



STAR-K KOSHER CERTIFICATION

A *Shemita* Primer for *Chutz La'aretz*

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Beginning on Rosh Hashana this year (5782) and ending Rosh Hashana next year (5783), it is the *Shemita*/sabbatical year in Eretz Yisroel. This is certainly one of the most special mitzvos that we have. The amazing demonstration of our absolute faith and *Emunah* in Hashem which is displayed from proper observance is unique from any other mitzvos. Furthermore, the guarantee that Hashem will provide us with sustenance *in advance* that comes along with observing *Shemita* is something that proves that the Torah can only be directly from Hashem himself.

Although *Shemita* does not apply to land outside of Eretz Yisroel, there are still a number of circumstances that we in *chutz la'aretz* will likely encounter, and thereby give us the ability to observe the mitzvah of *Shemita* properly. The laws of *Shemita* are quite extensive and complex. The goal of this article is to hopefully provide concise guidance to *Shemita* issues that people outside of EY may encounter. The *psakim* presented are based on the direction and guidance of Rav Moshe Heinemann *shlit"a*, Rabbinic Administrator of STAR-K Certification, and Rov of Agudas Yisroel of Baltimore.

Halachic Background

Before 'digging in' it is important to have a basic background of some of the potential issues with *Shemita* produce.

- 1) *Shamur V'Ne'evad*: Produce is considered to be ownerless/*hefker* during *Shemita*. Anyone who wants to come pick any produce that is growing, is allowed to do so. While farmers are allowed to take minimum precautions to ensure that no damage occurs from people entering their fields, they may not fully guard the field by prohibiting entry. Fields that were guarded and improperly restricted access are considered *shamur/watched*. "*Ne'evad/worked*" refers to fields that were worked on in a prohibited manner during *Shemita*. There is a dispute amongst the *Poskim* if fruit from either of these categories is prohibited to be eaten¹; at the very least they should be avoided².
- 2) *Sefichin*: Although the Torah only forbids physically working the land, there is an *issur d'rabanana* to eat certain types of produce that grew by themselves even if no one was involved in the process. Included in this prohibition would be vegetables, grains and fruits that grow on the ground (e.g. strawberries). It does not apply to fruits that grow on trees or vines.
- 3) *Biur*: Although one is allowed to buy and bring home produce of *Shemita*, there is a requirement that all *Shemita* produce be removed from your homes by the end of the harvest season for that item³. The only way to continue to eat these items once this time has passed is to take the produce out of your house and declare it ownerless/*hefker* in front of three people. Once this declaration takes place, it may then be reacquired and brought back inside and eaten.

This Halacha applies even for produce that has been exported (and even though it was prohibited to export⁴). Produce remaining after the time of *biur* and has not been declared *hefker*, may not be consumed. There are lists published which announce the dates of when each type of produce will reach its time to do *biur*.

הרמב"ם (שמיטה ד:א, ט"ו) פסק שהפירות מותרים. וחלק עליו הראב"ד שם. ויני' יבמות קכ"ב תוס' שם ד"ה של עזיקה. והגר"א (שנות אליהו שביעית ח:ו) וגם שו"ת חשב האפוד סי' כ"ב מחמיר. והחזו"א (שביעית י"ה) והגר"ח שליט"א בדרך אמונה ח"י"ב ס"ק פ"ט כתב להקל

חזו"א סדר שביעית סי' כ"ו

היתה שבת הארץ לכם לאכלה...ולבהמתך ולחיה אשר בארצך תהיה כל תבואתה לאכל (ויקרא כ"ה ו-ז) ודרשו שבזמן שכלה מן השדה לחיות, גם כלה לבהמתך מן הבית

4 If one does have *Shemita* produce outside of EY that is not prohibited already for other reasons, he must do *biur* before the appropriate time passes. An example would be Esrogim that grew during *Shemita*, which will arrive next year for *Sukkos* 5783/2022 (NOT this year 5782/2021), one would need to do *biur* at some point after *Sukkos*. The exact deadline by when *biur* must take place will be announced next year.

- 4) *Shemita* produce must be eaten in EY, it may not be exported. However, if it was exported (and assuming none of the other issues mentioned above apply), it does not prohibit consumption, although the produce retains its sanctity and must be treated as such.
- 5) *Shemita* produce may be eaten only in a normal manner. It may not be wasted or used for any other purpose. Any edible peels (e.g. citrus peels) may not be disposed of in the garbage. They need to be kept until they rot and become inedible and only then disposed of. Many people in EY have a special bin, called a *Pach Shemita*, for proper disposal of *Shemita* items.
- 6) There is a prohibition to do business with *Shemita* produce. Buying and selling of such produce is forbidden. Furthermore, any money used to purchase *Shemita* produce becomes sanctified and may only be used for like transactions. This does not apply to purchasing with a check or credit (including credit cards).
- 7) The *kedusha* of produce grown during *Shemita* as well as the prohibition of eating *sefichin* does not end after Rosh Hashana 5783. So long as it was grown during *Shemita*, it must be treated with *kedushas shvi'is*. Dates will be published after which produce next year can be assumed to be from after *Shemita*.

Israeli Produce Exports

Eretz Yisroel is known world-wide for its high-quality produce. During non-*Shemita* years, there are many Israeli produce items that get exported. Carrots, citrus fruits, herbs, peppers, and radishes are just some of the items that are commonly found in North American markets from EY. The typical concern is to ensure proper *terumos* and *maasros* are taken. During *Shemita* however, *terumos* and *maasros* are not typically applicable⁵, but there is significant concern that the produce may be from *Shemita*. There are a number of methods used in EY to ensure adequate supply of produce in Israeli markets during *Shemita*, including importing from outside EY, growing in areas that are outside the Halachic borders of EY, buying from non-Jewish farmers or utilizing the *Otzar Beis Din* system are but some of the methods used. However, during *Shemita*, due to anticipated shortages of produce, all produce grown or obtained with these methods are almost certainly not exported. Furthermore, all produce sold in EY is controlled at least minimally by the Israeli Rabbinat who ensure the basic prohibitions of *Shemita* are adhered to often utilizing many leniencies (e.g. *Heter Mechira*) that is beyond the scope of this discussion. However, when it comes to exports, there is no Rabbanut control at all. In fact, farmers that do not keep *Shemita* properly are more likely to export their items to avoid any Rabbanut interference. Therefore, any Israeli produce found outside of Israel during *Shemita* is actually more likely than not to be from growers that violated the laws of *Shemita*.

As stated above, there are a number of potential problems with such produce and some of which may even prohibit their consumption. Furthermore, if someone did purchase Israeli produce and paid cash (as opposed to check or credit card), returning it to the store may also potentially violate the prohibition of doing business with *Shemita* produce. If this did happen by mistake, a Rov should be consulted. If someone would obtain produce that he was able to find out was grown properly and/or *biur* had been performed, it would still need to be consumed while maintaining the proper treatment and sanctity of the produce.

Flowers

The question of whether flowers have *kedushas shvi'is* or not is a complex issue. It does seem that a significant percentage of flowers (in the United States, at least) come from EY. Rav Shlomo Zalman Auerbach *zt"l* ruled that flowers that do not give any scent do not have any *kedushas shvi'is*. If they do have a scent, then it depends. If they are being harvested and used for their scent, they would need to be treated with *kedushas shvi'is* and may also be problematic to purchase as they may be *sefichin*. If they are being harvested primarily for display, even though they also give off a scent, one would not be required to treat them with *kedushas shvi'is*. It would seem that most flowers are used primarily for display purposes and therefore as such, even if they also happen to give

⁵ Although there are some *poskim* who maintain that *terumos* and *maasros* are applicable to produce that was not made *hefker* properly.

a scent, would not be subject to the laws of *Shemita*. This seems to be the accepted *minhag*, not to require any special treatment of flowers, at least in *chutz la'aretz*.

Wine

Wine and brandy are allowed to be produced from grapes grown during *Shemita*. There are a number of wineries that produce wine during *Shemita* under the auspices of *Otzar Beis Din*. Such wine though does maintain the *Kedushas Shvi'is* and must be treated as such. It must be consumed fully and not wasted. Common examples would be that it may not be used for *havdala* when there is a custom to overflow the cup with wine and also extinguish the candle in the wine or likewise by the Pesach *sefer* for the ten *makos*. The main issue in *chutz la'aretz*, even with wine that was properly produced, is that it usually arrives here well after the time of *biur* and it may not have had *biur* performed properly. At that point, after the time of *biur* has passed, *biur* can no longer be done. Therefore, in *chutz la'aretz*, it is best to avoid such wine or brandy. *Shemita* wine or grape juice can possibly become available as soon as a few weeks after Rosh Hashana. Additionally, there is still wine and brandy on the market from last *Shemita*. Any Israeli wine from 2015 or 2021 (the year is usually stated on the bottle) are from *Shemita*. Even wine with other years can sometimes just be stating the year of bottling and not the proper harvest year. Therefore, it is always prudent to check for proper a *hechsher* and the statement that it is "free from concerns of *Shemita*".

Buying Land in Eretz Yisroel

There are organizations that promote the ability to buy a parcel of land in EY which is purported to allow you to observe *Shemita* by having it lay fallow. While is not clear that this enables actual observance of *Shemita* by the purchaser⁶, the cause can certainly be worthy if the funds are directed to farmers who will truly be observing the mitzvah of *Shemita* or other *tzedakah* organizations.

Loans

One aspect of *Shemita* that applies worldwide is the cancellation of debt. All loans become cancelled at the end of the *Shemita* year unless a special document, called a *pruzbul*, is executed. The document in essence places the debt under the authority of *Beis Din* and not an individual person. Such *Beis Din*-controlled loans are not cancelled during *Shemita*. The time to execute a *pruzbul* takes place before the end of *Shemita* year (prior to Rosh Hashana 5783) although some have a custom to also do so at the beginning of *Shemita*.

Conclusion

Like the mitzvah of *Shemita* is unique, the blessings and merits bestowed upon those who observe *Shemita* properly are also unique. The above guidelines present some of the ways that even those outside of EY can take part in observing this special mitzvah. The *Sefer Hachinuch* writes that the point of the mitzvah of *Shemita* is to strengthen our *Emunah* and remind us of who the real source of our sustenance is, which certainly applies outside of EY as well. Some *poskim*⁷ even say that when we say *shehechyanu* in *kiddush* on the first night of Rosh Hashana, we should also have in mind the observance of *Shemita*. May our careful support and observance of this special mitzvah allow all of us in *chutz la'aretz* to merit the extensive blessings bestowed upon those who observe *Shemita* carefully and may we merit to return to Eretz Yisroel where we can observe these mitzvos properly and fully. Wishing everyone a *Kesiva V'Chasima Tova!*

⁶ The Rambam (*Shemita* 1:1) notes that although the Torah seems to express the observance of *Shemita* as a positive commandment/mitzvah *aseh*, (ויקרא כ"ה:ה), שנת שבתון יהיה לארץ (ויקרא כ"ה:ה), really the observance of *Shemita* is a negative commandment/*lo saseh*. As such, there is no gain from buying land and then having it lay fallow. Similarly, there is no mitzvah to buy something not Kosher and then not eat it.

⁷ בשם הגרש"ז אויערבאך והגר"ש אלישיב זצ"ל