

לוקוטי ופסקי הלכות

# "חוקי חיים"

ותלמוד  
"חוקי חיים"  
לעשות רצונך  
בלבב שלם



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

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

# Halochos of Shmita Heter Mechira

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# ליקוטי ופסקי הלכות "חוקי חיים"

ותלמוד  
"תוקף תנים"  
לעשות רצונך  
בלבב שלם



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

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read during  
davening or  
Krias HaTorah

Heter Mechira Produce [Shemita 6]

Chayei Sarah 5782

244

## A History of the Heter Mechira

1. The leading poskim have discussed the implications of the heter mechira as far as working the land and the status of the produce. Much has been written about this; we are only discussing it because all the leading poskim questioned its legitimacy. They collectively concluded there is no basis for it and the sale does not take effect whatsoever (הבית הלוי ח"ג סי' א, הנצי"ב משיב דבר סוף ח"ב, ועוד (הרידב"ז הק' להל' שביעית, החזו"א סי' כ"ד, רבני עיה"ק ירושלים, ועוד).
2. We will detail some of the basic elements of the heter and the many facets of issur [like a fence that has more gaps than fencing] to explain the concept to the general public. This is particularly important today, now that the reality is completely different in many aspects (below, 19). We will also determine the halacha with regard to heter mechira produce in a person's possession (32).

### Life-and-Death

3. 135 years ago [19 shemita cycles], before Shemita 5649 [1888-89], shortly after the settlement of Chareidim in Eretz Yisroel, Some Jews living in Eretz Yisroel described to the rabbanim in Chutz La'aretz the dire circumstances in the Yishuv. Imported produce was rare, there was a famine, and hundreds of people would die if they could not find a solution. As a result, several rabbanim from Warsaw – with Rav Yitzchok Elchonon Spector of Kovno at their head – came out with a heter: the Jews could sell their fields to non-Jews, have non-Jewish laborers do certain types of work in the fields, and benefit from the produce. The rabbanim based their heter on certain halachic points (cited in the sefer Shemen Hamor), as we will explain. Every shemita since then, some people continued using this heter to "solve the shemita problem," working their fields as usual. This figuratively begs the question, "What relevance does shemita have to Har Sinai?" (Borrowed from Sifra Parshas Behar)
4. In fact, the rabbanim back then already acknowledged they were entering dangerous territory and it was only due to the situation, which they understood bordered on life-and-death for Jewish communities, that they relied on the heter, as they themselves said. But over the years, the circumstances have completely changed, both economically and with regards to the validity of the sale. Therefore, there is no justification today for the heter mechira. On the contrary, we should view shemita as an *opportunity* to do a mitzvah and keep the Torah according to Hashem's will – not as a *problem*. We have 613 mitzvos, not 613 problems!

## Halachic Introduction to the Heter Mechira

### Non-Jewish Owned Land Today

5. **No kedushah.** The Rishonim argue whether non-Jewish ownership of land in Eretz Yisroel today removes its kedushah or not. There is a sole opinion that after Churban Bayis Sheini, it could be Eretz Yisroel has the halachic status of Syria, and non-Jewish ownership removes its kedushah. According to this, in a regular year, if a Jew buys produce grown in a non-Jew's field and does the finishing work on it, it is exempt from terumos and maasros. Also, non-Jewish owned land may be worked in shemita (ל"א א"י) (ספר התרומה הל' א"י).
6. **Kedushah.** However, all other Rishonim and Acharonim argue that a non-Jew's possession in Eretz Yisroel does not remove its kedushah. Thus, if a Jew did the finishing work on produce grown in a non-Jew's field in a regular year, it is obligated in terumos and maasros, and such a field may not be worked in shemita. [There is a machlokes between the Beis Yosef and Mabit whether produce grown by a non-Jew in his field has kedushas shevi'is or not; we wrote about this previously (Issue 237).] רמב"ם פ"י תרומות ה"י, מהר"י (קורקס, כס"מ, סור ושור"ע י"ד סי' של"א ס"ג, רמ"א שם ס"י, חזו"א סי' כ

7. **In practice.** Some are machmir for the sole opinion. Thus, when taking maaser off wine made by a Jew from grapes grown in a non-Jew's vineyard, they do not make a brachah (ברכי יוסף י"ד סי' של"א) (סקק"ג, הגריש"א). However, many are not concerned about the sole opinion – even as a chumra – and make a brachah in this situation, since the final halachic ruling does not follow this opinion. They certainly do not rely on it as a kula to allow working land in shemita (חזו"א סי' כ"ד וּבפאת, דרך אמונה פ"א תרומות ציה"ל ס"ק קפ"ו).

### לא תחנם Issur of Selling Land to a Non-Jew:

8. There is an issur for a Jew to sell land in Eretz Yisroel to a non-Jew, from the posuk "לא תחנם," interpreted to mean, "Do not give them a place to reside" (שור"ע י"ד סי' קנ"א ס"ז). Thus, the very sale is an issur. Even though only the seller, not everyone who the sale was done for, violates the issur, the halacha is that there cannot be a shaliach for an aveirah, meaning the sale is null (תוס' ב"מ י"ג ע"ב ד"ה דאומר, נודב"י) (קמ"א אבה"ע"ז סי' ע"ה, חזו"א סי' כ"ד סק"ד). However, there were some suggestions to prevent the sale itself from violating this issur.
9. **Temporary sale.** To get around the issur of תחנם, some suggested that a sale for a set amount of time does not violate לא תחנם, as it is like a lease, which is only an issur derabanan and may be allowed to prevent a significant loss, along with other factors. At the same time though, they held that a temporary sale is a true transaction which removes the kedushah of Eretz Yisroel according to the opinion of the Sefer Haterumah.
10. Even this only works according to the opinions that a temporary acquisition is a true acquisition (ר' אביגדור כ"צ הובא בשו"ת הרא"ש כלל) (לה ס"ב, קצוה"ח סי' רמא סק"ד). However, many poskim argue and hold a temporary acquisition is not a true acquisition (רא"ש סוכה פ"ג סי' ל, ריטב"א קידושין ו; נתיב"מ שם סק"ה, חזו"א אבה"ע"ז סי' עד סק"ד, שו"ת דברי יואל סי' צ"ה אות ג').
11. **To Arabs.** Some suggest the issur of תחנם only applies to a non-Jew who does avodah zara. If so, there would be no issur to sell a field to Arabs, who do not do avodah zarah (ע"פ מזבח אדמה י"ב:).
12. However, in practice, all poskim agree this makes no difference. The issur is to sell to any non-Jew, even to one who does not do avodah zarah or to an Arab (רמב"ם פ"ד איסור"ב ה"ז וז; סמ"ע י"ד סי' קנ"א) (סקק"ה, חזו"א סי' כ"ד סק"ב).
13. **Selling trees, top layer.** To avoid the issur of תחנם involved in selling land to a non-Jew, some suggest that instead of selling all the land, one should only sell the top layer of the land and the physical trees with intend to uproot them.
14. However, many poskim reject this too with the claim that in such a case, there is no removal of kedushah even according to the Sefer Haterumah, as it is like a non-Jew's flowerpot with a hole on a Jew's ground – the plant is considered to be grown by a Jew since it gets nutrients from earth that has kedushah of Eretz Yisroel (חזו"א (סי' כ"א סק"ט, בית דוד קול מצות התלויות בארץ אות ג ובה"ע).

### A Ruse or a True Acquisition?

15. **Intention [סמיכות דעת].** Many poskim claim there is a serious lack of real intention in the sale, as it is obvious that the buyer and seller are merely performing a ritual, not intending for an actual sale. A person would not sell a field he worked hard to obtain; this is all the more so when an organization acts as an agent to sell all the fields and land in Eretz Yisroel, even if the field owners give their signed authorization. A person would not sell his field – or all of Eretz Yisroel – so easily. At the time the heter was given, there were perhaps a handful of fields which each owner personally sold to a non-Jew. But a general sale for all of Eretz Yisroel? Obviously Eretz Yisroel is not for sale...

