

“How-To’s” of Shemita

A *VERY* Brief Overview for SFW Students

This is a brief outline of some crucial information that you will need to observe the Halachot of Shemita.

Since this outline is meant to help our students at SFW, these outlines will focus primarily on the Halachot that you will encounter most frequently: the purchasing, consuming and disposing of fruits, vegetables, etc. There are many other halachot of course (e.g. farming and gardening, the cancellation of debts, etc. that we will not cover in this forum).

Remember: this is **only an outline**; you must get used to - and feel comfortable with - asking competent *halachic* authorities any questions you may have. This includes people in SFW, the Rabbi of your shul, etc.

Every effort was made to ensure the accuracy of this summary. Please forgive any errors.... And please let us know!

I. GENERAL

1. Every 7 years we have the *zechut* in Israel to perform a mitzvah that most of our ancestors (and our contemporaries in *chutz la'aretz*) were unable to perform.
2. Therefore, when speaking about food this time of year, we do not use the expression, “Do these vegetables have a problem of Shemita?” but rather “Do these vegetables have Kedushat Sh’viit?”
3. “The Shemita year is a year endowed with special kedusha, a year during which Shemita sanctity is added to the sanctity of the land, a year during which the words, “a Sabbath for Hashem,” echo throughout the land. Do you really want to miss out on a year like this?”¹

II. WHICH PRODUCE BEARS THE KEDUSHA OF THE SHMITTA YEAR?

In order to determine whether fruit bears kedushat sheviit, four matters must be clarified.

1. The Type of Produce

- a. Kedushat Shviit applies to crops that are grown specifically for human or animal food, or for anointing, lighting a fire, makeup, etc. It also applies to scent-bearing flowers (see below, IV,2, “Flowers”).
- b. Kedushat sheviit does not apply, for example, to decorative flowers that have no scent (see below, IV,2, “Flowers”).

2. The Time of Growth (i.e. when did the produce grow?)

Although the Shemita year runs from Rosh Hashana of the 7th year until Rosh Hashana of the 8th year, nevertheless kedushat sheviit applies to the fruit and the crops according to the stages in their growth as listed below.

i. Vegetables

The determining stage for vegetables is harvesting/picking (לקיטה). Vegetables picked in the seventh year have kedushat sheviit; Vegetables picked in the sixth year or the eighth year do not have kedushat sheviit.

ii. Olives, Grapes, Grain and Legumes

The determining stage of olives, grapes, grains, legumes (such as beans, peas etc.) is the first third of their growth (שליש גידול). That is, they have kedushat sheviit if the first third of their growth occurs during the Shmitta year.

iii. Fruit

The determining stage for fruit is the formation of the fruit (חנטה). When does חנטה happen?

1. Rambam (Hil. Shemita V’Yovel 4:9) and the Shulchan Aruch (YD 331:125): a third of its growth (called “עונת המעשרות” or “שליש”).
2. Tosfot (RH 12b d”h hatevuah) and the Ra”sh (R’ Shmishon miShantz) (Shviit 2:7): when the fruit is recognizable after its blossom has fallen off.

iv. Flowers

Not all flowers have Kedushat Shviit (see below, IV,2, “Flowers”). For those that do, the determining for perennials is blossoming and for annuals is their picking.

NOTE: as consumers, it is hard for us to determine when the produce we buy reaches any of the above stages. Therefore, please refer to SFW’s “5775-5776 - Calendar of Kedushat Sheviit for Common Fruits, Vegetables and Grains” that will be distributed and posted around school.

¹ Rav Yosef Tzvi Rimon, “Shemita”, Maggid Books, 2014, p. 220

3. The Place of Growth

- a. According to the Torah, Shemita only applies to produce grown in Israel.
 - i. There are places within today's borders which were not captured at the time of the Second Beit Hamikdash, and therefore we can be lenient regarding some of the Halachot of Shemita.
- b. Shmitta also only applies to produce in Israeli soil. Produce grown hydroponically, for example, does not have Kedushat Shviit.

4. Who Owns the Land Where That Produce Grew?

- a. According to the **Beit Yosef** (Shu"t Avkat Rochel 24), produce that grows in a field belonging to a non-Jew does not have Kedushat Sheviit.² This is the accepted practice of Jerusalem and, in general, most of Israel. According to Rav Yaakovson shlit"a, this is SFW's p'sak as well.
- b. The **Mabi"t** (Rav Moshe miTrani, d. 1585) (Shu"t haMabi"t I:11) holds that produce grown in a field belonging to a non-Jew has kedushat sheviit (if grown in Israel). This is also the opinion of the Chazon Ish and therefore in Bnei Brak and elsewhere.

III. LAWS REGARDING KEDUSHAT SH'VIIT

Produce with Kedushat Shviit are subject to various halachot:

1. Torah Laws

- i. **Hefker/הפקר** - The owner of the produce must declare them hefker (ownerless) and may not guard or protect them from other people taking them. Produce that is guarded on Shemita is called "נעבד" and should be avoided (though, if necessary, we are lenient).
- ii. **Removal/ביעור** - One must physically remove produce with Kedushat Shviit from one's home. Every type of produce has its own time for Biur: as long produce of a particular species remains in the field, one may eat that type of species in their house. However, once that species is no longer found in the field it must be removed from ones house. (**Since we do not know the times of Biur, please refer to SFW's "5775-5776 - Calendar of Kedushat Sheviit for Common Fruits, Vegetables and Grains"**).

PLEASE NOTE the following crucial halacha for SFW students: The Mishna (Shviit 9:8) states and the Rambam (Hil Shmitta v'Yovel 7:3) quotes l'halacha that even when the time of Biur arrives for a particular type of produce, a person may keep enough of that food for three meals for each member of the household. It is therefore quite possible that, unless you buy a large quantity of a specific produce, you are probably not obligated in Biur.
- iii. **Destroying/קלקול** - It is forbidden to actively/purposely destroy produce that has Kedushat Shviit.
- iv. **Commerce/מקח וממכר** - It is forbidden to do business with produce that has Kedushat Shviit.
 1. This prohibition relates to a variety of activities which will be discussed in "Part 2" however, in general it should be noted, for our purposes ...
 - a. It is prohibited to sell or buy Shmitta produce that was harvested in order to be sold.
 - b. It is prohibited to sell or buy Shmitta produce by measure as they do in businesses (it is, however, permitted to measure produce that is not for the sake of a sale, e.g. for a recipe).
 - c. Money that is used to purchase produce with Kedushat Shviit, becomes kadosh itself.
 - i. This is an issue for the seller more than the buyer but it involves the buyer too since it is prohibited to hand money to someone not careful with mitzvot if s/he will misuse the money (due to **לא תתן מכשול**). In addition, you need not be concerned that change you receive in a store has *kedusha* unless you know otherwise (Chazon Ish 10:17, Minchat Yitzchak, VI:129)
 - ii. Food bought on credit (e.g. credit card) or with a check does not transfer the kedusha to the money.
 - iii. The food can also be purchased in a manner known as "**הבלעה**" which means "absorbed." That is, if you buy other, non-Kedusha items, together with your Kedushat Shviit produce, you may stipulate that your payment is exclusively for the non-Kedusha items.

² This is also the opinion of the Pe'at Hashulchan (R' Yisrael of Shklov, d. 1839) (23:12) in addition to Rav Kook, (Shabbat Haaretz in the Introduction and in chapters 11 and 4 and in Mishpat Kohen no. 70), Rav Shlomo Zalman Auerbach (Ma'adanei Aretz 2 d'h hinei), Rav Tzvi Pesach Frank (Har Tzvi, Zeraim, II:39) and Rav Ovadiah Yosef (Shu"t Yabiah Omer III, YD 19)

2. Rabbinic Laws

- i. Aftergrowth/שפיחי - Produce that grew on its own may not be eaten or used out of fear that a person may work the land advertently and inappropriately during the Shemita year in order to grow produce and then claim that they grew on their own.
 1. Because of this reason, produce such as fruit - which cannot be grown during the Shmitta year if planted that year - is not prohibited.
 2. Produce that is grown on purpose during the Shmitta year is called “נעבד” and should be avoided (though, if necessary, we are lenient).
- ii. Export - It is forbidden to export fruit of Shemita outside of Israel (Be careful when flying to chu”l for Pesach or in the summer!)

IV. **HOW SHOULD PRODUCE WITH KEDUSHAT SH’VIIT BE TREATED?**

Because of the above halachot, (especially, for students, III, 1, I, 2 and 3 above) produce with Kedushat Shviit must be treated properly.

1. **Care When Eating Produce with Kedushat Shviit**

We may eat produce with Kedushat Shviit - and there may even be mitzvah to do so³ - however we **must not actively destroy it or waste it**. Therefore, if you do not finish all of your food (that has Kedushat Shviit), you may not throw the leftovers in the regular garbage since that will cause the food to be destroyed by the garbage in the can. The food must be treated as follows:

- i. Leftovers that are unfit to be eaten by people or animals may be thrown away in the regular garbage can.
- ii. Leftovers that are still fit to be eaten by people or animals must be thrown away in a separate bag, container, or receptacle and only afterward be thrown in the regular garbage can once they have rotted on their own. You may also throw the Shmitta bag directly into the regular garbage can though that should be avoided if it is not too difficult to do so.
 1. There is no problem throwing out fresh leftovers with Kedushat Shviit into a new “Shmitta receptacle” together with fresh leftovers that do not have Kedushat Shviit. For example: soup that is made of carrots (with Kedushat Shviit) and onions (that do not have Kedushat Shviit) may all be discarded together in the same, new “Shmitta receptacle”.
 2. These halachot apply to the following examples:
 - a. Pits and Peels - Pits and peels that still have some edible fruit on them must be treated as Kedushat Shviit and disposed of appropriately. Pits or peels without any edible fruit may be disposed of in the usual manner.
 - b. Soup and cholent - mixtures that have a taste of Shemita produce that has Kedushat Shviit. Therefore the entire mixture has to be treated with Kedusha. See also 2.i.3.
 - c. Tiny amounts of Leftovers - small amounts of leftovers that stick to the pot or bowl may be disposed of in the usual manner and do not need to be treated with Kedusha once the primary leftovers are disposed of properly.
- iii. It is also forbidden to misuse produce that has Kedushat Shviit (e.g. using it in a manner which is not its usual manner.)
- iv. On Shabbat, you should avoid selecting Kedushat Shviit produce out of your leftovers to be placed in the Shmitta receptacle because of *borer* concerns. However, there is room for leniency. Therefore, if you are a guest in a home where they are separating various food items, you may do so.

2. **Flowers**

When buying flowers for Shabbat hosts, please be aware of the following:

- i. Flowers with no scent do not have Kedushat Shviit nor do they have the prohibition of Sefichin. (It should be noted that most flowers do indeed have a scent.)
- ii. Flowers with a scent are the subject of a *machloket* among modern-day *poskim*.
- iii. It is therefore recommended only to buy flowers that have *kashrut* certification.

V. **PART II : SOLUTIONS FOR LARGE POPULATIONS**

1. As we learned, produce with Kedushat Shviit must be treated properly. In addition, it is forbidden to do business with produce that has Kedushat Shviit. That means that it is prohibited to sell, buy or measure Shmitta produce that was harvested in order to be sold. It also means that money that is used to purchase produce with Kedushat Shviit, becomes kadosh itself.

³ See Hasagot HaRamban, Mitzvat Asei 3 and the Megillat Esther’s understanding. See also the Sridei Eish (II, 116, 1) and the Chazon Ish (14:1) who disagree. Rav Kook (Shabat ha-Aretz 5,7) even requires one to wash hands before eating Kedushat Shviit. This has not been accepted l’halacha but it does indicate the special nature inherent in eating food with kedusha!

2. The State of Israel and its millions of inhabitants utilize a number of broad and wide-ranging methods to provide fresh produce while, simultaneously, observing the Halachot of Shmitta.
3. Each of these methods - listed below in no particular order - has its advantages and challenges.

VI. SIXTH YEAR PRODUCE/שנה ששית

1. Any produce grown, picked, etc. in the sixth year will not have Kedushat Shviit and may be bought, sold, measured and discarded in the usual manner.
2. This method has **challenges**:
 - i. This produce - unless canned or frozen - does not last forever and will, at some point during the Shmitta year, run out.

VII. PRODUCE GROWN DETACHED FROM THE GROUND / מצע מנותק

1. Produce that is grown on a platform or bedding (=מצע) that is detached from the ground (=מנותק) (e.g. in a container resting on plastic sheeting) grown either inside a hothouse or under a roof do not produce Kedushat Shviit even if it is grown in Israel on land belonging to a Jew.
 - i. This produce may be bought, sold, measured and discarded in the usual manner. This is the opinion of Rav Kook, the Chazon Ish, Rav Shlomo Zalman Auerbach, Rav Elyashiv, Rav Aharon Lichtenstein, and others.
 1. There are many details to these halachot. For example, certain conditions must be met (viz. grown in hothouse, on a detached bed, containers sold to a gentile, Jews perform only labors that are Rabbinic and not from the Torah).
 2. This method also includes produce grown hydroponically.
2. This method has **challenges**
 - i. This method is very expensive, which means the produce will therefore be more expensive as well.
 - ii. Expensive production also means that there will be less supply.

VIII. ARAVA / ערבה

1. According to the Mishna (Shviit 6:1) and the Rambam (Hilchot Shmitta v'Yovel 4 and elsewhere) Israel is divided into three categories for the sake of Shmitta:
 - i. *Olei Bavel* - When the Jews returned to Israel from Bavel after 70 years, the areas of the land occupied by the returnees - and sanctified by Ezra - regained their Kedusha.
 1. In these areas, halachot of Shmitta are fully binding.
 - ii. *Olei Mitzrayim* - the areas (not included in the *Olei Bavel* region) conquered by Yehoshua after *Yetziyat Mitzrayim* but not re-conquered when Ezra returned.
 1. In these areas, halachot of Shmitta are partially binding viz. there is no prohibition of sefichin.
 2. This area includes, according to many, parts of the western Negev.⁴
 - iii. *Eretz Yisrael* - the rest of Israel that was promised to Avraham (but not included in the above two regions).
 1. These areas have no Kedushat Shviit.
 2. These areas include the southern Arava (i.e. between the Dead Sea and the Gulf of Aqaba), parts of the Negev and the northern tip of the Golan Heights.
2. This method has **challenges**
 - i. It is the subject of a major debate among the Rishonim and Achronim as to where these areas are geographically.
 - ii. The areas are limited which in turn means limited supply.

IX. GENTILE PRODUCE/יבול נכרי

1. According to one opinion (see below and see above Part I), one way to obtain produce in a normal way (e.g. regular commerce, measuring, purchasing, etc.) is by purchasing produce grown either in **Chutz Laaretz** or on **land owned by non-Jews**.
 - i. As we learned in "Part 1," there is an important *machloket* regarding produce grown in a field that is owned by a non-Jew in Israel:
 1. According to the **Beit Yosef** (Rav Yosef Karo, d. 1575) produce that grows in a field belonging to a non-Jew does not have Kedushat Sheviit. This is the accepted practice of Jerusalem and, in general, most of Israel. According to Rav Yaakovson shlit"a, this is SFW's p'sak as well.
 - a. According to this opinion, produce that grows in a field belonging to a non-Jew may be bought, sold and measured in the usual manner.
 - b. This produce may also be discarded in the usual manner.

⁴ The Gemara in Chulin (7a), as explained by Rashi, says that these cities were not re-sanctified in order that the poor could get produce from them during the Shmitta year.

- c. Money used to buy produce in this manner does not receive Kedusha.
- 2. The **Mabi"t** (Rav Moshe miTrani, d. 1585) holds that produce grown in a field belonging to a non-Jew has kedushat sheviit (if grown in Israel). This is also the opinion of the Chazon Ish and therefore in Bnei Brak and elsewhere.
 - a. According to this opinion, produce that grows in a field belonging to a non-Jew may be not be bought, sold and measured in the usual manner.
 - b. However, according to the Chazon Ish Money used to buy produce in this manner does not receive Kedusha.
- 2. This method has **challenges**:
 - i. Due to security concerns, it is often difficult to determine that the produce comes, in fact, from gentile-owned lands. Unfortunately, the market for gentile produce is so profitable, sometimes Jewish farmers sell their produce to Arabs in order to market it as gentile-produce.
 - ii. Additionally, many of the Arab farmlands are located in hostile areas. *Mashgichim* are often placed in danger when they travel to these areas.
 - iii. Significant areas of land in Israel have been illegally appropriated by Arabs and are actually and halachically owned by Jews.
 - iv. Buying gentile produce strengthens the gentile hold on land in Israel: An increase in demand for gentile produce results in an increase in production which, in turn, increases water allocation for those lands. This increase in production allows them to seize control of additional land even after the Shmitta year.⁵
 - v. Buying gentile produce (instead of Jewish produce) causes Jewish farmers - the very farmers trying to observe Shmitta - to profit less than they would otherwise.
 - vi. Many people are philosophically opposed to purchasing produce anti-Israel farmers (not all fall gentile-owned lands fall into this category). For example, they feel that purchasing from the Palestinian Authority may help strengthen the anti-Israel regime and terrorist groups.

X. OTZAR BEIT DIN / אוצר בית דין

- 1. The Tosefta (Shviit 8:1-2) relates that Beit Din used to send agents to the fields during harvest time. Those agents were paid by the Beit Din to harvest the produce in the regular manner and store it (אוצר = warehouse/storage) and distribute it to each and every person to his/her family's needs.
 - i. The Chazon Ish (Shviit 12:6) based on the Ramban (Vayikra 25:7) says that the agents of the Beit Din are able to work the field in the usual manner the prohibition against agricultural activities during Shmitta apply to the owner of the field and not Beit Din.⁶
 - 1. Many Rishonim quote this Tosefta P'halacha including the Ro"sh (Shviit 9:8) Rabbeinu Dovid (Pesachim 52b), Tosfot Ri"d (Pesachim 51b), Rashb"a (Pesachim 53a) and others.
 - 2. It should be noted that the Rambam does not quote this solution leaving some, like the Radva"z (Shmitta vYovel 7:3) to say he didn't accept it P'halacha. The Chazon Ish (Shviit 11, Section 7 s.v. uma shepersha Maharashas) says the Rambam did hold like the Tosefta.
 - 3. Rav Kook revived Otzar Beit Din in 5670/1909-10 and the Chazon Ish did as well in 5705/1944-45.
 - ii. In this manner, the produce can be harvested as usual and stored as usual.
 - iii. In addition, money can also change hand and it does that money does not acquire Kedusha.
 - 1. The reason for this is because we are paying not for the produce but for cost of the labor of collecting, transporting, storing, and distributing. (Remember: the produce is *hefker!*)
 - iv. It is important to emphasize: **produce collected and distributed by an Otzar Beit Din does have Kedushat Shviit** and must be treated like all produce with Kedusha (e.g. it may not be discarded in the usual manner; see above Part I).
- 2. This method has **challenges**
 - i. An Otzar Beit Din has to be set up legitimately, i.e. the money really has to go towards the cost of the labor of collecting, etc. and not the produce itself. This is hard to do on an industrial level.

⁵ This is true not only of land but also the produce itself. For example: after 1993 (until a health ban in 2000), Arab farmers held a lock-hold on the provision of cucumbers to the Israeli market. (Incidentally, the health ban was introduced because there was an epidemic of hepatitis in certain communities, apparently caused by the contamination contained in vegetables grown by Arabs in untreated sewage water. This was a long time ago so there is no reason to be alarmed. But it does indicate how hard it is to oversee produce of this nature.)

⁶ This is in consonance with the philosophy behind the mitzvah of Shmitta: during the Shmitta year, it is essential that the owner of the field demonstrate that it is G-d Himself Who is the true owner of the land. A Beit Din working the field does not negate that since they represent the Klal and not the individual owner. Another explanation is this: as we saw in "Part I", even the owner is permitted to gather enough food for three meals. Beit Din, as representatives of all of Klal Yisrael, may gather enough produce for every member of Klal Yisrael for three meals.

- ii. The solution of Otzar Beit Din only applies to the collection of the produce, not the planting. As such, it can only apply to fruit (all year) and vegetables in the beginning of the Shmitta year. Once the vegetable supply runs out, Otzar Beit Din will not enable new planting.

XI. HETER MECHIRA / היתר מכירה

1. One of the most talked-about solutions to providing fresh produce to millions of Jews in Israel is that of Heter Mechira. In short, it involves the permissibility to work the land (היתר) once the land is sold (מכירה) to a gentile for the Shmitta year. Some labors on the land would then be permitted by Jews and other labors by gentiles. In addition, produce from these now-gentile-owned lands may be bought, sold, measured and discarded in the usual manner
 - i. This solution relies on a number of opinions:
 1. **Opinion 1** - Shmitta today is **מדרבנן**
 - a. This is a very involved discussion in the Rishonim but, as a summary, it should be noted that that is the opinion of Rashi, Tosfot, Rashba, Ritva, Ran, the Tur and the Rambam (according to most Achronim). This is also the opinion of Rav Kook and the Chazon Ish.
 - b. Others disagree: the Ramban, the Rosh, and the Rambam (as understood by the Kesef Mishna) maintain that Shmitta today is **מדאורייתא**.
 2. **Opinion 2** - Land owned by gentiles revokes its Kedusha
 - a. As mentioned above, this is the opinion of the Beit Yosef.
 - b. The Mabi"t disagrees and maintains that land owned by gentiles does not lose its Kedusha. This is also the opinion of the Chazon Ish.
 - ii. The solution of Heter Mechira also cites a few leniencies:
 1. **Factor 1** - There is a disagreement among the Rishonim as to how to count the Shmitta cycle.
 2. **Factor 2** - According to one Rishon (the Ba'al Hamaor, R' Zerachya HaLevi d. 1186), Shmitta today is not even a **מצוה מדרבנן** but a **מדת חסידות**.
2. This method has **challenges**
 - i. Those who do not rely on the Heter Mechira, argue any or all of the following:
 1. As we saw, according to some opinions, Shmitta today is **מדאורייתא**
 2. Land owned by gentiles does not revoke its Kedusha
 - a. And, even according to the Beit Yosef who maintains that the land has no Kedusha when owned by a non-Jew, working that land may still be forbidden.
 3. There is a prohibition "לא תחנם" (see Devarim 7:2) which, according to one explanation in the Gemara (Avodah Zara 20a) prohibits the selling of Israel to a non-Jew.
 - a. Proponents of Heter Mechira maintain that there is no prohibition of **לא תחנם** because
 - i. A sale for a limited time does not fall under the prohibition of **לא תחנם**.
 - ii. A sale to a non-Jew who is not a **עובד עבודה זרה** (e.g. an Arab) does not fall under the prohibition of **לא תחנם**.
 - iii. A sale to a non-Jew who already owns land in Israel does not fall under the prohibition of **לא תחנם**.
 - iv. Even if the prohibition of **לא תחנם** were in effect, the prohibition would fall on the farmer not the consumer.
 4. The sale of any land in Israel to a non-Jew may not have legal authority.
 5. The farmers who sell their land may not have **גמירת דעת**, full intention, to sell. In other words, these opinions maintain that the sale is a ruse.

XII. HOW SHOULD WE ACT?

1. According to Rav Yaakovson shlit"א, we should do our best, **לכתחילה**, to rely on any of the above solutions **except** Gentile Produce and Heter Mechira due to the challenges mentioned.
2. However, you may go out to eat with your parents and/or other Shabbat hosts and rely in the Heter Mechira. In that case, you should try your best to treat the produce, where applicable, with Kedusha.
3. In sum:
 - i. **Sixth Year Produce** - Acceptable
 - ii. **Produce Grown Detached from the Ground** - Acceptable
 - iii. **Arava** - Acceptable
 - iv. **Gentile Produce** - should be avoided if/when possible. Care should be taken, if possible, to purchase produce in the quantities and types that you purchase the other 6 years of the Shmitta cycle.

This is due to the challenges mentioned above. Maintaining the same quantity and type of produce limits the negatives of this method.

v. **Otzar Beit Din** - Acceptable

Heter Mechira - to be avoided due to the challenges mentioned above. However, you may go out to eat with your parents and/or other Shabbat hosts and rely in the Heter Mechira. In that case, you should try your best to treat the produce, where applicable, with Kedusha.