

THE HISTORICAL CONTROVERSIES OF SHEMITA

מדרשת רחל וחיה

A] SHEMITA IN THE PERIOD OF THE TANACH

1. דָּבָר אֶל-בְּנֵי יִשְׂרָאֵל וְאָמַרְתָּ אֲלֵהֶם כִּי תֵבְאוּ אֶל-הָאָרֶץ אֲשֶׁר אֲנִי נֹתֵן לָכֶם וְשָׁבַתָּה הָאָרֶץ שְׁבַת לָהּ

ויקרא כה:ב

Shemita came into effect only when the Jewish people entered Eretz Yisrael

2. כָּל-הַמָּקוֹם אֲשֶׁר תִּדְרֹךְ כָּף-רַגְלְךָ בּוֹ לָכֶם יְהִיָּה מִן-הַמִּדְבָּר וְהַלְבָּנוֹן מִן-הַנֶּהָר נְהַר-פָּרָת וְעַד הַיָּם הָאֲחֵרֹן יְהִיָּה גְבֻלְכֶם

דברים יא:כד

The Torah gives a very wide potential boundary for Eretz Yisrael but makes that subject to actual conquest

3. שֵׁשׁ שָׁנִים תִּזְרַע שְׁדֵךְ וּשְׁשׁ שָׁנִים תִּזְמַר כְּרֶמְךָ וְאָסַפְתָּ אֹתָהּ תְּבוּאָתָהּ: וּבִשְׁנָה הַשְּׁבִיעִית שְׁבַת שְׁבִתוֹן יְהִיָּה לָאָרֶץ שְׁבַת לָהּ שְׁדֵךְ לֹא תִזְרַע וְכְרֶמְךָ לֹא תִזְמַר

ויקרא כה:ג-ד

Shemita is also dependant on personal ownership of the fields

4. (ח) וְסִפַּרְתָּ לָךְ שִׁבְעַת שָׁנִים שִׁבְעַת שָׁנִים שִׁבְעַת שָׁנִים שִׁבְעַת שָׁנִים תִּשַׁע וָאַרְבָּעִים שָׁנָה: (י) וְקִדַּשְׁתָּם אֶת שְׁנַת הַחֲמִשִּׁים שָׁנָה וּקְרָאתֶם דְּרוֹר בָּאָרֶץ לְכָל-יֹשְׁבֵיהָ יוֹבֵל הוּא תְּהִיָּה לָכֶם וְשְׁבַתָם אִישׁ אֶל-אֶחָיו וְאִישׁ אֶל-מִשְׁפַּחְתּוֹ תִּשָּׁבוּ

ויקרא כה:ח, י

Shemita is part of a larger 50 years cycle of Yovel

5. וּמֵאִמָּתַי הִתְחִילוּ לִמְנוֹתָּ: מֵאַחַר אַרְבַּע עֶשְׂרֵה שָׁנָה מִשְׁנַכְנְסוּ לָאָרֶץ שְׁנָאֻמֵּר שֵׁשׁ שָׁנִים תִּזְרַע שְׁדֵךְ וּשֵׁשׁ שָׁנִים תִּזְמַר כְּרֶמְךָ - עַד שִׁיְהִיָּה כָל אֶחָד מִכִּיר אֶת אֲרָצוֹ וְשִׁבַּע שָׁנִים עָשׂוּ בִּכְבוֹשׁ הָאָרֶץ וְשִׁבַּע שָׁנִים בַּחֲלֹק וּמִנּוּ שִׁבַּע שְׁמִטוֹת וְקִדְּשׁוּ שְׁנַת הַחֲמִשִּׁים שֶׁהִיא שְׁנַת אַרְבַּע וְשִׁשִּׁים מִשְׁנַכְנְסוּ לָאָרֶץ

רמב"ם הלכות שמיטה ויובל פרק י הלכה ב

The Shemita and Yovel cycle therefore started 14 years after the Yehoshua and the Jewish people entered the Land. There were 7 years of public conquest, 7 years of division of the Land into private ownership and then the count started. So the first Yovel year was 64 years after they entered the Land

6. דִּתְּנִיָּא: מִשְׁגְּלוֹ שְׁבַת רְאוּבֵן וְשְׁבַת גַּד וְחֲצֵי שְׁבַת הַמְּנַשֶּׁה בְּטִלוּ יוֹבֵלוֹת, שְׁנָאֻמֵּר: וּקְרָאתֶם דְּרוֹר בָּאָרֶץ לְכָל יֹשְׁבֵיהָ - בְּזִמָּן שְׁכָל יוֹשְׁבֵיהָ עָלֶיהָ וְלֹא בְּזִמָּן שְׁגִלוּ מִקְצָתָן. יִכּוֹל הֵיוּ עָלֶיהָ וְהָן מְעוֹרְבִין - שְׁבַת בְּנִימִין בִּיהוּדָה וְשְׁבַת יְהוּדָה בְּבִנְיָמִין - יְהִיָּה יוֹבֵל נוֹהֵג: תִּלְמוּד לומר: לְכָל יֹשְׁבֵיהָ - בְּזִמָּן שִׁיּוֹשְׁבֵיהָ כְּתִיקוֹנָן וְלֹא בְּזִמָּן שֶׁהָן מְעוֹרְבִין!

ערכין לב:

Yovel is only in effect when the 12 Tribes¹ are present in the Land and living in their respective territories. As such, once the first of the Tribes were exiled Yovel ceased to apply

1. This does not mean literally all the Jews. The commentators discuss whether a majority is needed, or whether even a minority representation of all the tribes will suffice
rev

7. (לג) וְאַתֶּם אֲזַרְתֶּם בְּגוֹלָם וְהִרְקִיתֶם אֶחָדֵיכֶם חֶרֶב וְהִיטֵתָה אֶרְצְכֶם שְׁמִמָּה וְעִרִיכֶם יִהְיוּ חֲרָבָה: (לד) אִזּוֹ תִרְצֶה הָאָרֶץ אֶת־שְׁבֻתֹתֶיהָ כָּל יְמֵי הַשְׁמָה וְאַתֶּם בְּאֶרֶץ אִי־בִיכֶם אִזּוֹ תִשָּׁבֵת הָאָרֶץ וְהִרְצֵת אֶת־שְׁבֻתֹתֶיהָ: (לה) כָּל־יְמֵי הַשְׁמָה תִּשָּׁבֵת אֶת אֲשֶׁר לֹא־שָׁבֵתָה בְּשְׁבֻתֵיכֶם בְּשָׁבֻתְכֶם עָלֶיהָ:

ויקרא כו-לג-לה

The Chumash predicts that Exile itself would be a direct response to lack of observance of Shemita!

B] SHEMITA AFTER THE PERIOD OF THE TANACH

8. תנן: משקין בית השלחין במועד ובשביעית. שביעית, בין למאן דאמר משום זורע, ובין למאן דאמר משום חורש - זריעה וחרישה בשביעית מי שרי? - אמר אביי: בשביעית בזמן הזה, ורבי היא. רבא אמר: אפילו תימא רבנן, אבות אסר רחמנא

מועד קטן ב:

There is a debate between the Tannaim as to whether Shemita applies today on a deoraita or derabbanan basis. According to Rabbi Yehuda Nasi, Shemita is inextricably linked to Yovel. As such, since Yovel does not apply today, Shemita cannot have Torah effect. It remains in force however on a derabbanan level so that the concept will not be forgotten. According to the Rabbanan, Shemita remains in full Torah force today

9. ובזמן שהיו בל נהג, נוהג דין עבד עברי ונוהגת שביעית בארץ והשמטת כספים בכל מקום מן התורה, ובזמן שאין היו בל נהג אינו נוהג עבד עברי. ונוהגת שביעית בארץ מדבריהם

רמב"ם הלכות שמיטה ויובל פרק י הלכה ט (פרנקל)

The Rambam rules leniently that all Shemita today is rabbinic

10. חיוב הארץ בשביעית ובמעשרות אינו אלא מפני שהוא כבוש רבים וכיון שנלקחה הארץ מידיהם בטל הכבוש ונפטרה מן התורה ממעשרות ומשביעית שהרי אינה מן ארץ ישראל. וכיון שעלה עזרא וקדשה לא קדשה בכיבוש אלא בחזקה שהחזיקו בה ולפיכך כל מקום שהחזיקו בה עולי בבל ונתקדש בקדושת עזרא השנייה הוא מקודש היום ואף על פי שנלקח הארץ ממנו וחיוב בשביעית ובמעשרות על הדרך שביארנו בהלכות תרומה

רמב"ם הלכות בית הבחירה פרק ו הלכה טז

Elsewhere the Rambam rules that the original kedusha of Eretz Yisrael created by the conquest of Yehoshua was later removed during the Babylonian exile. When Ezra returned to rebuild the Land during the Second Temple period, the new kedusha was lesser in area - they did not occupy the same area of the Land as before, and also in nature - 'chazaka' rather than 'kibbush'. The Rambam links the current status of Shemita to that of Terumot

11. התרומה בזמן הזה ואפילו במקום שהחזיקו עולי בבל ואפילו בימי עזרא אינה מן התורה אלא מדבריהן שאין לך תרומה של תורה אלא בא"י בלבד, ובזמן שכל ישראל שם שנאמר כי תבואו - 'ביאת כולכם'. כשהיו בירושלם ראשונים וכמו שהן עתידין לחזור בירושלם שלישית, לא כשהיו בירושלם שנייה שהיתה בימי עזרא שהיתה ביאת מקצתן ולפיכך לא חיבה אותן מן התורה ...

רמב"ם הלכות תרומות פרק א הלכה כו

Rambam is very clear that Terumot are only obligated on a Rabbinic level since most of the Jewish people are not living in Israel²

So according to the Rambam there are two good reasons why Shemita today is derabbanan:-

(i) *It is linked Yovel and Yovel does not apply*

(ii) *The lower-level kedusha of the land stems from a minority occupation since Ezra*

Other Rishonim disagree on this issue, as follows:-

Shemita is Rabbinic:- Rambam, Rashi, Rashba, Ritva, Ran, Yad Rama, Tur and most other Rishonim

Shemita is Deoraita:- Ramban and Rosh

There is also a view - held by the Ra'avad, Meiri and Ba'al HaMaor - that Shemita today is even less than a Rabbinic mitzvah, and is observed as a 'middat chassidut'

2. Although that statistic could change in the near future! However, even when the majority of Jews in the world live in Israel, they will probably not be living in their traditional Tribal lands

Most Acharonim and modern day poskim have ruled that Shemita today is Rabbinic, as in the following (non-exclusive) list:-

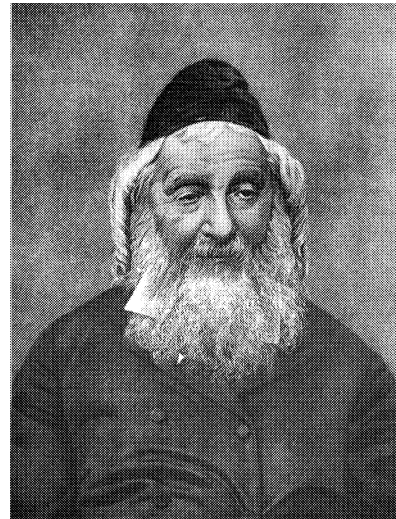
Rabbinic:- Bach, Sema, Avnei Nezer, Rav Kook, Chazon Ish, R. Chaim Ozer Grodzinsky, R. Eliezer Waldenberg, R. Ovadia Yosef

Deoraita:- Beit Halevi, Netziv

This Shemita, 5775, is the 278th Shemita since the destruction of the Second Temple



The Beit HaLevi



The Netziv

C] THE NEW YISHUV IN ERETZ YISRAEL

First Aliyah 1882-1904 (partial list)

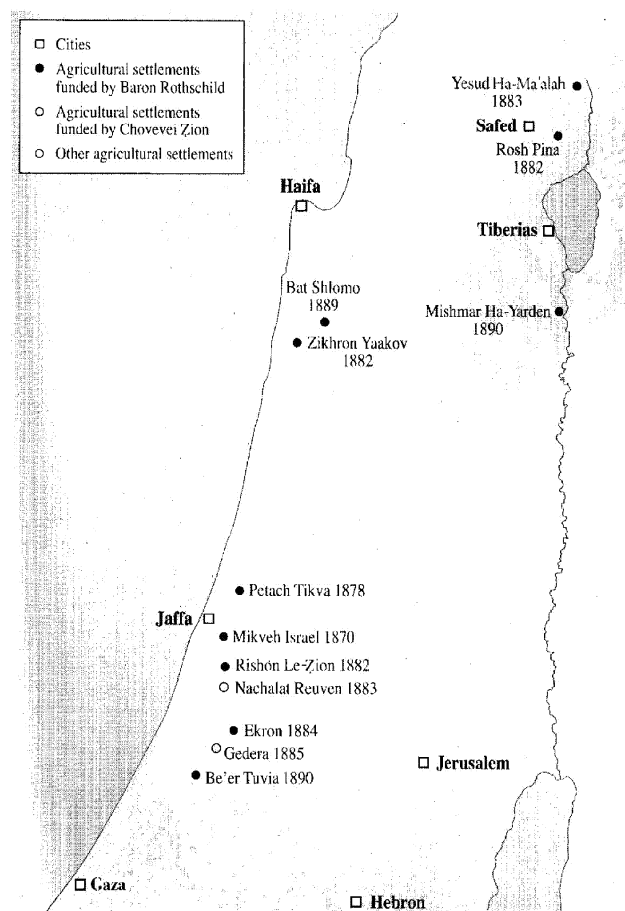
1878 - Petah Tikva
 1882 - Rosh Pinna, Rishon LeZion, Zikhron Ya'akov
 1883 - Mazkeret Batya, Ness Ziona
 1887 - Gedera
 1890 - Rehovot
 1891 - Hadera
 1896 - Metula
 1903 - Kfar Saba, Atlit

Second Aliyah 1904 - 1914

1905 Tel Hai
 1908 Kinneret
 1909 Degania (first kibbutz)
 1911 Ben Shemen

Early Shemita Years

1874/5, 1881/2, 1888/9, 1895/6, 1902/3, 1909/10, 1916/7



The first twelve.
 Jewish settlements in Palestine during the Shemittah of 5649 (1889-1890)

C1] SHEMITA 5635 - 1874/5

• *Pre-settlement. There was a French Jewish agricultural school called Mikveh Yisrael (founded 1870). It was not run on observant lines and some religious leaders already warned in 1874 that the non-observance of Shemita was a major problem.*

C2] SHEMITA 5642 - 1881/2

• *Petach Tikveh now founded (in 1878) - by Orthodox Jews from the Old Yishuv. There was also a small older Jewish agricultural settlement at Motza*

• *Malarial swamps caused the abandonment of the yishuv by most residents (who founded the nearby town of Yehud)*

• *Those who stayed followed the strict psak of Rav Shmuel Salant (of the Old Yishuv in Yerushalayim) and did not carry out any forbidden agricultural work during the Shemita year*

• *Eliezer Ben-Yehuda, secular and atheist early Zionist leader, supported the strict observance of Shemita, hoping that this could encourage the ultra-Orthodox community to go along with a more nationalist Zionist agenda*

C3] SHEMITA 5649 - 1888/9³

• *Chovevei Zion had been founded in 1882. Stimulated by increased persecution of Jews in Russia, it quickly developed branches in the US and Europe. It was dedicated to renewed Jewish national identity and active agricultural settlement in Palestine. For the first time, it gained support in some religious circles, particularly from Rabbi Shmuel Mohilever (1824-1898) who is often regarded as one of the earliest pioneers of Religious Zionism. Rabbi Mohilever ran Chovevei Zion in the 1880's together with its secular founder, Leon Pinsker, before forming the religious wing of the movement - Mizrahi (an abbreviation of 'Mercaz Ruchani') in 1893. Chovevei Zion was eventually absorbed into the Zionist Congress in the early 20C.*

• *Rabbi Mohilever had convinced Baron Edmond de Rothschild to invest heavily in new Jewish settlements in Eretz Yisrael, in particular Mazkeret Batya/Ekron. Baron de Rothschild wanted his investment to thrive, which of course meant the working of the land and NOT leaving it idle. He met with Rabbi Shmuel Salant (1816-1909) in 1888 to discuss observance of Shemita in his new settlements.*

• *In Oct 1888 he sent a delegation to Rav Salant to see if there were any halachic solutions to the problems of Shemita. He was told that there were none, and also received the same answer from Rabbi Yehoshua Leib Diskin of the Old Yishuv. Rothschild was very disturbed and upset for a number of reasons:*

- *the potential ruin of the settlements and loss of his investment, and concern that the settlers would demand large financial bail-outs to maintain the settlements through the inactive Shemita year.*

- *proof to others that opposed his investment in Palestine and claimed that it was impossible to resettle the Land.*

- *a clash with the Baron's own philosophy of Judaism - that Torah would not stand in the way of basic survival.*

- *a desire to break away from the 'dependency model' of the Old Yishuv, where the Jewish community was systemically financially dependant on support from Jewish communities in the Diaspora.*

- *personal pride - he was indignant at being 'taken for a ride' by 'chutzpadik' farmers who took his money and then announced their inability to work for a whole year for 'religious reasons'.*

• *Baron de Rothschild turned to his own religious mentor, Chief Rabbi of Paris Rabbi Zaddok Kahn, who himself turned to one of the leading Rabbis in Lithuania - Rav Yitzchak Elchanan Spector.*

3. Much of the information in this section is taken from an extremely interesting and well-researched account of the early Shemita years - *Rebels in the Holy Land*, by Sam Finkel

- *Rabbi Spector then created the Heter Mechira to allow working the land. The relevant land would be sold to a non-Jew. Work would then be permitted on the land by Jews BUT ONLY melachot which were themselves Rabbinic in nature. Rav Spector soon made the Heter stricter and only allowed work on the land by non-Jews.*
- *The Heter relied on a number of major halachic assumptions:-*
 - *That the entire status of Shemita today is Rabbinic*
 - *That the sale of land in Eretz Yisrael will actually be effective to remove the sanctity of the Land so as to allow work (and not just the sanctity of the produce, so as to allow export)*
 - *That the sale of land in Eretz Yisrael is halachically permitted in any event and is not a breach of 'Lo Techonem'*
- *The Heter also relied heavily on the precedent of a much older teshuva of the Shemen HaMor - Rav Mordechai Robbiyo - a 17C posek in Chevron who permitted the sale of a vineyard to a non-Jew for 2 years over Shemita. Rav Spector considered this rare teshuva so critical that he sent someone to Berlin to bring back a copy!*
- *The Heter was opposed by other leading Lithuanian rabbis, including Rav Naftali Zvi Yehuda Berlin - the Netziv, Rav Yosef Dov Soloveitchik - the Beit HaLevi, Rav Eliezer Gordon, Rav Yechiel Michel Epstein - the Aruch HaShulchan. Even the esteemed Rabbi Spector was not beyond criticism.*
- *At the same time, Chovevei Zion had approached three other leading Eastern European rabbinic authorities - Rav Mohilever, Rav Yisrael Trunk of Kutna and Rav Shmuel Klapfisch of Warsaw. They proposed a heter similar to that of Rav Spector but seemed to allow all work by those who could not afford non-Jewish labor. However, they also expressed it to be subject to the approval of Rav Spector and also stated that any Shemita labor would also have to be sanctioned by the Jerusalem Rabbinical court of the Old Yishuv (which opposed the entire Heter!)*
- *The Baron staunchly supported the Heter and demanded that his settlements follow it.*
- *The Old Yishuv were horrified by what they saw as a legal loophole and felt let down by the Baron. They attributed the Heter to a combination of (i) the encouragement of the Baron's anti-religious land administrators; (ii) pressure from what they saw as maskilim in Chovevei Zion, which they regarded with suspicion and (iii) the work of anti-religious Jewish nationalists. Ben Eliezer came out in favor of the Heter and reacted very negatively to the intransigence of the Old Yishuv. He declared Rabbi Salant the chief 'enemy of the New Yishuv'. The battle-lines were drawn!*
- *In the end most farmers relied on the Heter, although some did not, siding with the Old Yishuv Jerusalem Rabbinate.*



Rabbi Shmuel Mohilever



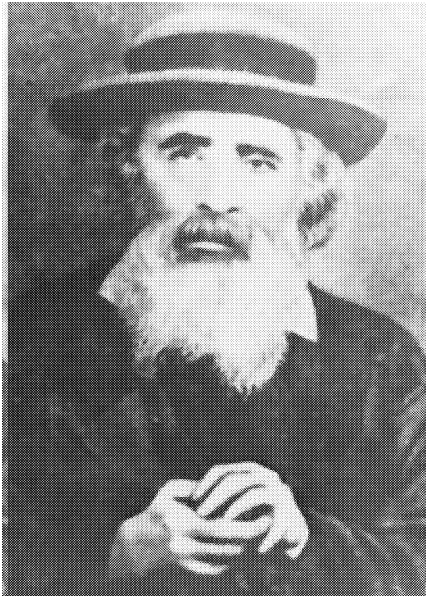
Eliezer Ben-Yehuda



Baron Edmond de Rothschild

C4] SHEMITA 5656 - 1895/6⁴

- *By now there were many more settlements and the Baron had a firmer hold on the farmers. In the years since the last Shemita, many had been broken by other disputes with the Baron and his local administrators.*
- *The expectation was that most farmers would follow the Heter.*
- *Rav Naftali Hertz Halevi, Chief Rabbi of Yaffo, who had been involved in the 1888 Shemita controversy, but had ultimately not implemented the Heter now lobbied the Old Yishuv rabbis to look again at the Heter.*
- *Some of the Old Yishuv Rabbis now felt that the best option was to allow a limited Heter Mechira. Rav Shmuel Salant was said to have (orally) agreed with this (although others dispute this) and Rabbi Yehoshua Leib Diskin (1818-1898) of the Old Yishuv approved a limited application of the Heter. The main change related to the sale of the Land and issues of Lo Techonem. Rather than selling the Land itself temporarily, the trees with soil around them were sold, but absolutely. Rav Diskin also insisted that it was a temporary accommodation only and must be revisited each Shemita. Rav Naftali Hertz asked Rabbi Spector in Europe if he would modify the Heter on this basis, but he refused and stuck to the same position he had taken in 1888. He felt that a temporary sale of the Land was preferable to the permanent sale of the trees.*



Rabbi Yehoshua Leib Diskin



Rabbi Shmuel Salant

C5] SHEMITA 5663 - 1902/3

- *By now Rav Diskin had passed away and leadership in the Old Yishuv had largely passed to the Aderet - Rabbi Eliyahu David Rabinowitz-Teomim (1843-1905) (father-in-law of Rav Kook - who was still in Europe at this time). Rav Shmuel Salant (now very old) was still officially head of the Old Yishuv.*
- *Again after lobbying by Rav Naftali Hertz (who died that year) the Aderet⁵ (reluctantly) agreed after consultation with Rav Shmuel Salant to endorse the Heter as permitted by Rav Diskin in 1895.*

4. Much information about this Shemita and all the early issues of Shemita in the New Yishuv can be found in *Sefer HaShemita* by Rav Yechiel Michel Tukachinsky - Mossad HaRav 1993 pp 59-62

5. Interestingly, both the Aderet and Rav Kook had initially opposed the Heter when they were still in Russia.



The Aderet - Rabbi Eliyahu David Teomim

C6] SHEMITA 5670 - 1909/10

- *Some important new rabbinic leaders were now in place. Rav Shmuel Salant, the Aderet and Rav Naftali Hertz of Yaffo had now passed away. The new rabbi of Yaffo was Rabbi Avraham Yitzchak HaCohen Kook (1865-1935). The new Rabbi of Zefat was Rabbi Yaakov Dovid Wilovsky (1845-1913) - the Ridvaz.*
- *The Second Aliyah was now well underway and many of the new agricultural settlements were entirely non-religious.*
- *In 1909 the Ridvaz turned to Rav Kook with a proposal to visit the Baron and convince him to support total observance of Shemita without reliance on the Heter. Rav Kook refused and insisted that his first priority was to support the Heter and only then to assist farmers who wished not to rely on it. The Heter was upgraded and now involved a combination of sale of the Land and also of the trees.*
- *The Old Yishuv Rabbis totally opposed and boycotted the Heter this time and a major battle developed with the workers in the New Yishuv who rallied behind Rav Kook and called the Old Yishuv Rabbis 'cruel' for preferring the produce of Arabs over the success of the Jewish farmers. Both the Ridvaz and Rav Kook wrote sefarim to back up their halachic positions - Pe'at HaShulchan by the Ridvaz and Shabbat Ha'Aretz by Rav Kook.*
- *Rav Kook backed the Heter as formulated by Rav Spector - sale of the actual Land for 2 years - with some minor adjustments. He was also keen to stress that this was a temporary measure to be readdressed every Shemita. He also supported and raised money for those farmers who did not wish to rely on the Heter. Whilst insisting on the validity of the Heter "with respect to the Heter itself, I see no grounds whatsoever for doubt"⁶, he stressed the fact that the Heter was permitted only because of great need and he supported those who wished to be machmir and the drive to find other halachically acceptable solutions⁷.*
- *In this vein, Rav Kook also suggested for the first time the introduction of an 'Otzer Beit Din', whereby produce would be collectively harvested by a Beit Din and the individual farmers have no private ownership. They are paid a flat rate for the work and not for the specific produce. The idea was warmly welcomed by some (including Rav Chaim Berlin) but not by the Ridvaz. It's not clear whether the idea was taken up significantly at the time (we know of one prominent farmer who signed up in Rechovot and entered into an Otzar Beit Din contract signed by some of the leading Rabbis of the Old Yishuv, including Rav Berlin and Rav Sonnenfeld.) The concept fell into disuse until the 1940's when the Chazon Ish revived the idea.*
- *Even with the Heter, Rav Kook only permitted work by non-Jews or, if necessary, by Jews in a manner that would be a Rabbinic melacha only.*
- *Rav Mohilever actually allowed a more permissive Heter, which would enable Jews to perform Torah melacha, but this was opposed by Rav Kook.*

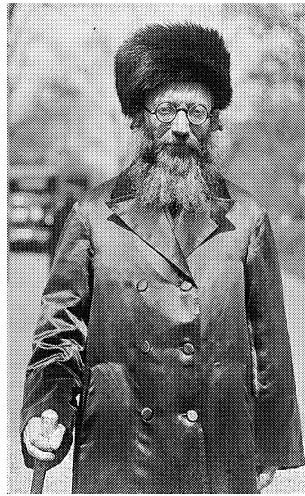
6. Mishpat Kohen 71 p 126

7. See Mishpat Kohen 3 and 61

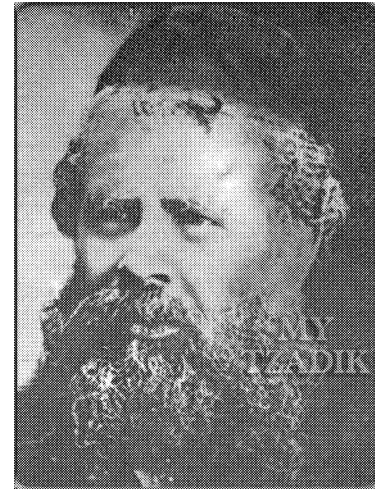
• Rav Kook drew very heavy criticism from both sides! The Old Yishuv accused him of siding with the non-religious settlers of the New Yishuv. Those same settlers accused Rav Kook of being overly strict and not permitting the full working of the Land.



Rav Chaim Berlin



Rav Avraham Yitzchak HaCohen Kook



The Ridvaz - Rav Yaakov Dovid Willovsky

C7] SHEMITA 5677 - 19016/17

• The sha'at hadechak - pressing need - of the financial situation of the Yishuv which had prompted Rav Kook to support the Heter in 1910 was even MORE pressing in 1917 - in the middle of WW1! There were massive food shortages, the Ottomans required the fields to be worked to produce food and then the British invaded Palestine in late 1917. Rav Kook continued to support the Heter, although was stranded in Europe for this Shemita year.

C8] SHEMITA 5684 - 1923/24

• By now, Rav Kook was back in Eretz Yisrael, now as the first Ashkenazi Chief Rabbi! He continued to support the Heter and the Old Yishuv continued to oppose it.

C9] SHEMITA 5691 - 1930/31

• Rav Kook's last Shemita (he died in 1935).

C10] SHEMITA 5698 - 1937/38

• The Chazon Ish - Rav Avraham Yesheya Karelitz (1878-1953) arrived in Eretz Yisrael in 1933. Almost immediately he began to campaign on the issue of Shemita. In 1937 he published the section of his monumental work - Chazon Ish - on the halachot of Shemita. Whilst he was more lenient than Rav Kook on many aspects of hilchot Shemita, he vigorously opposed the Heter and helped to set up Keren HaShemitta - to support religious farmers who did not work the fields at all for Shemita year.

C11] SHEMITA 5705 - 1944/45

- The Chazon Ish, undisputed leader of the Charedi community in Israel, continued to campaign against the Heter.
- The idea of the Otzer Beit Din was revived by the Chazon Ish.

C12] SHEMITA 5712 - 1951/52

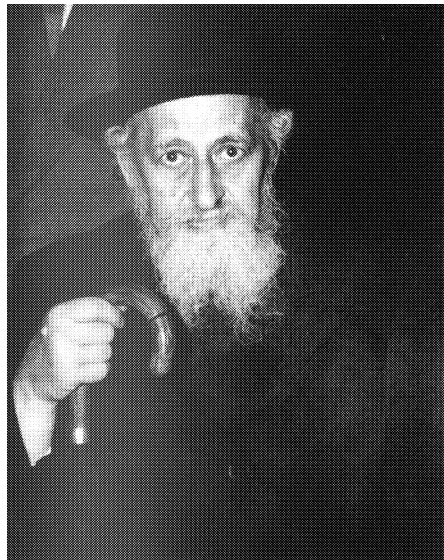
• *First Shemita after the foundation of the State. The Ashkenazi Chief Rabbi, Rav Yitzchak Herzog, was initially reluctant to continue with the Heter, as previously formulated. He suggested an alternative proposal - for each farmer to make a declaration before 3 people that his land was hefker. However, in the end, that proposal was dropped and Rav Herzog issued a letter together with Rav Tzvi Pesach Frank and Rav Benzion Uziel which stated as follows:*

"With all the joy and praise to the Rock and Redeemer of Israel that we have merited His salvation and the spark of the light of redemption, as well as the rebirth of Jewish sovereignty in part of our holy land, we have not yet reached the end of salvation and blessing as this shemita year approaches, and due to the sha'at hadechak (emergency situation) and the urgent need to facilitate the ingathering of the exiles and the absorption of refugees from the lands of their oppression, we still need to provide the heter mechira as a hora'at sha'a (temporary order)...."

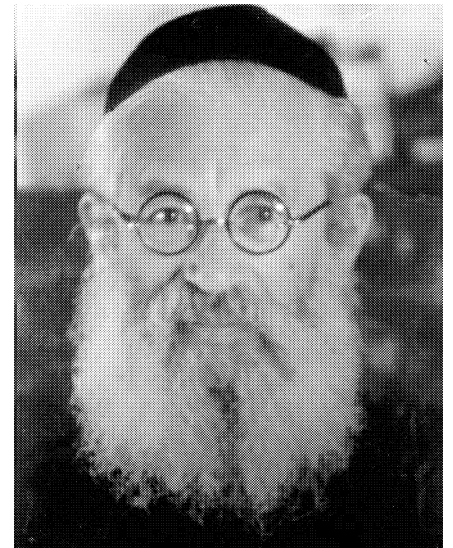
- *Many farmers were new immigrants who had just began to work the land.*
- *The Chazon Ish and the Brisker Rav continued to oppose the Heter completely and raised funds to assist farmers. However, Otzar Beit Din was further strengthened.*



The Chazon Ish



The Brisker Rav



Rabbi Isaac Herzog

C13] SHEMITA 5767 - 2007/8

- *Stringencies were introduced to the Heter to make the sale more watertight and halachically binding.*
- *Nevertheless, controversially, the Chief Rabbinate broke with its previous unlimited support of the Heter - see Jerusalem Post article below.*
- *This Shemita also saw the launch of a third mainstream options - Otzar Ha'Aretz, which is based on Otzar beit Din - see HaAretz article below. See also <http://www.otzarharetz.co.il/sources-supply/>.*

Religious Zionist rabbis skewer Chief Rabbinate over shmita - Jerusalem Post 2007

Call for "a solution good not just for haredi members of society, but also for secular consumers."

Religious Zionist rabbis attacked the Chief Rabbinate on Sunday for adopting a hard-line haredi stance to the upcoming shmita (sabbatical) year instead of showing sensitivity to the needs and interests of Jewish farmers and the majority of Jewish consumers. "We must put an end to the Chief Rabbinate's monopoly over kosher supervision, because it no longer performs its primary function - providing halachic solutions for the entire Jewish people," said Rabbi Benny Lau, head of the Beit Morasha Institute, which trains rabbis and educators. "I believe a grassroots movement should push to create an alternative rabbinic body that would reinstitute the historical mission of the Chief Rabbinate." Rabbi Yosef Carmel, head of the Eretz Hemda Institute, which trains rabbinic judges, also called on the rabbinate to be more lenient in its approach to the shmita year. "The Chief Rabbinate has an obligation to find a solution that is good not just for the haredi members of society, but also for secular farmers and consumers," said Carmel. Rabbi Yehuda Gilad, a former Labor-Meimad MK and a member of the religious Kibbutz Lavi in the Galilee, said that he was in favor of providing haredim with imported fruits and vegetables out of deference to their halachic stringencies. "But I oppose the idea that haredim should coerce others, whether secular or Modern Orthodox, to adhere to haredi standards of kosher supervision," he said. Lau, Carmel and Gilad are all opposed to the recent decision by the Chief Rabbinate's governing council to grant full autonomy to rabbis insisting on the most stringent approaches to shmita.

Several local rabbis, including the rabbis of Herzliya, Petah Tikva, Bat Yam, Afula and Ashdod, have announced that they will not provide kosher supervision to restaurants, markets and other food-serving venues selling produce grown according to "heter mechira" - a controversial legal solution involving the sale of Jewish land to non-Jews. Jerusalem, with a Jewish population of 500,000, is also expected to ban all heter mechira produce. According to Jewish law, Jews must refrain from working the land of Israel every seventh year. During this year, plowing, sowing, planting, trimming and other field chores are forbidden. As a result, no annual crops, such as wheat, corn, tomatoes and cucumbers, can be grown on Jewish-owned land during shmita. Some rabbis have permitted heter mechira for farmers with field crops who cannot afford to go an entire year without income. Transferring the land from Jewish to non-Jewish hands abrogates the inherent holiness of the land, thus permitting all types of work. However, many rabbis argue that the sale is purely fictitious and, therefore, non-binding. As a result, all the annual crops grown on this land during the shmita year are forbidden for consumption, enjoyment or profit.

Nevertheless, the Chief Rabbinate has officially supported heter mechira. The rabbinate even appointed Rabbi Ze'ev Weitman, chief rabbi of Tnuva, a dairy concern owned by kibbutzim and moshavim, to provide farmers with the option of heter mechira. Still, although in principle it recognizes heter mechira as a legitimate halachic solution, the chief rabbinate's governing body voted two weeks ago that local rabbis who chose to reject heter mechira would be allowed to do so. Rabbi Yehiel Ya'acobovitz, chief rabbi of Herzliya, is one local rabbi who decided to adopt a more stringent position. Ya'acobovitz has refused to provide kosher certificates to any venues selling heter mechira vegetables. On August 21, Asif Yinov, a wholesale produce provider, petitioned the Supreme Court to force Ya'acobovitz and the rabbinate to permit the sale of these vegetables. The Supreme Court decision is pending. However, Attorney-General Menahem Mazuz has already said that the rabbinate's position on the autonomy of local rabbis is legally untenable. Mazuz said the rabbinate was obligated to provide all Jewish citizens of Israel with heter mechira products if they demanded it. "It's not religious coercion," said Shabatai Markovitz, a manager of Kashrut Le'mehadrin - a kosher supervision outfit under the rabbinic guidance of Rabbi Yosef Yekutieli Efrati, who is himself a disciple of Rabbi Yosef Shalom Elyashiv, the most respected rabbinic authority for Lithuanian haredi Jewry. "We just want the land of Israel to rest in the shmita year, because that is what God wants," Markovitz said Sunday. "If some hotshot economist were to come along and tell secular Israelis that abiding by the rules of shmita would make the economy flourish, they would listen. So why is it that when God says so, they don't?" Local farmers who rely on heter mechira are concerned that the ban instituted by some local rabbis will hurt their profits. Yusta Bleier, Chairman of the Farmer's Association, told The Jerusalem Post just over a week ago that the loss of income could amount to some NIS 700 million. In response, Agriculture Minister Shalom Simhon threatened last week to implement economic sanctions against haredim. Simhon warned that he would block all imported fruits and vegetables - one of the main sources of produce for haredim during the shmita year - unless the rabbinate retracted its support for stringent local rabbis.

Follower than thou - HaAretz Nov 18 2007

By Yair Ettinger

The ultra-Orthodox attempt to force everyone in Jerusalem, Herzliya, Ashdod and other cities to consume only imported mehadrin - stringently kosher - produce during the shmita (sabbatical) year has given rise to an ostensibly united national-religious opposition of rabbis and Knesset members.

However, the shmita crisis, whose first chapter ended in an ultra-Orthodox defeat at the High Court of Justice, has diverted attention from a no less fervid ideological battle raging within religious Zionism. On the surface, this is about a dispute in rabbinic law. Beneath the surface, this is a stormy fight that touches upon the political agenda within religious Zionism.

The rabbis of the Religious Kibbutz movement and the liberal rabbis support the heiter mehira - sales permit - the traditional rabbinic solution that allows Jews to consume produce from lands that have been symbolically sold to a gentile for the fallow year. Then there's the strictly Orthodox Zionist (Hardali) camp, which considers the heiter mehira a last resort only. This growing camp rejects the ultra-Orthodox system that prefers fruits and vegetables imported from abroad.

This year, this camp has set up Otzar Haaretz, an ambitious project calling for "a strictly Jewish fallow year." The group is stirring stormy emotions in both camps. Otzar Haaretz was founded by the Torah and Land Institute, which operated out of Kfar Darom in the Gaza Strip until the 2005 evacuation. Its heads include the rabbis of the evacuated settlement bloc Gush Katif. This kashrut organization has a huge produce production operation. In preparation for the fallow year, it signed people up to promise to consume the agricultural produce it supplies. According to Eliezer Barat, a member of the initiative's management, 20,000 families have joined so far - more than 150,000 souls - and the total number of consumers is double that, since many are not subscribers.

The initiative's rabbis have ranked various sources - the main thing being that "enemies' vegetables" not be included, as Barat puts it. So what is included? Nearly every method that circumvents the main prohibition of the fallow year: the cultivation of soil in the land of Israel. The Otzar rabbis call for other methods, like raising produce on beds that do not touch the ground, or cultivating the southern Arava (which is not considered to be within the boundaries of the land of Israel for purposes of the fallow year).

Their first preference, however, is relying on otzar beit hadin, considered the most stringent method in rabbinic law, which allows for vegetables (and some kinds of fruit) to be raised under various restrictions.

Thus there has been a switch in historic roles: The ultra-Orthodox have almost entirely abandoned the method of otzar beit hadin, which is identified with the Hazon Ish (Rabbi Avraham Yeshayahu Karelitz), who was among the state's founders, in order to avoid the halakhic complications it entails. In contrast, a growing segment of the national religious camp is abandoning the heiter mehira, which is associated with its founding father Rabbi Yitzhak Hacohen Kook. Rabbi Yaakov Ariel, one of the heads of religious Zionism and the rabbi of Ramat Gan, has called anyone who relies on the heiter mehira "a villain in the realm of Torah."

Two and a half weeks ago, the Otzar Haaretz rabbis published a notice in the press in an attempt to ameliorate the dispute. Prior to the publication, the Religious Kibbutz rabbis had asked their more observant colleagues to disassociate themselves from the ultra-Orthodox who reject the heiter mehira, in which most of Israel's farmers participate. Religious Kibbutz members fear that Otzar Haaretz's strictly Orthodox consumers, along with the ultra-Orthodox public boycotting local produce, will bring about the destruction of large amounts of Israeli produce later in the sabbatical year.

In the wake of the religious Kibbutz appeal, senior rabbis, among them the late Rabbi Avraham Shapira, Rabbi Mordecai Eliyahu and Rabbi Yaakov Ariel, wrote that the heiter mehira was "valid and should not be questioned," but for those who wish to maintain the strictest levels of observance, "it is preferable to eat otzar beit hadin produce and produce about which there is no question in rabbinic law."

The rabbis, who have committed themselves to providing Jewish produce in any case, explained that they would also provide imported produce, under the ultra-Orthodox system, "since Otzar Haaretz is a public body interested in providing stringent agricultural produce for a varied population."

It is doubtful that the publication softened the edges of the disagreement. Despite the fact that rabbis from both camps are prepared to agree with the halakhic rulings in the announcement, the fallow year is continuing to lead religious Zionism toward the schism that started during the evacuation of the Jewish settlements in the Gaza Strip and the northern West Bank: extreme stringency with respect to rabbinic law alongside sectarian separatism, versus an attempt by the "state-oriented" and liberal stream to connect to secular society.

Nonetheless, the schism's current lines do not overlap those of the other disputes: The moderate wing, for example, includes rabbis from the Merkaz HaRav Yeshiva (named after Rabbi Yitzhak Hacohen Kook, the founder of the state-oriented heiter mehira) and of Har Hamor, who oppose any secular and academic education, whereas some of the leading Tzohar rabbis, like Rabbi Yuval Cherlow, are signatories to Otzar Haaretz. Rabbi Shlomo Aviner, the rabbi of the West Bank community of Beit El, who has been considered a "state-oriented" rabbi since the disengagement, recently wrote a stern article against Otzar Haaretz, arguing that the refusal to use the heiter mehira has "many flaws," first and foremost the "damage to the earnings of Jews, and of course it is written 'that thy brother may live with thee' [Leviticus 25:36]."

But it is not by chance that the rabbis who have been leading the public struggle against the ultra-Orthodox and the strictly Orthodox national religious, and have been championing the heiter mehira, are the rabbis of Tzohar, the Religious Kibbutz movement and other moderate Orthodox. Many of them are involved in initiatives like Ma'agalei Tzedek, champion social rights within the spirit of halakha, perform marriages without pay and fight the ultra-Orthodox line in the rabbinic courts, and have denounced the breaking of the teachers strike among national religious schools. Regarding the sabbatical year, they also express solidarity "not only with 'our own' people," in the words of Rabbi Yoel Bin-Nun, until recently the head of Religious Kibbutz yeshiva at Ein Tzurim. Rabbi Bin-Nun, for example, is trying to lead an initiative on a forgotten part of the commandments regarding the fallow year - the cancellation of debts at the end of every seventh year. His aim is to establish a fund for the cancellation of all Israelis' debts.

Rabbi Benny Lau, the rabbi of the Ramban Synagogue in Jerusalem, told Haaretz recently that rabbis must denounce the oppression of manpower company workers just as they must thwart the threat hanging over most producers and consumers of produce in Israel. "The title 'rabbi' has to come with collateral," he said. "What is happening now in religious Zionism is bringing us closer to intra-Zionist solidarity. Rabbis want to see religious services as a more central core of Israeli society while saying what needs to be said in the face of ultra-Orthodox violence."

Rabbi Bin-Nun supports the rabbinic law behind the principles of Otzar Haaretz, but nevertheless sees it as "first-class national irresponsibility." "In Israel there are 20,000 farmers under the heiter mehira. All together, this is the livelihood of 80,000 people. This is 10 times the population of Gush Katif. If for one year all of these people do not earn a living, many of them will not be able to continue working in agriculture. The rabbinic alternatives to the heiter mehira cannot supply the market's needs, and even if we do supply all the produce in accordance with Otzar Haaretz, the question will remain as to how ordinary farmers will make a living. Are we going to do to all the farmers what the state has done to the farmers of Gush Katif?"

"I see in this a kind of thinking that resembles the refusal to obey orders during the expulsion from Gush Katif," says Rabbi Bin-Nun. "There were rabbis who thought that if we threatened to refuse, the government would surrender, but it is not by chance that the vast majority of the religious soldiers understood the significance of this and did not refuse. They understood that there would not be an army, because if we take responsibility for the people and the kingdom, this has to be done all the way. It is impossible to leave 20,000 farmers without a living. I am in favor of a plan, but the rabbis must try to persuade the state, the people. I don't want to impose myself on others."

Rabbi Yehuda Amichai, one of the heads of Otzar Haaretz, says that the initiative reconciles the concerns of farmers with those of consumers who refuse to compromise in matters of rabbinic law. "Our line is to see to Jewish agriculture that observes the strictures. I was the first to defend the heiter mehira, but the difference between me and them (the critics of Otzar Haaretz - Y.E.) is that I don't see the heiter mehira as an ideology or a positive commandment written in the Torah. A secular farmer must receive a heiter mehira so that he doesn't fail. We are in favor, but not of making this an ideology; it is not an aspiration. I relate to this like Rabbi Kook: It's better to manage without. The rabbis you have mentioned undoubtedly have not yet approached the stature of Rabbi Kook."

C14] SHEMITA 5774 - 20014/15

- *Further stringencies have been introduced by the Rabbanut to the Heter to make the sale more watertight.*
- *For the first time, the sale has been effected with a 'Ger Toshav' and not an Arab. The Chief Rabbis initiated a special ceremony to sell the land to a Ukranian Israeli (who is not Jewish but has a Jewish grandfather). A Ger Toshav must keep the 7 Mitzvot Bnei Noach and may halachically acquire land in Eretz Yisrael.*
- *As per normal, the Charedi authorities will not recognize Heter Mechira at all. They are generally also reluctant to use Otzar Beit Din since it introduces issues of kedushat shevi'it. They will therefore go for what is often called 'Shemita Lechumra', which basically means 'yevul nochri'. Many object to the label 'Shemita Lechumra' as it implies a higher level of halachic observance, when in fact in some areas it takes a much more lenient approach.*
- *The Rabbanut Yerushalayim are issuing two levels of hechsher for Shemita - (i) regular Shemita which goes along with the regular Rabbanut Hechsher and (ii) what they are calling 'Shemita Kehilchata', which goes along with the 'Mehadrin' and 'Mehuderet'⁸ hechsher. The guidelines for the two levels of Rabbanut Shemita hechsher are set out in the teudah below. In brief they are as follows:-*

<i>Regular</i>	<ul style="list-style-type: none"> - Uses heter mechira only for produce which is not 'sefichim' i.e. it WILL use produce which grew during 6th year but which is <u>picked</u> during 7th year and thus has kedushat shevi'it. Even though there are potential halachic problems for the commercial sale of that produce, the issues are mainly for the sellers and not the consumer. - Uses the heter mechira for produce from the NORTH Arava. - Will use yevul nochri for the rest.
<i>'Shemita Kehilchata'</i>	<ul style="list-style-type: none"> - Will not use any produce with kedushat shevi'it. - Will use produce from the SOUTH Arava. - Otherwise will use yevul nochri, which is not treated with kedushat shevi'it.

8. Mehuderet is a new general hechsher issued by the Jerusalem Rabbanut and falls between the regular and Mehadrin hechsher (but closer to the Mehadrin). It differs from Mehadrin mainly with respect to the origins of the red meat (not chicken). A Mehadrin hechsher uses a recognized high level Bedatz hashgacha for red meat. Mehuderet uses regular Rabbanut red meat or 'Glatt/Chalok' meat from chu'l.

• Another new change this Shemita is a policy reversal by the army. Historically, the army used Heter Mechira produce. However, for a number of reasons, (mainly focused on the influx of Charedim into Zaha'l, who will not rely on Heter Mechira at all) the army will this Shemita be relying on Otzar HaAretz and then, when this runs out, yevul nochri. This is a major turn-around, which has been challenged in the courts by the Agriculture Ministry, which claimed that it will prejudice Israeli farmers, relatively few of whom are signed up for Otzar HaAretz. The Courts upheld the army's decision and this could have a very significant impact on the number of farmers joining Otzar HaAretz NEXT Shemita.

הרבנות ירושלמית

אגף חקלאות ופיתוח

אגף חקלאות ופיתוח

נשינו בשמטה

נשינו בשמטה של הרבנות ירושלמית בשנת שמטה? בכשרות רגילה אין מתירים להביא ירק שנורע או שנשתל ע"י יהודי בשנת השמיטה (האסור באיסור ספיחין), אולם ירקות שנורעו בשיטת ונלקטו בשביעית למרות שהם קדושים בקדושת שביעית ואסורים בסחורה, הם מותרים מעיקר הדין באכילה. נהגו זו נמכרים ירקות אלה למרות שחל עליהם איסור סחורה, וזאת בהסתמך על הסוברים שאיסור סחורה חל רק על המוכר ולא על הקונה. כמריכ נמכרת בחנות זו תוצרת נכרית המאושרת עפ"י תעודת משלוח ותוצרת יהודית מהערבה הצפונית (מאיזור נאות הכיכר ומטה).

האם מותר לאכול פירות הקדושים בקדושת שביעית? כן. אולם יש מספר הלכות כיצד לנהוג בפירות אלו וחובה על כל יהודי לזכורם.

מה עם הפרשת תרומה והשגחה על ערלה בחנויות בכשרות רגילה? ההשגחה על ערלה היא כבכל השנים מלאה, כולל בדיקות במטעים. מפירות וירקות שישית מפרישים תרומה מלכתחילה, ומפירות וירקות שביעית מפרישים תרומה מספק, לחומרה.

מה ההבדל בין כשרות למהדרין לכשרות רגילה? בחנויות בכשרות מהדרין ("שמטה כהלכתה") אין מכניסים תוצרת הקדושה בקדושת שביעית. כך שאין חשש שנעשית מלאכה אסורה בתוצרת זו. כמריכ בחנויות מהדרין הירקות המגיעים משדות נכרים מושגחים מרגע הקטיף ועד להגעתם לחנות. (הרבנות ירושלמית נהגה מאז ומתמיד בפירות נכרים כפי שפסקו רבני ירושלמית מקדמת דנא, שאין קדושת שביעית בפירות נכרים).

בחנויות מהדרין אין מאשרים תוצרת מהערבה הצפונית, תוצרת כזו מאושרת לחנויות שבכשרות רגילה בלבד, מאחר ולשיטת פוסקים רבים אין איזור זה כדין אר"י.



ארגון רבני צהר

מועצת הרבנים

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

לחץ המדיניות
לחץ המדיניות
לחץ המדיניות

החלטות מועצת רבני צהר בנושא השמיטה

שנת השמיטה נקבעה בתורה כשנת תיקון האדם, האדמה והחברה. מצוות השמיטה מכוננת אותנו להרפות מעט מתחושת הבעלות על הארץ המאפיינת את המין האנושי, ולזכור שהארץ שייכת לה'. מסיבה זו מופקדים פירותיה לכל אדם, ואסור לעבד בה את האדמה ולשעבדה לצרכים ולרצונות האנושיים. קיום מצוות השמיטה יוצר שוויון בין המעמדות השונים בחברה - לכולם חלק שווה בתנובת השדה.

במשך אלפיים שנות גלות לא זכינו לקיים את מצוות השמיטה כעם, ורק הבודדים שישבו בארץ זכו לקיימה. עם הנס הגדול של שיבת ציון הנוכחית, ששיאו בהקמת מדינת ישראל, גברו השאיפה והגעגועים לקיומה כהלכתה. ואולם, בד בבד, צפו מחדש האתגרים והקשיים הכרוכים בקיומה.

השמיטה היא חלק מהמורשת היהודית

יישום מצוות השמיטה מעמיד בפני החקלאי והחברה קשיים רבים. התורה עצמה עמדה על הקושי העצום הכרוך בקיומה, ושמה בפי עם ישראל את הטענה: "וכי תלאמו מה נאכל בשנה השביעית הן לא נזרע ולא נאסף את תבואתנו" (ויקרא כה, כ). ואכן ישנן עדויות רבות בדברי חז"ל על קושי רב בקיום הלכות השמיטה (יהושעלמי שביעית, א).

משום כך, לאורך הדורות עשו חכמים מאמצים רבים למצוא פתרונות שונים ומגוונים להקל את קיום מצוות השמיטה. בדורות האחרונים הוצעו ויושמו שני פתרונות הלכתיים: 'היתר המכירה' ו'אוצר בית דין'.

ה'היתר המכירה'

'היתר המכירה' משמעותו מכירת הקרקע לגוי למשך שנת השמיטה. באמצעות המכירה מפקיעים מהקרקע את הלכות שמיטה. בשדה כזה מותר לעשות את רוב המלאכות החקלאיות, ופירותיו אינם קדושים. בהיתר זה עשו שימוש גדולי הפוסקים כבר לפני קרוב לשלוש מאות שנה, ולאורך הדורות הוא אושר שוב ושוב על ידי הפוסקים. גם הרבנות הראשית לדורותיה אימצה פתרון זה, כאשר התומכים הבולטים ביותר בכך היו הרב אברהם יצחק הכהן קוק זצ"ל והרב עובדיה יוסף זצ"ל. עם זאת, הפוסקים הדגישו כי מדובר בפתרון זמני הנובע מצרכי השעה, בעוד שהקיום האידיאלי של מצוות השמיטה אינו על ידי מכירת הארץ לגוי.

בחסדי ה', במציאות הנוכחית שוב אין מצוות השמיטה מעמידה את עם ישראל בסכנת רעב. ועם זאת, השבתה מוחלטת של המשק החקלאי בשמיטה עשויה לפגוע אנושות בחקלאות העברית, שהיא אחד הביטויים המשמעותיים של מצוות ישוב הארץ והתנועה הציונית. האחיזה החקלאית בארץ שומרת על אדמות המדינה, והתוצרת החקלאית מספקת פרנסה לעשרות אלפי משפחות של חקלאים, עובדי ארזה, שיוק, ייצור ועוד. משום כך, 'היתר המכירה', שנחתם לשמחתנו גם השנה על ידי הרבנות הראשית לישראל, הינו חיוני והכרחי במציאות הנתונה, ובהעדרו עלול מערך הכשרות בארץ להתמוטט.

אוצר בית דין' הוא מנגנון שהתקיים כבר בתקופת המשנה, ומשמעותו היא שהחקלאים מוסרים את שדותיהם לידי בית דין, ובמהלך השנה הם עובדים בשדה כשכירים של בית דין. מנגנון זה מאפשר לבצע חלק מהמלאכות החקלאיות (בעיקר קצירה ובצירה) ולשווק את הפירות. האדמה עצמה נשארת בבעלות יהודית, ולכן פירותיה קדושים בקדושת שביעית'. פתרון זה אינו מתאים לכל סוגי הגידולים (משום שגם שליחי בית דין לא יכולים לזרוע בשמיטה), והוא מעלה מספר קשיים הלכתיים.

הקמת 'אוצר בית דין' הינה מהלך מבוך המבטא את געגועים וכמיהתנו לשמירת שמיטה כהלכתה. זאת משום שבמסגרת אוצר בית דין נשארת האדמה בבעלות יהודית ומתקיימת בה מצוות השמיטה. מסגרת זו חיונית לשם מימוש, ולו חלקי, של השמיטה האידאלית.

השמיטה היא חלק מהמורשת היהודית

מועצת רבני צהר קוראת לציבור הרחב לרכוש הן תוצרת של 'היתר המכירה' והן גידולי 'אוצר בית דין'.

בתוצרת אוצר בית דין הירקות והפירות קדושים בקדושת שביעית, ועל כן יש להימנע מלקלקל או להשליך אותם בעודם ראויים לאכילה. יש לראות בחובת השמירה על קדושת פירות שביעית ערך הלכתי וחינוכי, ולא טורח, חלילה.

המועצה קובעת כי שני המסלולים ('היתר המכירה' ו'אוצר בית דין') ראויים מבחינה הלכתית, ואין משמעות למושג 'מהדרין' שמרבים להשתמש בו ביחס למסלולים השונים.

יש להעדיף את שני המסלולים הללו, המחזקים את החקלאות הישראלית, על פני רכישת תוצרת חקלאית זרה הפוגעת בה.

עם פתיחת שנת השמיטה, מועצת רבני צהר קוראת לציבור להקפיד ביתר שאת על הימצאות תעודת כשרות לפירות ולירקות.

בתפילה לגאולה שלמה ולקיום מצוות שמיטה במלואה במהרה בימינו.

"וְעִשְׂתִּים אֶת חֻקֵּי וְאֶת נִשְׁפָּטֵי תִשְׁמְרוּ וְעִשְׂתִּים אֲתָם וְיִשְׁבְּתֶם עַל הָאָרֶץ לַשְּׁמִיטָה. וְנָתַתָּ הָאָרֶץ פְּרִיָּה וְאִמְלַחְתֶּם לַיִסָּע וְיִשְׁבְּתֶם לְכַסֵּחַ עֲלֶיהָ" (ויקרא כה, יח-ט)



A number of organizations are promoting total rest of the land on Shemita⁹

9. See also <https://shviit.com/>

APPENDIX 3

Brief Summary of Arguments Pro- and Anti- the Heter Mechira

Issue 1 - Does Shemita apply today on a Rabbinic or Torah basis?

- The Heter relies on the assumption that Shemita applies today only on a Rabbinic basis - see sources above. If it applied min HaTorah, it would be very difficult to rely on its leniencies

Pro-Heter

- This is position of most of the Rishonim including (probably) the Rambam
- This is the position of almost all Acharonim and modern-day poskim, including Rav Kook, the Chazon Ish, Rav Ovadia Yosef and indeed others who in fact oppose the Heter
- There is even a minority position that Shemita today is kept as a middat chasidut. In a time of pressing need, even a da'at yachid (sole opinion) can sometimes be relied upon
- In any event the Heter only permits work by non-Jews or rabbinically prohibited work by Jews (hence two levels of derabbanan)
- There is a further debate as to which is in fact the correct year for Shemita. This can be joined into the halachic equation as a ground for leniency in a rabbinic law

Anti-Heter

- There is a minority position in the Rishonim that Shemita applies today Min HaTorah - Ramban and Rosh
- This is the position of some poskim, including the Beit Halevi and the Netziv. The Beit HaLevi regards the doubt as to the correct Shemita year as a potential ground for stringency in other years!
- In practice much of the work has actually been performed by Jews, with little hashgacha to ensure that the work is derabbanan (this reality is now changing with the growing number of non-Jewish workers in Israel)
- The position that Shemita today is a middat chasidut is totally marginal and irrelevant and may indeed be referring to shemitat kesafim only

Issue 2 - The Importance of Observance of Shemita for the spiritual success of the Yishuv

- The Torah is very clear that one of the main reasons for the Exile was non-observance of Shemita. So any hope of success for the Yishuv in Eretz Yisrael must include a proper observance of Shemita

Anti-Heter

- The heter mechira attempts to by-pass the entire purpose of Shemita - to leave the land fallow. It circumvents the spiritual essence of the mitzvah and the need for mesirut nefesh that the Torah requires of us. By effectively wiping Shemita off the books it undermines the spiritual success of Israel

Pro-Heter

- The heter mechira saves us from mass breach of Shemita. Most farmers in the country would not stop work for a year so better to have the land sold to and worked by non-Jews than retained and worked by Jews without the Heter. The market would be flooded with prohibited produce.
- Non-violation of Shemita was seen as a critical to maintaining general awareness/respect of the non-religious Yishuv for the halachic system, which is vital for the spiritual success of the Yishuv
- The heter mechira is a halachically valid system, approved by some of the greatest Torah minds of the 19th and 20th Century. Living through the halachic process is exactly what we are meant to be doing and will hopefully work towards the success of our spiritual mission. It is in no way similar to the mass breach of Shemita refereed to in the Torah and Chazal
- Shemita is a rabbinic mitzvah today - see above. There are many central Torah mitzvot that we should be focused on and which will be a zechut for the Yishuv

Issue 3 - Is the sale to a non-Jew effective?

- Clearly, the Heter only works if a non-Jew actually has true ownership of the land. Does the Heter achieve this?

Anti-Heter

- The sale is fictitious and bogus for a number of reasons (Chazon Ish):-
 - (a) The sale is a halachic violation of Lo Techanem (see below). It would nevertheless be valid bedieved if conducted directly between the farmer and the non-Jew. But it is not. The Chief Rabbinate acts as a shaliyach and since 'ein shaliyach ledvar aveira' - a representative is halachically ineffective if asked to do a prohibited act - the sale is invalid
 - (b) The sale is not registered at Tabu (the Israeli Land Registry) and is thus legally invalid in Israeli law. This makes it halachically invalid on the basis of 'dina demalchuta dina' - the local civil law of the land is halachically binding. This is especially so since the establishment of the State of Israel
 - (c) The sale is effectively a sham - there is no real 'gemirat da'at'. The sellers are often unlearned and/or non-religious and think that that they are only selling the land for 'religious' reasons. Even if the sellers fully understand the binding nature of the sale, this could make it worse, since they often do not really agree with it on political/philosophical grounds. The buyer has no rights over the land and the seller continues to express full ownership.

Pro-Heter

- (a) The sale is NOT a halachic violation of Lo Techanem (see below). Even if it WERE a prohibited act, 'ein shaliyach ledvar aveira' - does not invalidate the sale, but merely places responsibility for the aveira on the shaliyach. Furthermore, 'ein shaliyach' does not apply if the shaliyach is unaware of the prohibition or, as in this case, holds it not to be prohibited at all.
- (b) Non-registration in Tabu does not affect the legal validity of the sale, simply the willingness of the Government to recognize it
- (c) Non-registration in Tabu does not affect the halachic validity of a sale. Examples can be brought in connection with avoiding the Torah prohibition of interest, where property is sold to a lender (without registration) so that the lender can receive income/eat produce. Since this is valid for a Torah prohibition (interest), it certainly works for a Rabbinic one (Shemita). Further, registration at Tabu is not legally required for a sale for 2 years. Also, the purpose of Tabu is to avoid fraud and collect taxes, neither of which are relevant here. Finally, in 1979 the Knesset passed a law giving legal validity to the sale of land for Shemita.
- (d) The seller clearly intends the sale to be binding or he will be in breach of Shemita violations. Furthermore, in the sale of Chametz (which involves a Torah prohibition) even though the buyer should have control, if the seller retains full control the sale remains valid. Finally, in the 2007/8 Shemita changes and updates were made to the wording of the sale documents to ensure that the seller and buyer are fully aware of the binding nature of the transaction.
- (e) According to Rav Kook, the 'religious' nature of the sale helps since it means that the regular registration process may be superfluous

Issue 4 - Is the sale of land to a non-Jew for the purposes of the Heter a Torah prohibition of Lo Techanem?

- There is a Torah prohibition to sell land in Eretz Yisrael to a non-Jew - Lo Techanem

Pro-Heter

- Lo Techanem is only relevant when it weakens the Jewish yishuv in Eretz Yisrael. The purpose of the Heter is to strengthen it! Actually buying produce from Arabs may not technically violate Lo Techanem but it weakens the Yishuv and thereby violates the spirit of Lo Techanem.
- Lo Techanem does not apply to a temporary sale for 2 years.
- Some argue that the issur of lifnei iver - putting a stumbling block before the blind - by causing the farmers to work during Shemita, outweighs the issue of Lo Techanem
- Lo Techanem is only prohibited if selling to an idolator. A Moslem Arab is halachically monotheistic. As noted above this Shemita (5775) the sale is being effected with a Ger Toshav, which is even less problematic.
- Maybe there is no/less of an issur to sell to a non-Jew who already owns some land.
- Many of those against the Heter are prepared to ignore the issur of Lo Techanem when accepting the political transfer of land to Arabs as part of a peace deal!

Anti-Heter

- The Heter is in breach of this prohibition and is effectively 'jumping out of the frying pan into the fire!' To avoid a rabbinic prohibition, the farmer is now in breach of a Torah one!
- Selling to an monotheist does not remove the problem. Sale to a Ger Toshav is not possible at this point since it is only possible to have a status of Ger Toshav when the Yovel is applicable (see above)
- A temporary sale cannot be better than rental of land in Eretz Yisrael to a non-Jew, which is still assur. Furthermore, the more temporary the sale, the less likely to remove the sanctity of the Land (rental will not suffice)
- Many of those in favor of the Heter, still invoke the serious issue of Lo Techanem when opposing any political transfer of land to Arabs as part of a peace deal!

Issue 5 - Even if the sale is permitted and valid, does ownership by a non-Jew actually remove the prohibitions of Shemita?

- There is a very major halachic debate in Chazal as to whether ownership of land in Eretz Yisrael by a non-Jew is sufficient to remove from it the specific mitzvot which relate to the land - Terumot, Ma'aserot, Shemita etc

Anti-Heter

- The Rambam (possibly) rules, as do the majority of Rishonim, that sale of land in E.Y. to a non-Jew does NOT remove the halachic prohibition. (There is an apparent contradiction in the wording of the Rambam which must be resolved).
- There is a major machloket in the Acharonim (between the Mabit (strict) and the Beit Yosef (lenient)) as to whether the sanctity is indeed removed
- Today, when all of the land in Eretz Yisrael is under the rule of a Jewish government (even that land which is privately owned by non-Jews) there is further room to doubt that even non-Jewish private ownership is sufficient to remove sanctity from the Land

Pro-Heter

- The Rambam's view is not clear. Besides, many Rishonim hold that the sale DOES remove the prohibitions, especially where the sanctity of the land is only Rabbinic to start with. It is certainly appropriate to rely on this view for a Rabbinic prohibition.
- It is also appropriate to rely on the lenient opinion of the Beit Yosef (which is not a sole opinion but was a widely accepted view by a major posek) in the case of a potential Rabbinic prohibition
- Furthermore, the Heter only permits work by a Jew which itself is normally Rabbinically proscribed, or work by a non-Jew. Today the reality on the farms is that almost all the work is done by non-Jews, which was not the case in the past

Issue 6 - Are the original grounds for the Heter still relevant**Anti-Heter**

- Everyone agrees that the Heter was initially introduced because of the fragility of the early yishuv and the potential issues of 'pikuach nefesh' if the farmers were not allowed to work the land. Now, these reasons are not relevant. The Yishuv is very established. Most of the Israeli economy is non-agricultural. There are funds in place to assist farmers who cannot work for the year

Pro-Heter

- There is still a significant agricultural sector. 2.8% of GDP and 8.9 % of the work force is employed in agricultural production or services. The annual agricultural export market is \$1.3 billion. If contracts are lost for a year, they will not be regained next year. A one year break could be devastating for future earnings. Given that Shemita is a Rabbinic prohibition which has a halachic solution, albeit relying on leniencies, there is no reason to be strict in such a prohibition and undergo this level of loss.
- The maintenance of Jewish agriculture and land occupation/use is critical for the future of the Yishuv. There are Arab organizations trying to buy Israeli land within Israel to weaken the Yishuv. Strengthening the Israel farmers is as critical now as ever.
- The mitzvah of Yishuv Eretz Yisrael is min haTorah and cannot be set aside by a Rabbinic prohibition

Issue 7 - Is buying Arab produce and avoiding (boycotting?) Israeli produce inappropriate?**Pro-Heter**

- In the current political climate it is inappropriate and perhaps immoral to divert funds away from Jewish farmers to Palestinian and Israeli Arab producers, thereby weakening the Israel economy and strengthening the Palestinians. The political situation is a relevant meta-halachic and hashkafic factor in the mitzvah of Yishuv Eretz Yisrael

Anti-Heter

- Politics cannot be introduced into a halachic debate. If there is a real prohibition, political factors will not make it go away.

Issue 8 - If the Heter is invalid, are people are being encouraged to eat produce which is not permitted?

- Aside from the prohibition of work in the fields, there are a number of halachic issues which can prohibit buying and consuming the produce:-

- the issur of sefichin which is a Rabbinic prohibition on eating anything which grew during Shemita and which is normally planted annually (ie vegetables and not fruit)
- the issur of shamur - produce which was guarded during shemita when it should have been made hefker
- the issur of ne'evad - produce which was worked during Shemita in a way which is prohibited
- the issue of sechora - to do business with shemita produce
- issurim relating to treatment of kedushat shevi'it produce
- the issue to eat the produce after the 'zman biur'

Anti-Heter

- Since the Heter does not work, people are being encouraged to eat produce which is prohibited for all these reasons. Thus heter mechira produce is prohibited and there is a halachic question if the pots used to cook it are now non-kosher.

Pro-Heter

- The Heter does work, the produce is yevul nochri and therefore these issues are not a problem.
- Furthermore, even if the Heter does NOT work, most poskim rule that shamur and ne'evad are not a problem bedieved for the consumer. This would be helpful for Heter fruit, but not vegetables which would still have a problem of sefichin. Some people are therefore more lenient with Heter fruit than vegetables. Those who wish to be machmir can treat the Heter produce with kedushat shevi'it. The potential issur of sechora is violated by buying produce for consumption (which is allowed) but there could still potentially be 'lifnei iver' - causing the sellers/wholesalers to do business with the produce and to handle money which now has Shemita sanctity. However, since those in business rely on a legitimate Heter, there is no lifnei iver. Finally, even if the Heter produce was considered prohibited by some (much less likely for fruit than for veg) the pots and pans would not become prohibited since those using them are relying on a heter.

Issue 9 - Does the Heter 'uproot' a Torah mitzvah?**Pro-Heter**

- The Heter will not uproot the mitzvah. It is a temporary ruling. It does not permit work which constitutes a malacha min haTorah.
- Some religious farmers (Charedi farms or those which are part of the Otzer Beit Din) do not follow the Heter, and observe Shemita in its full. Some people exclude a portion of their farm from the sale and leave it fallow to retain the original mitzvah
- Is the Heter so different to Prozbul (also now Rabbinic) which Chazal instituted to enable people to lend money through Shemita year? Those who wish to be strict for Shemita should be releasing their loans too and not relying on a Prozbul.
- The sale is comparable with the halachically valid procedures of selling Chametz or selling an animal about to give birth to a first-born to avoid the issues of bechor.

Anti-Heter

- The Heter, even if it works, causes mass ignorance of Shemita and effectively uproots and remove a mitzvah, which is prohibited. The original mitzvah will be forgotten.
- Any comparison with Prozbul is inappropriate (and perhaps arrogant) as Prozbul was instituted by Chazal who had much more authority in such matters
- Comparisons with the sale of Chametz are inappropriate for many reasons (a) the sale of Chametz removes the chametz from one's possession, which is what the mitzvah requires, whereas the Heter enables the farmer to work, which is the opposite of Shemita! (b) the sale of Chametz is more realistic than the sale of all that land to one non-Jew; (c) the seller would take the cash for the Chametz but not for the land! (d) with the Heter, the sale is effectively ignored by the seller - see above

Issue 10 - Is the Heter a 'ha'arama' - legal fiction - and thus inappropriate or maybe even proscribed?Anti-Heter

- The Heter is a ha'arama, which is usually highly discouraged as potentially undermining the halachic process. This is especially important for Shemita, on which the success of the Yishuv depends
- Shemita was NEVER easy - even during Temple times. The entire point is the mesirut nefesh to show that the Land is ultimately G-d's and to rely with bitachon on G-d's promise of extra blessing if we keep Shemita properly. A legal fiction to undermine this is totally unacceptable.

Pro-Heter

- The promised blessing only applies when there is full settlement of the Land and Shemita applies on a Torah basis. Our current situation is far from this.

Issue 11 - If the purpose of settling Eretz Yisrael is to KEEP its special mitzvot, does the Heter not undermine this?Anti-Heter

- The Ridvaz strongly argued that the whole purpose of settling Eretz Yisrael is to have the opportunity to KEEP the special mitzvot which depend on the Land, like Shemita. If we effectively by-pass Shemita, what is the advantage over chu'l?

Pro-Heter

- Rav Kook countered that settling Eretz Yisrael and the treatment of Shemita are independent issues. Not every halachic issue dependant on E.Y. can be implemented at this stage (eg tumah/tahara)

Issue 12 - The Heter was instituted BEFORE the State. Does it still have the same weight AFTER the StateAnti-Heter

- Many halachic problems with the Heter became much more serious after the foundation of the State eg Lo Techanem, the emergency status of the farmers who did not previously have government support, the stability of the Yishuv as a whole

Pro-Heter

- Some halachic issues became even more pressing after the State in favor of the Heter - now more Jews are in the country with greater financial and spiritual risk