

# Shemitta for the Consumer

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The year 5775 is, according to our calculations,<sup>2</sup> a shemitta year. Although the prohibition of agricultural activity is limited to Eretz Yisrael, certain restrictions exist concerning the use of Israeli produce even if exported, so shemitta is *halacha l'ma'aseh* (practically applicable) for us as well.

In fact, some authorities prohibit all produce that is guarded or worked on in normal fashion by those who grow it.<sup>3</sup> However, most authorities seem to reject this view.<sup>4</sup>

Grains and vegetables that are both planted and harvested during shemitta are prohibited.<sup>5</sup> This applies to exported soup powders, canned vegetables, and cookies made of Israeli grain, including those on the shelf for up to 15 months after the end of shemitta.<sup>6</sup> Some authorities permit them after similar products grow from the following year's crop, but others disagree.<sup>7</sup> When harvested after shemitta, they are permitted when the next year's crop grows, or on Chanukah at the latest.<sup>8</sup> Fruits that blossom during shemitta, as well as grains and vegetables that are harvested during shemitta, are holy. They must be treated accordingly. In fact, they may not be exported, but if they are exported they may be eaten.<sup>9</sup> They may not be thrown out unless they become inedible, nor may they be eaten by a non-Jew. Squeezing citrus fruit into juice is permissible.<sup>10</sup> Peels and pits that are ordinarily thrown out have no *kedusha* and may be thrown out.<sup>11</sup>

## Method of Sale

Shemitta fruit may not be marketed in a normal fashion. This prohibition applies to the seller, and does not make the fruit forbidden. The buyer violates *lifnei iver* (causing someone else to

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<sup>1</sup> This article was originally printed in *Hamevaser*, 5740 (1979).

<sup>2</sup> See *Bei'ur HaGra*, *Choshen Mishpat* 67.

<sup>3</sup> Rabbeinu Tam in *Tosafos*, *Sukka* 39.

<sup>4</sup> *Sefer Hashmita* p. 13. See also *Igros Moshe*, *Orach Chaim* 1 no. 186. See however, *Chazon Ish*, *Shvi'is* Chap. 26, and *Oz Nidberu* IV, pps. 32-35.

<sup>5</sup> *Chazon Ish*, *Shvi'is* Chap. 26.

<sup>6</sup> *Jewish Dietary Laws* II, p.153.

<sup>7</sup> *Chazon Ish* 9:13, 14.

<sup>8</sup> *Ibid* 7:16.

<sup>9</sup> *Igros Moshe Orach Chaim* 1 no. 186.

<sup>10</sup> *Chazon Ish* 25:32.

<sup>11</sup> *Chazon Ish* 14:10. See however, *Shvi'is Kehilkhoso* pps. 84, 85.

sin) on two counts: the sale itself and the giving of the money to the seller. The latter problem is due to the fact that money exchanged for shemitta products assumes the holiness of the produce. The money may only be used to buy food, and this assumes the holiness of the money, making the money *chullin* (mundane).

*Lifnei iver* does not apply when the other party (the seller in this case) acts on the basis of a rabbinic ruling (that the land may be sold to a non-Jew and that the produce grown on a non-Jew's land is not holy). Even if the buyer does not abide by these rulings (which are controversial and will be discussed later), he may buy shemitta produce in regular fashion.<sup>12</sup> Nevertheless, it is preferable to include the shemitta produce in a larger sale without specifying a price for the produce,<sup>13</sup> or to buy the produce by check or on credit.<sup>14</sup> One may not keep shemitta fruit at home ("fruit" in this article, unless stated otherwise, refers to all produce) beyond the time they are no longer available in the field. If one keeps them beyond this time (called "*z'man biur*") they may no longer be eaten. Rather, one must render them ownerless (be "*mafkir*" them) and place them outside the home. The owner may then reclaim them and eat them as shemitta fruit.<sup>15</sup> Some maintain that the fruits no longer have the holiness of shemitta fruit, or their restrictions.<sup>16</sup>

If one is in doubt as to the time of *biur*, he must make the fruits *hefker* every day until the "*z'man biur*" has definitely passed.<sup>17</sup>

There is a way to eliminate the problem of *biur*, as well as the problem of selling shemitta fruit, by setting up an *Otzar Beis Din*. This is a system whereby farmers give authority to a rabbinical court to tend to their fields. The court then appoints the farmers as its agents to gather the produce. The court sets a price and the customers buy on credit or by check so that the money does not have the laws of shemitta. The court then pays the farmers and storekeepers for their work.<sup>18</sup>

## Non-Jewish Produce

There is a great controversy about fruits grown by non-Jews on farms they own in Israel. While all agree that the prohibition against vegetables planted and harvested during shemitta does not apply,<sup>19</sup> the question is whether the produce has the holiness of shemitta.<sup>20</sup> Rav Yosef Karo held that it does not, and therefore must be tithed. He even excommunicated those who did not tithe. Although the majority of authorities differ from Rav Yosef Karo, the magnitude of his authority continues to determine the custom of Jerusalem. In other parts of Israel the custom is to treat the produce as shemitta fruit, while tithing it in deference to Rav Yosef Karo's decision.<sup>21</sup>

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<sup>12</sup> See *Oz Nidberu* IV, pps. 6-8, 147.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Chazon Ish* 26 (end).

<sup>16</sup> *Ibid.*, 13:5.

<sup>17</sup> *Ibid.*, 26.

<sup>18</sup> *Ibid.* and *Hilchos Shvi'is* pps. 30-32.

<sup>19</sup> Rambam, *Hilchos Shemitta* 4:29.

<sup>20</sup> *Kesef Mishneh* and *Radbaz*, ad loc.

<sup>21</sup> *Chazon Ish* 20:7, *Oz Nidberu* IV, p. 154.

Some authorities hold a compromise view. The fruit must be eaten as shemitta fruit, but the prohibition against marketing and the law of *biur* do not apply. Tithes need not be taken.<sup>22</sup>

The ramifications of this controversy, which are great due to the large amount of Israeli land controlled by non-Jews, have been greatly extended. This is because of the Chief Rabbinate's sale of most Jewish owned farms in Israel to non-Jews for the duration of shemitta. This practice, now over one hundred years old, was sanctioned as a *horo'as sha'ah* (a temporary ruling) by many of the great rabbis of the late nineteenth century, including Rav Yitzchok Elchonon of Kovno, probably the most widely respected authority of his time.<sup>23</sup>

This sale can allow Jews to work the land during shemitta, but only if two assumptions are made: a) that the laws of shemitta are no longer Torah law but only of rabbinic nature, and b) that ownership of the land by non-Jews cancels this rabbinic sanctity.<sup>24</sup> The laws of shemitta would now be only rabbinic because the sanctity of Israel with respect to laws of the land is only *d'rabonon*—either since the destruction of the Second Temple, or even from its very inception. Incidentally there is a view, rejected by most authorities, that shemitta is not mandatory at all these days, since we have no *yovel*, the 50th Jubilee year, which applies only when most Jews live in Israel.<sup>25</sup>

Since both of the above-mentioned assumptions, especially the latter one, are very questionable, the rabbis did not allow a Jew to do work prohibited by the Torah—even after the sale. They further stipulated that the ruling is a temporary one, designed to prevent the collapse of the new settlements.<sup>26</sup> Unfortunately, many farmers do not observe the above restrictions, and the sale has become a matter of course, even for settlements that could survive without it. Only the Agudas Israel settlements have consistently refused to rely on the sale, due largely to the ruling of the Chazon Ish.

## Sale Forbidden

The Chazon Ish<sup>27</sup> forcefully rejected the second assumption above, and ruled that the sale was not effective to alter the state of the produce or to permit work on the land. In addition, he claimed that the sale violates the Torah injunction against selling the land to non-Jews, and rejected all the efforts to avoid this problem. These include a temporary sale, sale to a non-idol worshipper, sale of only trees and the immediately surrounding area, sale to a non-Jew who already owns land in Israel, and sale to benefit the Jewish settlements.<sup>28</sup> He further stated that since the sale was prohibited, it has no legal effect if done by proxy (e.g. the Rabbinate).<sup>29</sup> Other authorities dispute the prohibition of the sale, and especially the contention that the sale is not

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<sup>22</sup> Radbaz op. cit., *Toras HaShmita* p.38.

<sup>23</sup> *Sefer HaShemitta* pps. 66-7.

<sup>24</sup> See *Otzar Yosef, Shemitta*.

<sup>25</sup> *Bei'ur HaGra, Yoreh Dei'ah* 331:6, 28; see also 8.

<sup>26</sup> *Sefer HaShemitta* op. cit.

<sup>27</sup> 20:7. See *The Jewish Dietary Laws* II, Appendix II.

<sup>28</sup> *Ibid.*, 24:1-4.

<sup>29</sup> *Ibid.*, 4.

valid.<sup>30</sup> The lack of an official government bill of sale and/or real intent, which renders the sale invalid according to some authorities,<sup>31</sup> does not preclude it according to others.<sup>32</sup>

If the sale is valid, then Rav Yosef Karo's ruling becomes even more far-reaching, for even if the sale does not allow for the working of the fields, the produce does not have the laws and restrictions of shemitta. This would seem to make grains and vegetables permissible—although some disagree<sup>33</sup>—and remove the question of worked or guarded fruit. If one rejects Rav Yosef Karo's ruling then even if the sale is effective to allow the farmers to work, the restrictions on the produce still apply.

Thus, for the American consumer, the main issue is not the effectiveness of the sale (once one assumes its validity), but rather the question of the status of the produce of non-Jews. With respect to fruit, even if one rejects Rav Yosef Karo's ruling and even the validity of the sale, most authorities permit the fruit to be eaten until "*z'man biur*" as shemitta fruit, even if it is worked and guarded as usual.<sup>34</sup>

This last fact is crucial not only to those who want to buy Israeli citrus fruit next winter but also to those who purchase an esrog grown in Israel. This is because an esrog must be edible halachically even if one does not plan to eat it. Rav Moshe Feinstein zt"l has ruled<sup>35</sup> leniently on this matter, while others disagree since many (some say most) authorities prohibit worked and/or guarded fruit.<sup>36</sup> Some suggest that an esrog has no laws of shemitta fruit, since it is grown for the mitzvah and not to be eaten.<sup>37</sup> If one rejects this idea, then one may not throw out his esrog after Sukkos. It must be used as jelly (which must be eaten before the "*z'man biur*" which is in Shvat<sup>38</sup>) or disposed of after it becomes inedible. Rav Yosef Karo's ruling does not apply because esrog growers do not sell their land through the Chief Rabbinate. The seller's problem of marketing and perhaps even that of exporting is often avoided through the *Otzar Beis Din* system described above.<sup>39</sup> The problem of the money assuming laws of shemitta is best avoided by paying for the four "*minim*" together.<sup>40</sup> (The status of the lulav and haddasim<sup>41</sup> is questionable, but many lulavim and haddasim sold in America are not Israeli).

Obviously, this is only a superficial summary of the laws of shemitta as they apply to the consumer, for we learn in Tosafos<sup>42</sup> that there is no limit to the laws of restrictions that apply to shemitta fruit. We all eagerly await the time when all of us will return to Israel and fully observe all the laws of shemitta.

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<sup>30</sup> *Kerem Zion* III pps. 1-8, by Rav Zvi Pesach Frank.

<sup>31</sup> *Shvi'is Kehilkhoso* p. 18.

<sup>32</sup> *Le'or Hahalakha*.

<sup>33</sup> See *Oz Nidberu* IV, pps. 20-4, 164.

<sup>34</sup> See *ibid.*, p. 161.

<sup>35</sup> *Igros Moshe Orach Chaim* I no. 161.

<sup>36</sup> *Oz Nidberu* op. cit. and pps. 32-35.

<sup>37</sup> *Kerem Zion, Shemitta*, p. 52.

<sup>38</sup> *Toras HaShemitta* p. 28.

<sup>39</sup> *Hilchos Shvi'is* II, P. 178.

<sup>40</sup> See *ibid.*, pps. 177-8.

<sup>41</sup> *Oz Nidberu* IV, pps. 129-31, *Hilchos Shvi'is* II p. 173.

<sup>42</sup> *Sukka* 39a.