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שע"י "חדר הוראה" שכונת מנחת יצחק פעיה"ק ירושלים תובב"א - בראשות הרב חיים אהרן בלייער שליט"א

Halochohs compiled by HaRav Chaim Bleier – Translated from the Hebrew edition by R' Zerachya Shicker

Halochohs of Produce Of Non- Jew

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Produce of a Non-Jew [Shemita – 3]

Ki Savo 5781

237

Produce of a Non-Jew: an Introduction

1. A major portion of the halachos of shemita that apply today revolve around the status of a non-Jew's involvement in and ownership of land and produce in Eretz Yisroel. Thus, we saw it fit to devote an issue to explaining and clarifying several principles on this topic and the practical halachah.

Field Fully Owned by a Non-Jew

2. It should be noted that we are only discussing produce that grew in a field actually owned by a non-Jew; only in such a case do the poskim discuss whether there is kedushas shevi'is. None of this applies to produce grown in Jewish-owned fields "sold" to a non-Jew through a fictitious "heter [issur] mechirah" today. Such produce has kedushas shevi'is according to all opinions and poskim with yiras Hashem. B'ezras Hashem, we will write about this in the future.
3. **Land leased to a non-Jew.** Produce grown on land leased to a non-Jew is not considered to be owned by a non-Jew; all poskim agree it has kedushas shevi'is (ה"ל' שביעית להגרמ"ט פ"ח ס"ו).
4. Produce grown on land owned by the Israel Land Administration and leased to a non-Jew also has kedushas shevi'is. Thus, those who give kashrus certifications must be meticulous in ensuring that land held by a non-Jew actually belongs to him and is not just leased. Accordingly, it is crucial to only buy from stores under the very best hashgachos.

Non-Jewish Ownership in Eretz Yisroel for a Maaser Petur

5. The Gemara (גיטין דף מ"ז ע"א) records that Rabbah held a non-Jew's ownership does not remove the chiyuv to separate maasros, whereas Rabbi Elazar held a non-Jew's ownership does remove the chiyuv to separate maasros. The halachah follows Rabbah's opinion.
6. **Maaser of a non-Jew's produce when a Jew does the finishing work [גמר מלאכה/מירוח].** A practical difference the Gemara gives between these two opinions is whether there is a chiyuv to separate maaser from a non-Jew's produce on which a Jew did the finishing work. Rabbah, whom the halachah follows, holds maaser must be separated; Rabbi Elazar holds there is no need to separate maaser.

Kedushas Shevi'is on Produce of a Non-Jew

7. There are two primary ways to understand this machlokes, which is the core of the machlokes between the poskim whether produce grown in a non-Jew's field has kedushas shevi'is.
8. **Beis Yosef's opinion.** Some understand that Rabbah and R' Elazar argue whether the non-Jew's land itself has the status of Eretz Yisroel or chutz la'aretz: R' Elazar says it is like chutz la'aretz for all purposes – orlah, kila'ei hakerem, and working it during shemita. Rabbah says it is viewed as Eretz Yisroel land for all these purposes. However, both Amora'im agree its produce does not have the status of Eretz Yisroel produce, e.g., for bikkurim or kedushas shevi'is; it is as if it grew in chutz la'aretz. [It is for an entirely separate reason that Rabbah holds maaser must be separated from the produce when a Jew did the finishing work.] (תוס' בתירוץ אהד, מאירי, הגר"א, רדב"ז) (ח"ו סי' ב' אלפים רכ"א, חיד"א ברכ"י י"ד סי' של"א סק"י, פאת השולחן סי' כ"ג סק"ט).
9. As proof to this, the Beis Yosef (ש"ת אבקת רוכל סי' כ"ד) cites the Rambam (פ"א תרומות ה"י), who rules like Rabbah and writes, "[If] a non-Jew buys land in Eretz Yisroel, it is not patur from the mitzvos; it remains with its kedushah. Therefore, if a Jew buys it back ... he separates terumos and maasros and brings bikkurim. All of this is deoraisa, as if it had never been sold to a non-Jew." This implies that Rabbah only says maaser must be separated deoraisa if the Jew bought it back, but until that happens, the produce has the status of chutz la'aretz produce and maaser does not need to be separated.

10. The same is true of shemita produce: although a Jew may not work a non-Jew's land during shemita since it remains with its kedushah, the produce that grows in a non-Jew's field does not have kedushas shevi'is (כס"מ פ"ד שמיטה ויובל הכ"ט).
11. **Mabit's opinion.** Others understand the machlokes differently: Both Amora'im agree the land is considered Eretz Yisroel land for the halachos of orlah, kila'ei hakerem, and working it during shemita. The entire machlokes is whether the produce has the status of Eretz Yisroel produce or chutz la'aretz produce. Since the halachah follows Rabbah, a non-Jew's produce has kedushas shevi'is (אבקת רוכל סי' כ"ב) (כ"ג כ"ה, ש"ת המב"ט סי' כ"א, מהר"ט ח"א סי' מ"ג, החז"א סי' כ"ד וכן ו"ה ומהר"ט).
12. There are proofs both ways, as the poskim detail, and both are legitimate opinions – "אלו האלו דברי אלקים חיים." See below (24) for current practice.

Various Halachos Regarding a Non-Jew's Produce

Biur

13. **No biur for a non-Jew's produce.** According to the Beis Yosef and his camp, a non-Jew's produce does not require biur [making gathered produce hefker at a certain time] since it does not have kedushas shevi'is. However, the poskim argue within the Mabit's opinion: Some say the Mabit and his camp would agree that a non-Jew's produce does not require biur (ר"ש הזקן הובא באבקת רוכל סו"י כ"ג) since biur and hefker are monetary-dependent halachos and the Jew can claim that his monetary rights over the produce are no greater than the non-Jew's (ע"פ הגמ' בכורות דף י"א ע"ב).
14. **Biur for a non-Jew's produce.** However, others hold that according to the Mabit and his camp, one should treat such produce with all the halachos of shevi'is, including the halachah of biur (חרדים סי' נ"ה), ש"ת שער האותיות קדושת האכילה אות מ"ו עד נ"ז, חז"א סי' כ"ו סדר השביעית שלי"ה). This is the minhag among those who follow the Mabit.

Issur to Do Business

15. According to the Beis Yosef and his camp, one may do business with a non-Jew's produce since it does not have any kedushas shevi'is. That said, even according to those who treat a non-Jew's produce with kedushas shevi'is, some say there is no issur to do business with the produce (אבקת רוכל סו"י כ"ה, תוספת) (יוהכ"פ פ"ג. ע"פ הר"ש הזקן הנ"ל).
16. Others say that according to those who treat a non-Jew's produce with kedushas shevi'is, the issur to do business applies (חרדים, שלי"ה), (חז"א סי' כ"ו סדר שביעית סק"ג). See below (29) for a way to avoid the issur of doing business when buying produce in a store.

Issur Sefichim

17. In Issue 236, we discussed the issur sefichim. This issur does not apply in a non-Jew's field since the whole point of the issur is to prevent sinners from planting in secret – since non-Jews are not forbidden to work the land in shemita, there is no reason for this gezeirah in their fields (רמב"ם פ"ד הכ"ט).

Guarded, Worked, Planted

18. The poskim argue in a case where a Jew guarded his field instead of making it hefker whether the produce is assur (see Issue 236, paragraph 20). A similar machlokes exists when forbidden work is done in a Jewish-owned field in shemita (ibid.). However, when it comes to a non-Jew's produce, even those who follow the Mabit and treat a non-Jew's produce with kedushah do not need to worry about the issur of produce that was guarded or worked (שמור ועבד). Furthermore, produce planted in a non-Jew's field in shemita does not become forbidden (בית דוד ח"ב אות י' ובהערה).

Terumos and Maasros

19. **Jew's field.** Shemita produce from a Jew's field is patur from terumos and maasros (טור י"ד סי' של"א סי"ט). Some say this is because shemita produce is hefker, and hefker is patur from terumos and maasros (ב"י שם, אבקת רוכל סי' כ"ד הובא במהר"ט סי' מ"ב). Others say the patur is due to the kedushas shevi'is (מהר"ט ח"א סי' מ"ג ד"ה) (ורואה אני מב"י שם, מהר"ט ח"א סי' מ"ג ד"ה). Yet others understand that anything that grows in shemita is inherently patur from terumos and maasros, the proof being that the Torah did not tell us which type of maaser applies during shemita (חזו"א סי' ז' סק"ט ד"ה ט"ו, תוס' ר"ה י"ד: ד"ה ולשביעית).
20. **Non-Jew's field.** Produce that both grew and had its finishing work done in a non-Jew's field in shemita is patur from terumos and maasros however you look at it: if it has kedushas shevi'is, it is patur (מב"י ט), and if it does not, then for the same reason it does not have kedushas shevi'is [i.e., because a non-Jew's possession of the land removes its chiyuvim], it is patur from terumos and maasros (ב"י).
21. **Finished in a Jew's possession.** However, the poskim argue about a case where produce grew in a non-Jew's field but had its finishing work done in a Jew's possession, e.g., a Jew bought grapes and made wine from them. Some say that according to the hefker reasoning for the patur of terumos and maasros, one must separate terumos and maasros since a non-Jew's produce is not hefker (ב"י י"ד סי' של"א) (סי"ט, רמ"א שם). According to others, the reason terumos and maasros must be separated is because [according to them,] there is no kedushas shevi'is on a non-Jew's produce (כפתור ופרח פמ"ז).
22. However, others hold such produce is patur from terumos and maasros because it has kedushas shevi'is (מב"י ט, מהר"ט שם) or because of the inherent patur of all produce that grows in shemita (ע"פ החזו"א הנ"ל).
23. **In practice.** In light of this machlokes, the consensus of the poskim is that terumos and maasros should be separated from a non-Jew's produce in shemita (פאת השלחן פ"א סי"ג, חזו"א סי' ט' סק"ח ד"ה ולמעשה) without a brachah. We separate them to satisfy the opinions that hold the produce must have terumos and maasros separated, but we take into account the opinions that it is patur and we don't make a brachah. Even for those who hold that the produce has kedushas shevi'is, separating terumos and maasros is not a problem of wasting shemita food since the purpose is to avoid a possible issur (חזו"א שם).

Minhag Today Regarding Produce of a Non-Jew

Minhag Yerushalayim

24. The long-established minhag in Yerushalayim dating back to the times of the Beis Yosef is to follow the Beis Yosef's opinion that a non-Jew's produce does not have kedushas shevi'is (חיד"א בברכי יוסף). Thus, it does not require biur (13); one may do business with it (15); and if a Jew did the finishing work, terumos and maasros must be separated (21). The Beis Yosef came out with a strong letter requiring everyone to separate terumos and maasros from produce of non-Jews (ש"ת אבקת רוכל סי' כ"ה, ש"ת מהרשד"ם י"ד סי' קצ"ב).
25. **Badatz Eidah Chareidis.** This has been the practice of the Eidah Chareidis since its conception, based on the rabbonim of Yerushalayim who ruled that the halachah follows the Beis Yosef. Thus, the Eidah hechsher certifies stores to sell non-Jews' produce, requiring it to be labeled "produce of a non-Jew." Someone who lives in Yerushalayim or is associated with the Yerushalmi communities – and certainly a Sephardi – can confidently rely on the Beis Yosef, the foremost posek of Eretz Yisroel. Whoever buys from Eidah Chareidis stores and follows the Eidah with regards to produce of a non-Jew will not encounter any shemita produce since Eidah stores only sell sixth-year produce, chutz la'aretz produce, and produce from non-Jews, all labeled accordingly. [It should be noted that the Eidah does not use "Otzar Beis Din" that other agencies, particularly in Bnei Brak, use. Thus, there is no Eidah Chareidis produce whatsoever that has kedushas shevi'is.]
26. **Wants to be machmir.** Some say that if someone from Yerushalayim wants to be machmir to treat produce of a non-Jew with kedushas shevi'is, he may do so (תוס' יוה"כ"פ למהר"ם בן הניב יומא דף פ"ג ע"א), (הגרמי"ט הנ"ל). In the past, even those who were machmir only did so privately. Certainly a Sephardi who wants to be machmir should only do so privately (אור לציון פ"ב סי"ד). Recently, some poskim allowed Ashkenazim to be machmir publicly (ספר שמיטה כהלכתה), but before one takes a chumra upon himself, he should first consider whether the chumra will be on him ... or on his family ...

27. However, most rabbonim of the Eidah Chareidis – Harav Yosef Tzvi Dushinsky [גאב"ד], Harav Pinchas Epstein [ראב"ד], and the Minchas Yitzchak [גאב"ד] – opposed those in Yerushalayim who were machmir publicly to treat produce of non-Jews with kedushas shevi'is, as is well known (השמיטה והלכותיה ח"ד סי' ד'). It is also said that the Brisker Rov was personally machmir on produce of non-Jews but did not want to go against the ruling of the Beis Yosef by eating them with kedushas shevi'is.

Chazon Ish's Minhag

28. In Bnei Brak, they follow the Chazon Ish, who ruled that produce of non-Jews has kedushas shevi'is, in accordance with the Mabit. Thus, they must treat such produce with kedushah and not waste it or disrespect it, as we will iy"ח discuss in the future. They are bound by the issur to do business according to the Chazon Ish (above, 16) and must perform biur at the proper time (14). If the finishing work was done by a Jew, they must separate terumos and maasros as a chumra, but without a brachah (החזו"א הנ"ל).

A Way for Stores to Buy and Sell

29. Being that the Chazon Ish held the issur to do business applies to produce of non-Jews (above, 16), how can one buy produce from stores if the produce has kedushas shevi'is? Everyone agrees that one may buy produce from a non-Jew himself since the issur is on the seller, but how can a Jewish storeowner sell to a Jew?
30. **Shliach.** The recommended way out is through a document in which the customers appoint the storeowner, who in turn appoints the wholesaler, as their shliach to buy from the non-Jew. Accordingly, when the wholesaler buys produce from a non-Jew, the produce already belongs to the customers; the storeowner merely delivers to his customers produce that is already theirs. They reimburse the storeowner for the money he paid the non-Jew, plus a bit more for his efforts. In this way, no one transgresses the issur of doing business with shemita produce (הובא בספר שנת השבע ובמשפטי ארץ פכ"ו).
31. Bedieved, even if one did not appoint a shliach, he can still buy from a store if he does so knowing that the produce was bought on his behalf and is his responsibility (סוף תקנות החזו"א). This is because it can be assumed that the people in the city also intended for the shlichus to work for guests (דרך אמונה פ"ו צה"ל סק"מ).

Situations Involving Differing Minhagim

Buying Produce from Someone Who Follows the Beis Yosef

32. **In Yerushalayim.** Someone who follows the Mabit may buy produce from a seller in Yerushalayim who follows the Beis Yosef even without using shlichus since the issur to do business is on the seller. Since the seller is following the accepted local custom which has a strong basis, the buyer does not transgress the issur of לפני ש"ת מב"ט ח"א סי' כ"א, בית דוד) [מסייע] or aiding with an aveirah (פ"י אות ט' ע"פ הכתב סופר י"ד סי' ע"ז).
33. **In Bnei Brak.** However, in Bnei Brak, where they follow the Chazon Ish, one should not buy from an Ashkenazi seller who follows the Beis Yosef since he is obligated to follow the Chazon Ish, in accordance with the local minhag (הובא במשמרת השביעית פ"ז הע' 25). One may buy from a Sephardi since Sephardim accepted the ruling of the Beis Yosef everywhere in Eretz Yisroel (הגרשי"א, שם).

People Who Uproot the Minhag

34. Unfortunately, there are talmidei chachamim who, after learning the sugyas, concluded that the Mabit's opinion is the primary one and cannot accept the fact that there is a different opinion – that of the Beis Yosef – accepted as the minhag of Yerushalayim. Thus, they make all sorts of attempts to uproot the minhag of Yerushalayim with worthless claims that the produce of non-Jews today is not what the Beis Yosef was discussing. They develop convoluted arguments that there are issurim of amirah l'akum involved in ordering produce from non-Jews [we will write about this in the future, be"H], all with the intent to suppress and eradicate the minhag of Yerushalayim. They pressure the Eidah Chareidis's Vaad Shemita to retract its position.
35. Therefore, let us create an iron wall of support for the Eidah Chareidis's wonderful activities for shemita specifically, and for world kashrus in general, for their tremendous dedication, their adherence to the mesorah, and their rulings through the generations. Only people who have never actually worked in real time to provide kashrus services can challenge and tear down the kashrus structure built over a long time with the devotion and professionalism required of kashrus agencies.