

Elul 5781

# Shemittah 5782: Laws and Guidelines

## Introduction

As the Shemittah year fast approaches, it is important for all—the more so for those of us who merit to live in Israel—to be well acquainted with the halachic details related to Shemittah.

The Torah notes several times that the hardships of exile are related to our neglect of the Shemittah year while we were in possession of the Land. While it is certainly important to realize the values inherent to Shemittah—values that apply far beyond the narrow agricultural context, it is also imperative to ensure alignment with the halachic guidelines of the Torah and the Sages concerning the Shemittah year.

For many centuries, the laws of Shemittah were barely relevant; precious few Jews lived in the Land on Israel, and no produce from the Land was exported to Europe and other Jewish concentrations. The laws of Shemittah, much like the Land of Israel, were altogether neglected, set aside for “future times.” It is incredible that those “future times” are here, and that going through the coming year requires us to ensure acquaintance with the laws of Shemittah.

It is therefore with a deep sense of gratitude that I embark on writing this short summary of Shemittah laws. I hope that they will be helpful to all readers.

## Working the Land

The main Torah obligation for the Shemittah year is to refrain from working the land. It is Biblically prohibited to sow, plant or prune the produce of the Land as well as to harvest it:

Six years you may sow your field and six years you may prune your vineyard and gather in the yield. But in the seventh year the land shall have a sabbath of complete rest, a sabbath of Hashem: you shall not sow your field or prune your vineyard. You shall not reap the aftergrowth of your harvest or gather

the grapes of your untrimmed vines; it shall be a year of complete rest for the land (Vayikra 25:3-5).

It is also forbidden to plough one's field during the Shemittah year, and many authorities maintain that this, too, is a Torah prohibition. By contrast with these, other forms of labor such as fertilizing, watering, and so on, are prohibited on a rabbinic level. Pruning is a Torah prohibition concerning vines, but rabbinic concerning other produce.

The main difference between Torah and rabbinic prohibitions is in circumstances when the labor is required to save from damage. A Torah labor must not be performed even when required for saving from damage. By contrast, it is permitted to perform a rabbinic labor where the plant or tree will otherwise be damaged, or for other cases of harm.

It is therefore permitted to water a garden during Shemittah, where doing so is required to prevent the plants drying up. However, it is not permitted to water plants if this is for their enhancement rather than to save them from damage. Likewise, it is permitted to water grass to ensure it won't die, but not to use fertilizer for its enhancement. It is forbidden to prune plants for their enhancement but permitted to do so if they are getting in the way. Most authorities permit mowing the lawn, since this is done to keep the lawn tidy rather than for purposes of enhancement.

Sometimes, the line between "saving from damage" and "enhancement" is not easy to trace, and for concrete questions in such matters a competent authority should be consulted. However, life can be made somewhat easier by using an automated watering system, which is turned on before Rosh Hashanah. In this case, one does not need to be particular about the quantities of water and fertilizer that the system uses, and it is permitted to allow it to run throughout the Shemittah year. However, if the system breaks down and requires a reset during Shemittah, the principles of "saving from damage" will apply.

Note that it is permitted to tend to pot plants at home (under a roof) as one would in regular years. It is preferable to ensure that the pot has a plastic tray (or similar) beneath it, or that the pot is on the second floor (or higher) of the building.

## Preparing Gardens Before Shemittah

Because of the different prohibitions related to the Shemittah year, it is important to prepare one's garden before Shemittah—both for the Shemittah year itself, and for the year following Shemittah (it will not be permitted to prepare the garden for 5783 during the 5782 Shemittah year).

Concerning planting, one must ensure that all plants are planted in the earth with sufficient time to take root before Rosh Hashanah of 5782, though different types of plants and trees have different latest planting dates, as follows:

- Bare-rooted fruit trees must be planted the 15<sup>th</sup> of Av
- Saplings in an unperforated pot must be planted by the 29<sup>th</sup> of Av
- Saplings in a perforated pot with a clod of soil (as common today) can be planted until Rosh Hashanah, provided the clod of earth does not crumple upon transportation
- Non-fruit trees and ornamental plants, if planted in a clod of soil (as common today), can be planted until Rosh Hashanah.
- If there is no clod of soil, non-fruit trees and ornamental perennials must be planted by the 15<sup>th</sup> of Elul, while annuals must be planted by the 26<sup>th</sup> of Elul and watered immediately, so that they will take root in the earth before Rosh Hashanah.
- The same principles apply to vegetables: If the plants come with a clod of soil (this is common today), they can be planted until right before Rosh Hashanah, and if not, they must be planted by the 15<sup>th</sup> of Elul.

Instead of seasonal plants, toward the Shemittah year it is recommended to plant perennials (such as geranium, snapdragon, gazania, chrysanthemum, coreopsis,

sage, and so on) or biannual flowers, which will prosper even during Shemittah. It is likewise permitted to plant flower bulbs before Rosh Hashanah. Again, special questions should be referred to a competent authority.

Since pruning is forbidden during the Shemittah year, ensure that all trees and bushes that require pruning are pruned in advance of Rosh Hashanah. A gardener should be consulted concerning the optimal time for pruning, given that pruning will not be possible during the entire Shemittah year.

One should also perform all activities required to assist plants in advance of the Shemittah year, such as painting or wrapping tree trunks to protect them from cold, supporting and tying trees, pruning young trees, and so on. If these actions are not done before Shemittah, some of them will be permitted during the Shemittah year, to prevent damage. Nonetheless, one should do whatever labors are possible before the Shemittah year, so that they will not be necessary during Shemittah. The same is true of fertilization (a compost or combined fertilizer, which works slowly, can be applied before Rosh Hashanah).

The Shemittah year can be a useful time for inanimate landscaping such as installing benches, playgrounds, exercise facilities, pergolas, fountains, pools, and so on. Such landscaping activities are permitted provided that their purpose is not agricultural, that it is obvious to others from the context that the purpose is not agricultural, and that if a Biblically prohibited activity is involved, it is not done in a way that is beneficial to the relevant plant.

## Produce of the Shemittah Year

Many halachic rulings govern the laws of Shemittah produce, as detailed below. Before coming to these rulings, it is important to define some basic parameters: Which produce is considered Shemittah produce, so that the different laws will apply?

First, the laws of Shmitta apply only to produce grown within the Torah-defined boundaries of Eretz Yisrael, which are those areas occupied by the Jewish People during the period of the Second Temple.

These are not the same boundaries as those of the State of Israel that exist today, and their precise extent is a matter of much dispute. According to some authorities, anything grown south of Ashkelon is outside the halachic boundaries Eretz Yisrael, so that laws of Shemittah will not apply. Others extend the boundaries well into the Negev desert, down to Eilat—exactly to which point is a matter of dispute, though it is broadly accepted that south of River Paran is outside the boundaries (in the East, the Arava Stream has similar status). In the north, the status of the Golan Heights is questionable.

Because Shemittah today is assumed by Poskim to be rabbinic (because the majority of Jews are still not upon the land, because we are not divided up into our Tribes, or because we do not have the Sanhedrin), there is room for leniency in matters of dispute—though each issue must be judged on its specific merits.

Another significant dispute among early authorities relates to the question of produce grown on land owned by a non-Jew living in the Land of Israel. This age-old dispute between the *Beis Yosef* (Rav Yosef Karo) and the *Mabbot* (Rav Moshe Mitrani) is also the subject of different customs today: the custom in Israel generally, and in Jerusalem specifically, is not to consider it Shemittah produce (following the *Beis Yosef*), while the custom in Bnei Brak (based on the opinion of the *Chazon Ish*) is to consider it Shemittah produce.

This dispute brings us to the great question of the *heter mechira*, which was formulated and instituted by prominent rabbanim (and with the approval of Rav Yitzchok Elchanan Spector) in the year 1889, at a time when the Jewish population in Palestine was in dire straits and on the verge of starving. Even at inception the *heter mechira*—selling lands en masse to non-Jews—sparked a major controversy, and since that time the dispute over its legitimacy unfailingly flares up every

Shemittah year (it became more strident after many non-observant farmers arrived in the pre-Israel waves of Aliyah).

Some authorities argue today for the continued legitimacy of the *heter mechira*; others claim that it was never legitimate; and still others argue that even if there was room for the leniency in the past, in today's (less dire) circumstances it is no longer legitimate to rely on the *heter*. By contrast, others argue that today's *heter mechira* is better than it was in the past, because of contractual and formal improvements that have been instituted over the years.

Use of the *heter mechira* is a matter of public policy, and its endorsement or condemnation are contingent on the broader vision for Israel's Jewish settlement, as well as on halachic considerations that apply primarily to farmers, and partially to vendors (it is forbidden to do business with Shemittah produce, as detailed below). More on this below.

## Shemittah Produce: Relinquishing Ownership

There are two basic principles that guide our treatment of Shemittah produce. One is that we must declare all Shemittah produce *hefker*—ownerless and free for all to take and enjoy. This obligation applies to all who grow produce in their fields or gardens: the produce must be treated as ownerless, and permission must be granted for anybody to come and harvest the crop. According to most authorities, there is no need for an actual act of *hefker* (rendering the produce ownerless), and the obligation is only to treat the produce as available to all for consumption.

For somebody who owns a garden with fruit trees, for instance, the ideal is therefore to leave the gate open and place a sign outside notifying the public that all are welcome to come and pick fruit. However, since doing so will run the risk of people ruining the trees, and because of the potential discomfort and invasion of privacy related to people entering, it is permitted to close/lock the gate, while leaving a notice informing the public that they can enter by arrangement or at certain hours.

It is permitted for the owner to pick fruit for himself and the family, but this must be done for personal consumption alone, and in modest amounts appropriate for consumption of a few days. Commercial harvesting, both for the owner and for others, is forbidden. If a large amount of fruit is about to go bad, it is permitted to pick a larger amount and place it outside (but not to take it home) for others to take.

During the Shemittah year, it is permitted to enter other people's gardens for the purpose of picking Shemittah produce from trees. Asking permission first is strongly recommended.

## Shemittah Produce: Sanctity

The second aspect of Shemittah produce, which is relevant for all, is the inherent sanctity latent in the produce—*kedushas shevi'is*.

All fruit and vegetables that grow within the relevant boundaries of Eretz Yisrael during the Shemittah year, on a field owned by Jews (contingent on the dispute noted above), possess *kedushas shevi'is*. However, different types of produce receive their sanctity at different times of their development, depending on three basic categories, as follows.

### Tree Fruit

The relevant stage of development for tree fruit is *chanata*, which is when the flower falls off and the fruit itself begins to develop, or (according to another opinion) when the fruit grows to one-third of their full size. Thus, fruit that underwent *chanata* before Rosh Hashanah will not have *kedushas shevi'is* even if picked after Rosh Hashanah (5782). By contrast, fruit that undergo *chanata* during the Shemittah year, even if picked after Rosh Hashanah of the eighth year (5783), will possess *kedushas shevi'is*.

It follows that during the early months of Shemittah, fruit on the market will generally not be subject to the laws of Shemittah, because their *chanata* took place before Rosh Hashanah. Citrus fruit, for instance, that are sold in the winter of the Shemittah year (5782), underwent *chanata* in the previous year, and they will not

have *kedushas shevi'is*. By contrast, the *chanata* of summer fruit, whose market season begins around Adar (March/April), will have taken place during the Shemittah year, and they will therefore be subject to *kedushas shevi'is*.

### Vegetables

Vegetables are classified by their time of harvest. Thus, any vegetable picked between Rosh Hashanah of the Shemittah year (5782) and Rosh Hashanah of the following year (5783) is considered Shemittah produce and possesses *kedushas shevi'is*. These vegetables will often be forbidden for consumption because of the *sefichin* prohibition, as detailed below. However, for cases in which the *sefichin* prohibition does not apply, they possess the Shemittah sanctity and must be treated accordingly.

For the beginning of the new year, the status of vegetables in stores will depend on when they were harvested. Most vegetables that appear in stores, even in the days immediately after Rosh Hashanah, are picked after Rosh Hashanah, and will be subject to the laws of Shemittah produce. These include tomatoes, peppers, eggplant, zucchini, melons and watermelons, sweet potatoes, turnips, radishes, bananas (which are categorized as vegetables), strawberries, and so on.

However, there are some vegetables such as potatoes, onions, and carrots, for which produce at stores in the first weeks of the Shemittah year belong to the previous year, and do not possess *kedushas shevi'is*. Stores will often put up a sign indicating the nature of the produce, and if in doubt one should consult with a competent authority.

### Esrogim

Because of a halachic doubt over the status of *esrogim*, the custom is to ensure that all *esrogim* are picked in advance of Rosh Hashanah. This means that this year's *esrogim* (5782) will not possess *kedushas shevi'is*, while next year's (5783) will possess *kedushas shevi'is*.



### Mushrooms, Flowers, Herbs

Mushrooms, which do not grow from the earth, do not possess any *kedushas shevi'is*. Although some dispute this, today's mushrooms are almost exclusively grown indoors, in which case there is certainly no concern.

The consensus of most authorities is that flowers do not have *kedushas shevi'is*. However, one must ensure that the flowers were not planted in Shemittah, or at least that they were grown under the *heter mechira* arrangement.

Herbs that are used for taste in foods possess *kedushas shevi'is*, depending on the time of their picking. If they are for scent alone, the matter is disputed (and one can be lenient).

Note that most garlic sold in Israel (the white packages) is not Israeli produce, while the purple-hued garlic is Israeli and enters the market toward the end of the winter.

### How to Treat Produce with Kedushas Shevi'is

The sanctity of Shemittah produce (all mentions below of "Shemittah produce" refer to produce with *kedushas shevi'is*) results in a range of laws, as follows:

#### Destruction of Shemittah Produce

It is forbidden to destroy Shemittah produce so long as it is fit for consumption. Edible leftovers (including, for instance, cucumber peels, but not avocado peels) food should therefore be placed in a bag or a specially designated container, preferably outdoors so it won't , and discarded only after it spoils. If this is impossible, it should be put into a sealed plastic bag (or double-wrapped) and discarded. Cooked food may be discarded if it was left unrefrigerated for an entire night and has spoiled. An esrog grown during Shmitta must be discarded in this fashion after being used during Sukkos.

#### Consumption of Shemittah Produce

Shemittah produce must be consumed in its usual manner, so that fruit usually eaten raw (cucumbers, watermelon) may not be cooked, and those usually eaten cooked (potatoes, sweet potatoes, eggplants, beets, pumpkin, peanuts, corn, squash) may not be eaten raw. Produce that is often eaten raw but sometimes cooked, like an

apple, can be consumed in either form. Fruit or vegetables generally eaten raw but also used as seasoning (such as tomatoes, pepper, almonds, raisins) may be used for this purpose.

### Juicing

It is permitted to juice fruit and vegetables if it is common to consume such juices. This applies primarily to grapes and olives, and includes lemons, oranges, and grapefruit. Many are further lenient to include apple juice, pomegranate juice and other common juices. However, it is forbidden to prepare juice from fruit and vegetables whose juice most people do not drink. A reasonable index is the sale of a certain juice in regular grocery stores (which for today would also permit juicing carrots, tomatoes, cranberries, and so on).

### Additional Forms of Food Processing

It is permitted to pickle vegetables that are conventionally pickled (such as cucumbers), and likewise to freeze fruit, juices, and soups possessing Shemittah sanctity if this does not spoil them. It is likewise permitted to dry fruit and vegetables that are generally dried (tomatoes, grapes, figs, dates, plums) and to can fruit and vegetables that are generally canned.

### Peels

It is permitted to peel fruits and vegetables such as cucumbers and carrots, even though their peels are edible—though it is better to refrain from peeling edible parts of fruit and vegetables, even if the peels are discarded in a special bag or container. Edible peels (cucumber, apples, and so on) must be treated as Shemittah produce, while inedible peels do not require special treatment, unless some of the flesh is taken off together with the peel (often the case for watermelons).

### Commerce with Shemittah Produce

Shemittah produce must not be sold in for profit: It must not be sold in regular stores and must not be weighed as regular produce is sold. Rather, it can be distributed by means of an *otzar beis din* arrangement, as explained below.

### Shemittah Money

Money that was used to buy Shemittah produce becomes sanctified with *kedushas shevi'is*, and whatever is bought with that money must be treated in the same sanctified manner as Shemittah produce. For stores selling *otzar beis din* produce, or *heter mechira* produce for those who do not rely on the *heter*, this can raise a problem concerning receiving change from the storekeeper, in addition to the problem of what the storekeeper will do with the money. The recommendation is that produce with *kedushas shevi'is* should be purchased by means of credit card, checks, or electronic transfers, rather than with cash, thereby avoiding the issue.

### Exporting Shemittah Produce

It is forbidden to export Shemittah produce out of Israel. This is the reason why Israeli produce and manufactured goods must clearly state that they are Shemittah-free, and therefore permitted for export.

### The Biur Obligation

At the end of the season for each type of fruit or vegetable, one must remove from his possession all Shemittah produce, an obligation known as *biur*. This is commonly fulfilled by taking the produce whose season has come to an end and declaring in front of three people that the produce is ownerless. The same person may then take it back into his own possession.

The exact time of *biur* for most produce varies from one Shemittah to the next, and charts are published to indicate exact dates for each type of produce.

If one receives Shemittah produce for which the obligation of *biur* was not fulfilled—this is common for Shemittah wine, for instance—a halachic authority should be consulted.

### The Sefichin Prohibition

To enforce the prohibition against sowing and planting during the Shemittah year, Chazal enacted a prohibition against consumption of anything that was sown or planted in the Shemittah year.

Yet, this prohibition could be evaded by false claims that the produce was not planted during Shemittah but was rather the result of incidental sprouting. To counter this possibility, Chazal also forbade the consumption of all annual plants—plants that need to be planted each year, including most vegetables—that sprouted during the Shemittah year, even if they sprouted on their own. Such plants that are forbidden for consumption during Shemittah are called *sefichin*.

Perennials, which do not be replanted every year—a category that includes all fruit trees and many herbs—do not raise the suspicion of having been planted during the Shemittah year (they take time to mature and do not bear fruit for some time after planting). Thus, fruit (and other perennials) that grow during the Shemittah year are not considered *sefichin*, and they are permitted for consumption.

In addition, only produce grown in a Jewish-owned field is subject to the *sefichin* prohibition. Because the origin of the rabbinic prohibition is the concern for violation of Shemittah regulations, this concern does not apply to a field owned by non-Jews, whose produce is therefore permitted for consumption (this is irrespective of the dispute, noted above, over whether such produce will have *kedushas shevi'is*).

Authorities dispute the status of vegetables that began growing in the sixth year, prior to Shemittah, but finished growing and were picked during the Shemittah year. The Sephardi custom is to consider such vegetables as *sefichin* (following the Rambam's ruling), and prohibit them for consumption, while the Ashkenazi custom is that if the vegetables germinated during the sixth year (such as if the stalk becomes visible above the earth, and certainly if the vegetable itself started to grow) are not subject to the *sefichin* prohibition.

According to the Ashkenazi custom, it follows that any vegetables (such as tomatoes, lettuce, and so on) that are bought immediately after Rosh Hashana may still be eaten—though as explained above, they will possess *kedushas shevi'is* and must be treated accordingly. Charts are available in Israel providing dates for each fruit, legume, and vegetable regarding when the different laws apply.

## Otzar Beis Din

To facilitate the effective distribution of Shemittah produce in a way that is consistent with the many halachic details of Shemittah, a system commonly known as *otzar beis din* was established, by which the local Beis Din of each city administers the distribution.

Effectively, the Beis Din hires the farmers themselves as agents to tend to and harvest the crops, engaging of course only in activities that are permitted during the Shemittah year (as explained above; they are allowed to water and treat the trees to ensure that they don't die, and can pick the fruit, but may not engage in activities that enhance growth). The Beis Din also appoints middlemen to distribute the produce. The Beis Din then charges fees from consumers who receive the produce, to offset the relevant cost of paying farmers (for permitted labor) and middlemen and for maintaining the warehouse (the *otzar*). No money is charged for the fruit themselves, and it is forbidden for the Beis Din to make a profit.

This system is an excellent option when it is properly organized and supervised, ensuring that farmers do not perform any prohibited labors—the type of labors permitted is subject to a major dispute among authorities—and tightly controlling prices so that distribution will not de facto become commerce in Shemittah produce.

Produce sold in the *otzar beis din* system has *kedushas shevi'is*, and such produce—especially wine—can surface years after the Shemittah year. As noted above, if received before the time of *biur* it is permitted to consume the wine, while if received after the time of *biur* a halachic authority should be consulted.

## What Produce Do I Choose?

Over the course of the Shemittah year, we will have to choose between several options of produce.

Naturally, it is forbidden to buy Israeli produce from non-Shemittah observant farms. While produce of such farms is not necessarily forbidden for consumption—

this is the subject of a significant dispute among Rishonim (concerning produce that is *shamur* and *ne'evad*)—there is a separate prohibition against buying such produce, so it must be avoided. The options for purchasing are therefore:

1. *Heter mechira* produce
2. *Yevul chutz la'aretz* produce
3. *Otzar beis din* produce.

Of the three options, the first and the second are non-ideal.

The first is non-ideal because it relies on the sale of land to non-Jews, which is intended to ensure that the sanctity of the Shemittah year will not apply to the produce. Of course, it is far more ideal to observe the Shemittah law, though the difficulties of doing so for farmers are of course very substantial (just think about international contracts and the like). Moreover, there are also questions over the validity of the sale: clearly, the State of Israel is not going to allow the transfer of strategically significant parts of the country to non-Jews.

The second is non-ideal because it takes Israeli commerce away from local farmers and gives it to non-Jewish farms outside of Israel. There is a mitzvah to support Jewish business over non-Jewish business, and this is all the truer of Israel, where agriculture remains an important part of the Jewish settlement of the land. While buying produce from outside Israel solves our private halachic issues, it remains a problematic option from a public policy perspective of supporting Jewish and Israeli agriculture.

There is therefore an inherent preference for *otzar beis din* produce, where this is available (though it, too, relies on several leniencies). Where *otzar beis din* produce is not available, either of the other alternatives is possible—the approach of Haredi authorities is generally to refrain from *heter mechira*, out of concern that the sale is not valid, while that of religious-Zionist authorities is to prefer it over imported produce. If one wishes to be stringent in the matter, it is recommended to treat *heter mechira* produce as having *kedushas shevi'is*, though this is not obligatory.

## Conclusion

It is wonderful to be on the verge of another Shemittah year, which presents us (even non-farmers) with an opportunity for Torah engagement with the produce of the Land of Israel. According to some opinions, there is even a concrete mitzvah to eat Shemittah produce, and even if not a full mitzvah, it is certainly a virtue—a virtue of experiencing the sanctity of the Land, and even of supporting local agriculture, to the degree that this is permitted during Shemittah.

At the same time, the opportunity of Shemittah is not without challenge—which is why some prefer to rely on *yevul chutz la'aretz*, imported produce that does not raise the issue of Shemittah produce. For those of us, myself included, who wish to take some part in the Shemittah effort, it is therefore very important to become aware and familiar with the many halachic details of Shemittah, which I have tried to summarize above.

In the merit of observing the Shemittah year, which the Torah emphasizes as fundamental to our life upon the Land, we should speedily see the final redemption, and enjoy the sanctity of the Land and its attendant closeness to Hashem not only for Shemittah purposes, for in every aspect of our lives.

With every blessing for a Kesiva Vechasima Tovah, a year of health and of bounty,



Dayan Yehoshua Pfeffer