will not become prohibited.⁴⁶
- Lo Techonem does not apply to a temporary sale for 2 years⁴⁷.
- Some argue that the prohibition of lifnei iver - putting a stumbling block before the blind - by causing the farmers to work during Shemita, outweighs the issue of Lo Techonem.
- Lo Techonem is only prohibited if selling to an idolator. A Moslem Arab is halachically monotheistic. Furthermore, from Shemita 5775 the sale has been effected through a Ukrainian Ger Toshav with Jewish grandparents, which is even less problematic.
- Maybe there is no prohibition, or at least less of one, to sell to a non-Jew who already owns other land in Eretz Yisrael.
- Many of those against the Heter are prepared to ignore the issur of Lo Techonem when accepting the political transfer of land to Arabs as part of a peace deal!

shiur.

45. Some object that deciding halacha on the basis of the reasons behind the mitzva is invalid - *ein dorshim ta'amei dekra!* Those in favor of the Heter point out that the Rambam (Hilchot Avoda Zara 10:4) unusually gives a reason for this halacha, indicating that it is legitimate to include the reasoning in the process of psak. (See R. Yitzchak Twersky's Introduction to the Code of Maimonides pages 407-514 for an appraisal of the ta'amei hamitzvot that the Rambam included in the Mishna Torah).

46. The Chazon Ish argued that, since the sale itself is prohibited, any attempt to use a shaliyach will not be halachically effective since *ein shaliyach ledavar aveira*. If so, the sale is ineffective and the produce is prohibited.

47. There is an inverse relationship between the issues of Lo Techonem and the *gemirut da'at* of the seller. If the sale is made more comprehensive, this assists on the issue of *gemirut da'at* but causes more concerns of Lo Techonem, and vice versa. R. Weitman recommends that the sale should be made *al menat lehachzir* - on condition that it will be reversed after Shemita.

C7] ISSUE 7: DOES OWNERSHIP OF LAND IN ERETZ YISRAEL BY A NON-JEW **ACTUALLY REMOVE** THE PROHIBITIONS OF SHEMITA?

- Even if the sale is permitted in halacha and valid in law, does ownership by a non-Jew actually remove the prohibitions of Shemita?
- There is a very major halachic debate in Chazal as to whether ownership of land in Eretz Yisrael by a non-Jew is sufficient to remove from it the specific mitzvot which relate to the land - terumot, ma'aserot, Shemita etc.

8. אמר רבה: אף על פי שאין קנין לעובד כוכבים בארץ ישראל להפקיע מידי מעשר, שנאמר: (ויקרא כה:כג) כִּי־לֹא הָאָרֶץ - לִי קדושת הארץ (רש"י - אם קנה עובד כוכבים קרקע בארץ אין קניינו קניי להפקיעה מקדושתה שלא תתחייב במעשר וישראל הקונה ממנו מן הפירות לריך לעשר). אבל יש קנין לעובד כוכבים בא"י לחפור בה בורות שיחין ומערות, שנאמר: (תהלים קטו:א) הַשְּׂמִימִים שְׂמִימִים לָהֶן הָאָרֶץ נִתְּנָה לְבְנֵי־אָדָם. ור"א אומר: אף על פי שיש קנין לעובד כוכבים בא"י להפקיע מידי מעשר, שנאמר: דגן, ולא דגן עובד כוכבים. אבל אין קנין לעובד כוכבים בא"י לחפור בה בורות שיחין ומערות, שנאמר: (תהלים כד:א) לָהֶן הָאָרֶץ [וּמְלוֹאָהָ].

גיטין מז.

*Chazal disagree on whether ownership of land by a non-Jew in Eretz Yisrael is sufficient to release it from the obligation to take ma'aser. Raba says it will NOT be released. Rabbi Eliezer say that it will be released.*⁴⁸

- The resolution of this question remains disputed and became a famous 16th Century machloket between the Mabit and Beit Yosef.
- The Mabit⁴⁹ ruled that ownership by a non-Jew will NOT release the land from mitzvot dependant on the Land. As such, it remains subject to Shemita laws, even if owned by a non-Jew⁵⁰.
- The Beit Yosef⁵¹ ruled that ownership by a non-Jew WILL release the land of obligations of Shemita etc⁵². The Beit Yosef also wrote that the sages of Tzfat agreed with his position, and threatened that those who followed the leniency of the Mabit on this would be excommunicated⁵³!
- The common practice of the communities in Yerushalayim and most placed in Israel is to follow the Beit Yosef.
- However, the Chazon Ish rules⁵⁴ strongly like the Mabit and this is the practice in Bnei Brak.

Anti-Heter

- The majority of Rishonim including (possibly⁵⁵) the Rambam rule that sale of land in Eretz Yisrael to a non-Jew does NOT remove the halachic prohibition.
- There is a major machloket in the Acharonim (particular between the Mabit (strict) and the Beit Yosef (lenient)) as to whether the sanctity is indeed removed.
- Even according to the Beit Yosef, only the produce is released from K7. It would nevertheless be prohibited to WORK the Land.
- Today, when all of the land in Eretz Yisrael is under the rule of a Jewish government (even land which is privately owned by non-Jews) there is further room to doubt that even non-Jewish private ownership is sufficient to remove sanctity from the Land⁵⁶.
- For who follow the Chazon Ish, this is a serious blow to the Heter Mechira. No sale of the Land will permit working the Land or indeed remove K7 status for the produce.

Pro-Heter

- The Rambam's view is not clear. Besides, many Rishonim hold that the sale DOES remove the prohibitions.
- For those areas (such as Syria) where the laws of Shemita only ever applied rabbinically, it is clear that ownership by a non-Jews WILL exempt the land from Shemita. Since, according to many poskim, the laws of Shemita apply today only rabbinically, this leniency should apply today to all of Eretz Yisrael⁵⁷.
- It is also appropriate to rely on the lenient opinion of the Beit Yosef (which is not a sole opinion but was a widely accepted view by a major posek) in the case of a potential Rabbinic prohibition.
- Furthermore, the Heter only permits work by a Jew which itself is normally Rabbinically proscribed, or work by a non-Jew. Today the reality on the farms is that almost all the work is done by non-Jews, which was not the case in the past.

48. Note that, even according to the opinion that ma'aser is not taken from land owned by non-Jews, this does NOT affect the inherent kedusha of the Land - see Rav Kook's Introduction to Shabbat HaAretz 15, R. Chaim Brisker on Hilchot Terumot 1:10.

49. Mabit 1:11,21, 217 and 336. R. Moshe of Trani was head of the community in Tzfat in the early 16th Century. He was one of the few rabbis who received 'true' Semicha in the restoration of Semicha.

50. This was actually applied by the Mabit as a leniency in that he ruled that Shemita produce from non-Jews was still exempted from terumot and ma'aserot.

51. Shu't Avkat Rochel 24, Kesef Mishna 4:29. R. Yosef Karo was also a senior Rav in Tzfat and was one of the few rabbis who received 'true' Semicha in the restoration of Semicha.

52. On the issue of ma'aser during the Shemita year, if the produce was stored and smoothed over - *miruach* - by a Jew it would be obligated in terumot and ma'aserot.

53. Some commentators argue that the Beit Yosef later reversed his position and agreed with the Mabit, see Birkei Yosef YD 331, Pe'at HaShulchan 23:29.

54. 20:7 and elsewhere.

55. There is an apparent contradiction in the wording of the Rambam which must be resolved.

56. This argument, which undermines the Heter Mechira, was actually made by R. Shlomo Goren.

57. This extrapolation is supported by the Sefer Hateruma and the Vilna Gaon. However, the Chazon Ish (20:7) notes that the Rambam rejects this comparison. He understands the position in Syria to be more lenient since there is no inherent kedusha to that land. Indeed, the Chazon Ish notes that the accepted practice in Israel since the time of Rav Yosef Karo has been to separate terumot and ma'aserot (with a beracha) from wine produced from grapes that were grown on Israeli land owned by non-Jews.

C8] ISSUE 8: IF THE HETER IS **INVALID**, ARE JEWS BEING ENCOURAGED TO SIN?

- Aside from the prohibition of work in the fields, there are a number of halachic issues which may prohibit buying and consuming the produce, including:
 - the issur of *sefichin* which is a Rabbinic prohibition on eating anything which grew during Shemita and which is normally planted annually (ie vegetables and not fruit).
 - the issur of *shamur* - produce which was guarded during shemita when it should have been made hefker.
 - the issur of *ne'evad* - produce which was worked during Shemita in a way which is prohibited.
 - the issur of *sechora* - not to do business with Shemita produce.
 - issurim relating to treatment of K7 produce.
 - the issur to eat K7 produce after the 'zman biur'.

Anti-Heter

- If the Heter does not work, Jewish farmers are being encouraged to carry out prohibited agricultural activities throughout the Shemita year. Even though the instructions for the Heter require that Jewish farmer must not perform activities which are Torah prohibited (but only activities which would otherwise be rabbinically prohibited, or activities through non-Jews or through *grama*), these instructions are routinely ignored by non-observant farmers.
- Consumers will also be in breach of halachic prohibitions if they eat the produce - such as *sefichin*, *ne'evad* and *shamur*, and not treating K7 produce with proper sanctity.
- Since Heter Mechira produce is prohibited, there is a halachic question if the pots used to cook it are now non-kosher!

Pro-Heter

- The assumption is that the Heter DOES work, the produce is *yevul nochri* and therefore these prohibitions are not a problem.
- The growing number of foreign workers in Israel agricultural sector (now around 25,000)⁵⁸ means that less and less actual melacha is performed by Jews.
- Most people who do not rely on the Heter Mechira do not consider it entirely invalid but choose, as a stringency, not to rely on it. Many poskim rule that they would be permitted to eat Heter Mechira produce if there were in a situation which required this (especially to avoid conflict and upsetting and embarrassing others).⁵⁹
- If the Heter is entirely invalid, there would indeed be a prohibition of *sefichin*. This is rabbinic and the prohibition of Shemita today is itself rabbinic according to most opinions. There are also other sefeket (such as the calculations of the years of Shemita). All this means that the worst case scenario is that a consumer would be in breach of a doubly rabbinic prohibition (*trei derabbanan*) in a situation where the Heter is needed to avoid major loss and for other reasons.
- The prohibition of *sefichin* will NOT in any event apply to fruits and perennial crops. As such, some people are more lenient with Heter Mechira fruit and wine than with vegetables. Those who wish to be machmir can treat the Heter produce with kedushat shevi'it.
- Also, many poskim are lenient, bedieved, regarding *shamur* and *ne'evad* and rule that one may eat fruits from fields which were guarded and worked unlawfully during Shemita.
- The potential issur of *sechora* is not violated by buying produce for consumption (which is allowed) but there could still potentially be 'lifnei iver' - causing the sellers/wholesalers to do business with the produce and to handle money which now has Shemita sanctity. However, since those in business rely on a legitimate Heter, there is no lifnei iver.
- Even if the Heter produce was considered prohibited by some (much less likely for fruit than for vegetables) the pots and pans would not become prohibited since those using them are relying on a rabbinic heter.⁶⁰

9. חלב הדבוק לכרס שתחת הפריסה אסור. הגב: וכן המנהג בכל מקום, מלצד בני ריינום, שנוהגין צמקתו היתר. ואין מוחין בידם שכבר הורה להם זקן. ובכל מקום שנוהגין צו איסור דינו כשאר חלב לצטל בששים. אבל אין אוסרין כלים של בני ריינום, הואיל ונוהגין צו היתר.

שולחן ערוך יורה דעה הלכות חלב סימן סד סעיף ט

The Rema records that the communities of the Rhineland permitted a certain chelev fat that no other community allowed. Although those from other communities may NOT eat this fat, the pots and pans of the Rheinisch community are permitted to all since that community was relying on a legitimate heter from their rabbanim⁶¹.

58. The presence of so many foreign workers causes other problems in Israeli society, not least the way in which they are treated and the minimal wages they earn.

59. R. Yosef Tzvi Rimon rules that those who normally avoid Heter Mechira produce out of stringency may eat it in situations of need. R. Yitzchak Yosef also rules in this way but only where the person has accepted the stringency *bli neder*, or obtained *hatarat nedarim*. (See Yalkut Yosef, Shevi'it Chap 25 pp 630-631).

60. R. Ovadia Yosef also ruled that, even if the Heter was entirely invalid, the principle of *stam kelim einam ben yoman* (we can assume that any pots and pans have not been used previously for 24 hours) means that others could eat non-Heter food made in those kelim.

61. This would not apply if a person regards the Heter Mechira as entirely invalid and all those who rely on it to be mistaken.

10. מי שנוהג באיזה דבר איסור מכה שסוּבַר שדינא הוא הכי, או מכה חומרא שהחמיר על עצמו, מותר לאכול עם אחרים שנוהגין בצדו, דודאי לא יאכילוהו דבר שהוא נוהג בו איסור.

שולחן ערוך יורה דעה הלכות מאכלי עובדי כוכבים סימן קיט סעיף ז

The Rema rules that someone who keeps a stringency in a matter of kashrut may eat at the home of other people who are lenient since they will not serve him food which he will not eat. The Shach⁶² rules that this only applies where the hosts are aware of the guest's stringency. As such, in the case of Heter Mechira, the host would be obligated to tell the guest which foods were Heter Mechira so that he could avoid them.

- If it works, the Heter Mechira would remove K7 from the product. Rav Kook recommended⁶³ that, where possible, one should be stringent and treat Heter Mechira produces with K7.

C9] ISSUE 9: IS THE HETER MECHIRA SIMPLY A 'HA'ARAMA' - A LEGAL FICTION - AND THUS INAPPROPRIATE OR EVEN PROHIBITED?

Pro-Heter

- The Talmud has many examples of circumventing a halachic prohibition by transferring title of ownership of a particular item.⁶⁴ In fact, the Gemara (Bechorot 3b) even encourages selling an animal to a non-Jew before it gives birth for the first time to avoid the restrictions regarding a Bechor. Mechirat Chametz has developed into a yearly routine in observant communities. Prozbul is a mechanism for avoid the release of loans at the end of the Shemita year.
- The promised blessing to enable us to survive through Shemita only apply when there is full settlement of the Land and Shemita applies on a Torah basis (see above). Our current situation is far from this.

Anti-Heter

- The Heter is a ha'arama, which is usually highly discouraged as potentially undermining the halachic process. This is especially important for Shemita, on which the success of the Yishuv depends.
- The sale of chametz ACHIEVES the Torah's intent - removal of chametz from our possession and ownership. The Heter Mechira DEFEATS the Torah's intent - for the Land to rest. Chazal never suggested a ha'arama to avoid Shemita since this would remove an entire mitzva - unlike the other cases.
- After the sale of chametz, the original owners have no connection with it at all. After the Heter Mechira, the original landowners continues to be involved with the land as if nothing had happened!
- The sale of chametz to a non-Jew is at least plausible (although in modern reality in Israel of millions shekels of chametz being sold to one person is less so!). The sale of all the land in Israel to one non-Jew is totally implausible.
- The other mechanisms referred to above were introduced by Chazal or Rishonim. It is arrogant to assume that the much more recent Heter Mechira can be compared to them⁶⁵.
- Shemita was NEVER easy - even during Temple times. The entire point is the mesirut nefesh to show that the Land is ultimately God's and to rely with bitachon on God's promise of extra blessing if we keep Shemita properly. A legal fiction to undermine this is totally unacceptable.

C10] ISSUE 10: ARE THE ORIGINAL GROUNDS FOR THE HETER STILL RELEVANT?

Anti-Heter

- Everyone agrees that the Heter was initially introduced because of the fragility of the early Yishuv and the potential issues of *pikuach nefesh* if the farmers were not allowed to work the land. Today these reasons are not relevant since the Yishuv is b'H very established.
- In 2017 only 2.4% of the Israeli economy was agricultural. In 1950 agriculture accounted for 60% of Israel's exports. Now is less than 3%. Less than 1% of Israeli work in the agricultural sector.
- There are also funds in place to assist farmers who cannot work for the year.

62. YD 119:20. The Shach sets out a lengthy typology of different levels of prohibition - customs, stringencies etc - and how they affect whether the guest may eat from those foods and others which were made in the host's pots and pans.

63. Shabbat HaAretz 6:6:5 and other places.

64. See Ma'aser Sheni 4:5, Tosefta Pesachim chapter 2, Beitza 17a, and Nedarim 48a.

65. Supporters of the Heter argue that it was not simply invented in the 19th Century, but is based on precedent going back 500 years to the Mabitz (2:64, 3:48), his son the Maharit (2:52) and R. Moshe Galanti (Shu't Maharam Galanti 57), all of whom permitted selling land to a non-Jew for the purposes of Shemita. Another important precedent, on which R. Spector based the Heter is Shu't Shemen HaMor YD 4 in which the 18th Century Rav of Chevron, R. Mordechai Robbio gave a heter mechira for vineyards.

Pro-Heter

- There is still a significant agricultural sector and 2.4% of Israel's GDP is generated by agricultural production or services. The annual agricultural export market is \$1.3 billion. If contracts are lost for a year, they may not be regained next year, so a one year break could be devastating for future earnings. Also, there are many other related industries which would be severely affected by a cessation of agricultural activity - packaging, trucking, warehousing, wholesalers etc. Given that Shemita is a Rabbinic prohibition which has a halachic solution, albeit relying on leniencies, there is no reason to be strict in such a prohibition and undergo this level of loss.
- The maintenance of Jewish agriculture and land occupation/use is critical for the future of the Yishuv. There are Arab organizations trying to buy Israeli land within Israel to weaken the Yishuv. Strengthening the Israel farmers is as critical now as ever⁶⁶.
- The mitzva of Yishuv Eretz Yisrael is min haTorah and cannot be set aside by a Rabbinic prohibition.

C11] ISSUE 11: IS AVOIDING JEWISH ISRAELI PRODUCE APPROPRIATE IN THE CURRENT BDS CLIMATE?Pro-Heter

- There are halachic reasons to direct business to Jewish suppliers where possible.
- In the current political climate it is inappropriate and perhaps immoral to divert funds away from Jewish farmers to Palestinian and Israeli Arab producers, thereby weakening the Israel economy and strengthening the Palestinians.
- The political situation is a relevant meta-halachic and hashkafic factor in the mitzva of Yishuv Eretz Yisrael.
- It may be a *chilul Hashem*, and will certainly be damaging to Israel, if Orthodox Jews in chu'l openly avoid buying Israeli produce. This may be seen as a boycott of Israel.

Anti-Heter

- Politics cannot be introduced into a halachic debate. If there is a real prohibition, political factors will not make it go away.

C12] ISSUE 12: THE HETER WAS INSTITUTED BEFORE THE STATE. DOES IT STILL HAVE THE SAME WEIGHT AFTER THE STATE?Anti-Heter

- Many halachic problems with the Heter became much more serious after the foundation of the State eg Lo Techonem, the emergency status of the farmers who did not previously have government support, the stability of the Yishuv as a whole.

Pro-Heter

- Some halachic issues became even more pressing after the State since more Jews are now in the country, with greater financial and spiritual risk. Originally it was just an issue of a few individual farmers. Now it applies to the Jewish State as a whole.

66. Most poskim in chutz l'Aretz rule that there is no justification for Jews living outside Israel to rely on the Heter Mechira for vegetables (which may be subject to the prohibition of *sefichin*) since ample produce is available from alternative sources. R. Hershel Schachter and R. Menachem Genack have stated that Rav Yosef Dov Soloveitchik ruled that the Orthodox Union's Kashrut department should not rely on the Heter Mechira. R. Soloveitchik argued that the Heter Mechira is a highly debatable leniency upon which one may contemplate relying upon only in case of very great need. Since such a pressing need does not present itself in chu'l, there is no room for Americans to rely on the Heter Mechira. The policy of the OU, Kaf-K, OK, and Star-K is not to rely on the Heter Mechira. Many poskim DO however permit reliance on the Heter Mechira in some cases for fruit. These include R. Moshe Feinstein (Igrot Moshe O.C. 1:186), the Chazon Ish (Shviit 10:6), and Rav Shlomo Zalman Auerbach (Teshuvot Minchat Shlomo 1:44). See also R. Willig's position at http://torahweb.org/torah/2001/parsha/rwil_behar.html. R. Schachter also rules in practice that it is permissible to use Heter Mechira fruit. According to some poskim, the fruit would have been treated as K7.