



A History of the Heter Mechira

- 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 סיי א, הנצי"ב משיב דבר סוף ח"ב, יכד, רבני עיה"ק ירושלים, ועוד הבית לוי ח"ג סיי להלי שביעית, החזו"א סיי 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 Shemitah 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 shemitah since then, some people continued using this heter to "solve the shemitah problem," working their fields as usual. This figuratively begs the question, "What relevance does shemitah 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 shemitah 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 shemitah ("א מיל א"ל).
- 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 shemitah. [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).] (קורקס, כס"מ, טור ושו"ע, חזר"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 (סקכ"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 shemitah (הוו"א סי כא דיה ביא מונה פ"א תרומות ציה" אום).

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

- 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" (שו"ע יו"ד ס" 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 (קמ"א אבהע"ז ס" ע"ה, חזו"א ס" כ"ד סק" תוס' ב"מ " ע"ב ד"ה דאומר, נודב"). However, there were some suggestions to prevent the sale itself from violating this issur.
- 9. Temporary sale. To get around the issur of לא תחם, לא תחם, some suggested that a sale for a set amount of time does not violate לא שוגה, 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 (לה סי"ב, קצוה"ח סי רמא סק"ד ר׳ אביגדור כ״צ הובא בשו"ת הרא״ש כלל). However, many poskim argue and hold a temporary acquisition is not a true acquisition (יה סי"ב, קצוה״ סי ריש״ כי ריש״ סי ריש סי ריש סי ריש סי ריש סי ריש סי ריש סי ריש״ סי יש סי סי ריש״ סי מי עד סיי״ בי שו״ סי י עד סיי״ ה אות גי לי, ריטב״ ש סי מי שי סי מי״ הי אות גי״.
- To Arabs. Some suggest the issur of לא 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 (י"ב מזבח אדמה "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 (המב"ע יר"ד סי קנ"א) סמ"ע יר"ד סי קנ"א).
- 13. Selling trees, top layer. To avoid the issur of לא 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 (איז ד קונ' מצות התלויות בארץ אות ג' ובהע' סי כ"א סק"ט, בית דוד קונ' מצות התלויות בארץ אות ג' ובהע'

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... 16. Also, the non-Jew who buys all the fields in Eretz Yisroel does not think he is actually buying Eretz Yisroel. He has zero intention of paying the full price if he would decide to buy it.

Non-Jew Working the Land

- 17. Jew. A Jew may only work a non-Jew's field according to the Sefer Haterumah (above, 5), who holds a non-Jew's ownership of land in Eretz Yisroel removes its kedushah; if there is no kedushah, a Jew may work it. However, since all the poskim argue with the Sefer Haterumah, as we mentioned above, it is obviously forbidden for a Jew to work a field even if it is actually a non-Jew's – all the more so when the sale is completely invalid.
- 18. Non-Jew. There is room to allow derabanan melachah to be done by a non-Jew in a non-Jew's field, even under instructions from a Jew – this is like a double derabanan in a situation of great necessity. However, it is worse if a Jew actively supervises the non-Jew and tells him what to do. Even so, if there is a serious need, there would be room to allow it if the sale is truly valid.

Concept and Evolution of the Heter Mechira

5649 [1888-89]

- 19. The heter mechira began in the year 5649, based on the assumption that the situation in the Yishuv threatened the lives of hundreds of Jews. In this difficult position, several gedolim stepped up to find a heter as a temporary ruling for that year. It was based on several conditions, as they themselves laid out (אות איות ז') וווויס.
- 20. Conditions. 1) Only non-Jews could do work (18); 2) The sale had to be short term (9) [for two years], and 3) to an Arab (11); 4) The heter relied on the sole opinion of the Sefer Haterumah (5); 5) The heter was for a life-threatening circumstances.

Over the Years

21. Over the years since 5649, the mechira was changed and modified in an effort to execute it in the best possible way. E.g.: In 5656, they only sold the trees and top layer of the land to avoid the issur of לא תחנם (13); in 5670 they made a temporary sale (9) and sold the trees on condition to cut them down – and if the non-Jew did not do so, by default there was only a temporary sale of the *land*, bringing back shailos of the issur of selling land to a non-Jew (8). This theme continued: with every adjustment, they entered even more questionable areas to release the chiyuv of keeping shemitah in Eretz Yisroel.

Before and After the Establishment of the State

- 22. We find a major change before and after the establishment of the State of Israel. Beforehand, Eretz Yisroel was anyway controlled and occupied by non-Jews, taxes were paid to them, and most fields belonged to them. These were the circumstances in which the heter to sell land to non-Jews originally came out, as explained in the original heter (שמן המור).
- 23. After the State was established. After the State of Israel was established, most areas belonged to Jews and taxes were paid to the government. Under these circumstances, there is no basis for a sale of the land to a non-Jew to allow work to be done, as the sale is only short-term; even their rabbanim were concerned about this (כמו שהובא בשמיטה כהלכתה קונ' היתר מכירה לנכרי).

Just a Ruse

- 24. Legally valid sale. In recent shemitah years, they improved the wording of the document of sale to make it legally sound; if it is not valid according to the laws of the State, the sale is obviously a joke. However, by law one must register land with the Israel Land Authority [ILA] to have full legal rights to it ("">τ ("")
- 25. This year. This year 5782/2021-22 Eretz Yisroel was sold by the Israel Land Administration and the Rabbanut to a non-Jew by the name of Mr. Wesley Schmidt. Incidentally, Schmidt sounds like an Ashkenazi last name [and also sounds like "shemitah"], not an Arab name (above, 11). After so much blood was spilled to get Eretz Yisroel from the Arabs, it is obviously not suitable from an ideological perspective to sell it back to an Arab so easily...
- 26. Last shemitah, Eretz Yisroel was sold for 125 billion shekel. In actuality, only a mere 2,000 shekel was paid as a down payment... Is there a bank in the world that would give a mortgage for this amount? Is there even a remote chance such a huge deal could be pulled off?

27. Out of fear the non-Jew will not sell Eretz Yisroel back after shemitah or that a rich Arab country will buy it from the non-Jew, there is a clause in the sale contract that in the event the non-Jew does not sell Eretz Yisroel back to the ILA at the end of the year, the sale is retroactively nullified, as if it never happened. The result of a completely nullified sale would be that the field owners directly transgressed an issur. Is there a greater ruse or trick than this?

In Practice

- 28. **Not life-and-death.** It should also be noted that the entire heter was based on the possibility that hundreds of people would die if it was not issued as outlined. Keeping shemitah today in no way creates a life-threatening situation. Also, the heter then was only for a non-Jew to do the work, not for Jews to do work as is done today, r"l.
- 29. **Other options.** Additionally, they can import more produce from Chutz La'aretz or the like so that there will not be a famine. The government can also grant subsidies and income security to farmers struggling during shemitah. Baruch Hashem, shemitah does not cause any poverty or life-and-death situations today.
- 30. In view of all this, we can see how laughable the sale is today. It has no validity whatsoever and does not make an ounce of difference in the halachos of the kedushah of the land.
- 31. Consensus of the leading poskim. Therefore, the consensus of the leading poskim is that one should not rely on the heter mechira whatsoever (אור לציון הק׳ אור לציון ה״, אור יצחק ח״ח ס׳ צ״ו, אור לשביעית ובשם ר׳ עזרא עטייה, הגריש״א, הגר״ש וואזנר, הגר״נ קרליץ, שיח לשביעית ובשם ר׳ עזרא עטייה.

Heter Mechira Produce Today

Vegetables

32. Since all the poskim reject the heter mechira, vegetables marketed as heter mechira that grew and were picked in shemitah may not be eaten due to the issur of sefichim (see Issue 236, par. 38). Therefore, one may not give them away. They may also not be wasted since they have kedushas shevi'is. Instead, they must be placed in a shemitah pail until they go bad on their own (Issue 243, par. 12 and on).

Fruits

- 33. Fruits are not subject to the issur of sefichim (Issue 236, par. 39). Thus, strictly speaking, heter mechira fruits are not forbidden. Still, since they were not made hefker and were worked in violation of halacha, it is best to be machmir. The minhag Yerushalayim is not to eat fruit that was guarded unless there is a pressing situation or it is for sick, elderly, or weak people (סיג צ׳ה) שליג.
- One should not buy heter mechira fruit lechatchilah since doing so assists transgressors – if people buy it, these farmers will continue doing work under an ineffective heter.
- 35. Bought accidentally. If one accidentally bought heter mechira produce only realizing his mistake after he got home, he may return his purchase to the store to get his money back. Doing so is not an issur of business since the whole purchase was in error and the sale did not take effect (הגר"ב ראקאוו, גאב"ד גייטסהעד). There is also no problem of lifnei iver in returning the forbidden produce to the store since he is only saving himself (").

Wine

- 36. It is very common for a person to buy heter mechira wine. The labels are the same as every other year, just with the words "Heter mechira" in small letters next to the hechsher. Everyone must be very careful when buying wine to make sure it is not heter mechira wine. In truth, this applies to everything a person buys. For example, there are potato chip packages that say "Heter mechira" in fine print.
- 37. Kiddush on heter mechira wine. If a person who does not eat produce that was guarded or worked (above, 33) made Kiddush on heter mechira wine, since he cannot drink it, he is not yotzei Kiddush. However, if he is meikel in this area and will drink the wine, he can be motzi others in Kiddush even if they personally would not eat such produce (ז' י').

Hosted by Someone Who Relies on Heter Mechira

38. One should not eat at the house of someone who uses heter mechira, even bedieved. Even if the host made food without any shemitah produce, if there are bliyos of heter mechira food in the cookware, the food should not be eaten (מו״ר שבט הקהת׳ ח״ה). However, if there is no concern of bliyos and the host keeps Torah and mitzvos, he is not considered a person suspected of violating shemitah, and one may eat from his dishes (שם).