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

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Otzar Beis Din [Shemita 4]

Parshas Lech Lecha 5782

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The Concept of Otzar Beis Din

There are numerous concepts and terms mentioned during shemita, and many people have no idea what they mean. Thus, we saw a need to explain the concept of "otzar beis din," which some permit while others generally do not rely on it. We will explain the concept, the heter, and possible pitfalls that can be encountered.

Source: Tosefta

- Distributing hefker produce.** In the shemita year, produce with kedushas shevi'is is hefker; anyone can go into any field and pick produce without the owner's permission, obviously making sure not to damage the trees in the process. There was a concern that 1) people would take more produce than they were allowed and do business with it, and 2) that they would not fulfill the mitzvah to get rid of it at the proper time [biur]. The Tosefta (פ"ה) mentions a solution: sheluchim of beis din would sit at city entrances, where field owners and other collectors would bring their produce and give them to the sheluchim to distribute it to the city's residents.
- Purpose of otzar beis din.** The purpose of otzar beis din was twofold: 1) To prevent people from doing business with shemita produce; 2) To prevent people from transgressing the mitzvah to do biur on shemita produce, as the mitzvah of biur only applies to produce held by a particular person, not to produce stored in beis din's reserves (רמב"ן עה"ת).
- Hefker.** An additional benefit was that many people lived far from the fields, and it would be a big hassle if every person had to go to the fields every time he wanted a fruit. Instead, beis din gathered the hefker produce and distributed it to make it readily available to the population (חוט שני, קונטרס אוצר ב"ד עמ' ש"פ).
- Labor of picking.** The Tosefta also says beis din is allowed to send sheluchim to the fields in the harvest season to pick produce, press wine from the grapes, press oil from the olives, and bring everything to be distributed to the population. This is an example of beis din going to lengths for the benefit of the people, as it saves the general public lots of work. Hence, beis din's sheluchim are not sheluchim of the field owners to sell their produce in a permissible way. They are sheluchim of the public who make sure hefker produce is utilized properly.
- Permissible quantity.** A field owner or other individual (חז"א סי' י"ב) (שם, וסי' י"ג סק"י"ז סק"ט) may not pick lots of produce from hefker, as that looks like he is doing business. He can only pick an amount that is normal for a person to pick and take home at one time (רמב"ם פי"ד ה"א) (והכ"ד). However, the above Tosefta says that beis din's sheluchim are allowed to pick an entire field's produce since doing so does not look like business, as they are everyone's sheluchim and they distribute the hefker by beis din's decree (רמב"ן עה"ת, חז"א סי' י"ב ס' ק"ו ד"ה ומהא).

Paying for Otzar Beis Din Produce

- Like all shemita produce, produce picked and distributed by otzar beis din has kedushas shevi'is and is forbidden to be sold. Thus, it may not be sold like regular produce. However, payment may be collected to cover beis din's expenses for the harvest laborers, transportation, storage, and distribution. Although the heter to take this payment does not appear explicitly in the Tosefta, it is obvious beis din is allowed to collect money to cover their costs just as they sometimes take money for the cost of other initiatives and municipal concerns, e.g., a mikveh or eiruv. It must be clear, though, that the payment is for the expenses, not the produce itself. This will be explained below.

Accepted Halachah

- The Rambam does not mention this heter of the Tosefta; the Raavad challenges his omission. Some want to claim the Rambam did not hold this heter was codified in halachah (משנת יוסף), but others reconcile his omission and say it could be he held it is recognized in halachah (רדב"ז פ"ו ה"ג, קונט' אוצר בית בין הנהוג כהיום עמ' ג; (בית דוד פ"ט הע"ו 1).
- In any case, many Rishonim cite the Tosefta as the accepted halachah to be relied on in practice (ר"ש פ"ט מ"ח, רא"ש, ראב"ד על תו"כ, (רמב"ן פ' הבר, תשו' הרשב"א פסחים נ"א בשם רבו, רשב"ש סי' רנ"ח פאת השלחן סי' כ"ז בבית ישראל סק"ג), (ערוך השלחן זרעים סי' כ"ז, רידב"ז), obviously only if the heter is executed with halachic precision and no deception or tricks.

Which Work Is Allowed for Otzar Beis Din Produce?

Picking, Pressing

- Picking.** Explicit in the Tosefta is a heter to pick produce and to squeeze grapes into wine and olives into oil. Beyond these actions, however, the Tosefta does not explicitly say anything else. It seems the sheluchim of beis din are allowed to harvest an entire field, as mentioned above (אות ה', חז"א שם).
- However, some take into account the opinion of Tosfos (ר"ה דף ט' ע"א) (ד"ה מנהג), that the issur to pick produce in a normal way is deoraisa, in which case it does not matter if one is picking for himself or for the general public. Thus, they make sure the actual harvesting is done by a non-Jew and in a slightly different manner (אוצר ב"ד בד"ץ) (ירושלים בשנת תר"ע).
- Pressing.** Everyone agrees work done after the produce is picked, e.g., pressing or packaging, may be done by Jewish sheluchim of beis din as in any other year since these things are only forbidden to regular people.

Pre-Harvest Agricultural Work

- Deoraisa melachah.** It is clear that work on the land or trees that is forbidden deoraisa may not even be done by beis din's sheluchim.
- Derabanan melachah.** However, the poskim allow some derabanan melachos which may be done by anyone, to be done by beis din's sheluchim as well. Some examples: watering a field that is normally watered by a person; work done to prevent general damage; and some melachos done for the purpose of maintaining trees.

Including These Melachos in the Expenses

- The poskim discuss whether the expenses of work done in the field by beis din's sheluchim before the produce is picked can be included in the price collected from the public. On the one hand, it does not appear in the Tosefta, which is the source for this halachah. But on the other hand, if these jobs were not done, the produce would not be edible and the public would not be able to enjoy it. The Chazon Ish was unsure about this (נתיב השמיטה סי' י"ב אות י"ד), and some poskim were meikel that these expenses can be included in the final price paid by the public (חוט שני, הגר"ח קנייבסקי, דרך אמונה פ"ז סק"ט).
- However, others hold we cannot permit more than appears in the source, i.e., work done after the produce is picked. Even after any work done while the produce is attached to the ground, the produce is still hefker – how can costs incurred for hefker produce be included? They only allow including the costs of work from the picking stage and on in the price since those have the purpose of transporting hefker produce to the people in the cities (הגר"ש"א, שו"ת) (מנחת שלמה ח"ג סי' קל"ב אות ט"ז וי"ז).

16. **Work for field's long-term benefit.** It should be noted that even the poskim who hold the cost of the pre-picking work can be included (above, 14) only allow doing so for work done for this particular produce. Everyone agrees permissible maintenance work done for the long-term benefit of fields or trees may not be included in the cost paid by the consumers since they are not benefiting from that work (משמרת השביעית, קוני אוצר ב"ד, שמיטה כהלכתה פ"ג ס"ט"ו בביאורים).

Guarding the Produce

17. Beis din's sheluchim may not guard a field to prevent individuals from picking the produce growing inside since shemita produce attached to the ground is hefker. Even after it is picked by beis din, it is still hefker, just beis din has the right to claim payment to cover their costs (חז"א ס"י ס"ק"ה ד"ה והקל, חוט שני, דרך אמונה פ"ו סק"ה סק"ט, מנחת שלמה ח"ג ס"י קל"ב אות ח"י).

18. Thus, one may not take harvested produce from otzar beis din without getting permission or paying for expenses since doing so is stealing from the general public and violating beis din's decree. Nevertheless, if one does, the produce does not have the halachic status of stolen with respect to kiddushin or taking an esrog on Sukkos since at the end of the day, it is hefker (חוט שני).

19. Therefore, beis din may not hang a No Entry sign by a field's entrance explaining that it is an otzar beis din field since it is assur to prevent others from entering – beis din's enactment cannot go against something explicitly in the Torah. Indeed, one may enter and pick a permissible amount taking care not to harm the trees.

20. **Making produce assur.** Some poskim say that according to Rabbeinu Tam, who holds that produce that was guarded becomes assur (see Issue 236, paragraph 20), produce guarded by beis din's sheluchim also becomes assur (משנת הגר"ש פ"ה ס"ט"ו, בית דוד פ"ט אות ד). If an esrog orchard is guarded by otzar beis din, there is a possibility the esrogim become assur, in which case no one may use them for the mitzvah. Accordingly, great care should be taken to ensure the orchard is not closed off.

Appointing a Field Owner as a Shaliach of Beis Din

21. Since every field owner knows his field better than anyone else, beis din sometimes appoints a field owner to be the shaliach to take care of his own field. He will do the permissible work according to beis din's instructions; beis din will pay him for his work as an employee; and beis din will collect money from the consumers of the produce to cover costs.

22. However, in such a case, beis din must make sure to pay the owner as an employee even if they will not cover their expenses from the money they receive, and even if the produce that grows is not good enough to bring in revenue. Otherwise, the whole arrangement is just a ruse.

Permissible Method of Distribution

Distribution Location

23. Even when shemita produce is sold in a permissible manner [e.g., in a small quantity or when it was picked with the intention of being sold], it may not be sold in a market or store in the same way it is sold every other year (ירושלמי פ"ו ה"א). Doing so gives the appearance of conducting regular business like any other year (פני משה שם). In light of this, the poskim discuss whether otzar beis din produce may be sold in stores.

24. **Store.** Some allow distributing otzar beis din produce in stores with other produce. They hold the issur is only to sell shemita produce in a market, but a *distribution* of otzar beis din produce – which is not a sale, as payment is just to cover costs – may be held in a store. When this is done, the store must make sure to put up a sign next to the otzar beis din produce labeling it as such (משנת הגר"ש פ"ה ס"ה).

25. Some kashrus bodies rely on this. They distribute otzar beis din produce in regular stores among other permissible produce, e.g., produce from non-Jews, Chutz La'aretz, or the sixth year, each with a sign indicating its source and kedushah status.

26. **Special location.** However, many poskim hold that otzar beis din produce should not be distributed in a store where produce is sold in other years, among produce from the sixth year, non-Jews, or Chutz La'aretz; doing so looks like conducting business with shemita produce. Instead, beis din designates a special store, empty storage location, or hall for the distribution of hefker produce. They do not distribute any products or produce there other than otzar beis din shemita produce (חוט שני קונט' אוצר בית דין עני ש"צ). This is the best method, as it ensures people will not minimize the idea of otzar beis din distribution, thinking it is like any other sale, just with the code words "otzar beis din" to permit it.

27. **Lower than usual price.** The consensus of all the poskim is that the cost to cover the expenses of produce distributed by otzar beis din has to be much lower than in a regular year, as the field owner's profit is subtracted from the price. Additionally, it should be clear to everyone that it is a distribution, not a sale.

Volume, Weight, Number

28. Regular shemita produce, even when it may be sold, may not be sold by volume, weight, or number (מג"ב פ"ו ה"ג). With respect to otzar beis din produce, some hold this restriction does not apply since it is a distribution, not a sale. This is especially so if it is obvious the produce is from otzar beis din based on its low price and clear label. Accordingly, payment to cover expenses can be determined by volume, weight, or number (חז"א, נתיב השמיטה ס"ב אות ט).

29. However, others are machmir even in this case and require the produce to be distributed by estimation or by the box, without making sure there is a specific amount. This way, it appears more like a distribution than a sale (מנהג ירושלים, השמיטה והלכותיה ח"ד ס"ד).

Some Issues in the Otzar Beis Din Arrangement

For the Benefit of the Public

30. The main principle of the otzar beis din heter is that it is for the benefit of the public. However, some make an otzar beis din arrangement to enable a field owner to make some profit like every other year. This was not the intention of the heter whatsoever, as we cited from the Tosefta (above, 2). That being the case, some poskim fiercely oppose the otzar beis din arrangement since it can easily lead to people disregarding the halachos and purpose of the arrangement (הדברי יואל, דבר השמיטה אות ל"א, רבני והברי בד"ץ עדה"ח). Accordingly, the minhag of Beis Din of Yerushalayim is not to rely on otzar beis din whatsoever [with the exception of the distribution of esrogim before Sukkos, where there is no other option since esrogim do not grow on non-Jewish-owned property in Ramallah..]

31. **Abusing the heter.** Some field owners gather three people who are kosher for hataras nedarim and appoint them as a "beis din" to create an "otzar"... They appoint themselves as beis din's sheluchim and do as they feel in their fields, even beyond what is permitted. They supply to wholesalers as usual and sell their products at a price similar to every other year. Their products are available on the market and in stores as usual, and they make it as if the payment is to cover their costs as well as everything they invested in their fields for this year and every year, all under the heter of "otzar beis din." This is an abuse and a disgrace to the kedushah of the shemita year.

32. **Only a reliable otzar beis din.** In other words, the heter of otzar beis din is like many things in the kashrus space: if it is done properly and responsibly by top-quality rabbanim and kashrus bodies, it can be relied on. Without all the above, it cannot be relied on whatsoever, and it is possible the produce is actually assur (above, 20).

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