

Shemita & Pruzbul: Part II

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D'ORAYSA OR D'RABANAN:

There is much discussion in the Rishonim and Poskim whether *shemita* today is *d'oraysa* or *d'rabanana*. At first glance, this may seem to be a purely academic discussion. One may think the only practical manifestation of this debate would be if one would be *machmir* or *meikel* when *shailos* come up. In actuality, however, there are many practical ramifications of this question.

A BRIEF HISTORY:

In the late 1800s, Jews began moving to Eretz Yisroel in greater numbers and the first *moshavim* were established. This led to *shemita* becoming an actual halachic issue, and not just a hypothetical discussion.

For hundreds of years prior to this time, there was almost no Jewish agriculture in Eretz Yisroel. Most of the produce was grown on Arab-owned farms. Whether produce grown on land in Eretz Yisroel that is owned by non-Jews is subject to the laws of *kedushas sheviis* is a famous dispute between the *Mabit* and the *Bais Yosef*. The laws of *kedushas sheviis* include prohibitions on how fruits and vegetables grown in the seventh year can be eaten, bought and sold, and disposed of. Additionally, produce that has *kedushas sheviis* must be liquidated by a certain time – known as the *zeman biur*. After the *zeman biur*, all the produce must either be destroyed or, according to some opinions, made *hefker* (ownerless).

The Bais Yosef held that produce grown by non-Jews has no *kedushas sheviis*. Accordingly, there are no restrictions on how it can be eaten, stored, bought or sold. This view was followed by the Jews of Yerushalayim for centuries and produce from Arab fields was consumed on *shemita* with no restrictions. The *Mabit* argued and held that non-Jewish produce does have *kedushas sheviis*. The Chazon Ish strongly supported the view of the *Mabit*, and this became the accepted custom in Bnei Brak.

When the first few dozen Jewish *moshavim* and farms were

established, the question came up of how to keep *shemita*. The economic system was very weak at the time and it was considered very risky to let the land lay fallow for a full year. Additionally, the Turkish rulers of the country had a law in place that allowed them to confiscate any fields that were not worked on for a year. This led to a widespread belief that it would be impossible to keep *shemita* according to all the halachos. A solution was proposed in the form of a “heter *mechirah*”. This heter *mechirah* should not be confused with the blanket sale of the land that is done in Israel today and which has little mainstream halachic support. Rather, because of the many dangers involved in keeping *shemita* at that time, some *gedolei haposkim* suggested that if *shemita* in contemporary times is only *d'rabanana*, it would be permissible to sell it with a “*harama*” (trick), in a manner similar to the way in which we sell chametz to a non-Jew before Pesach.

They explained that when we sell chametz, it is not a serious sale. We know that we don't really mean to give over ownership of our chametz to the non-Jew and we plan to buy it back after Pesach. Still and all, the “trick” sale works because the need to sell chametz is only a *d'rabanana*. The reason it is only a *d'rabanana* is because *m'dohraysia* being *mevatel* (annulling) the chametz would suffice. So too, these *gedolim* opined that if *shemita* today is a *d'rabanana* a “trick” sale to a non-Jew would work, and the Jewish farmer would be allowed to continue working in the field that is now “owned” by the non-Jew. If *shemita* would be *d'oraysa*, it would be much more questionable whether such a sale would be valid.

The above is just one example of why *shemita* today being *d'oraysa* or *d'rabanana* is important and relevant.

THE VIEWS OF THE RISHONIM:

When speaking about the institution of *pruzbul*, the Gemara says that *shemita* today is *d'rabanana*. It is not clear which *shemita* the Gemara is referring to – *shemitas kesafim* or *shemitas karka'os*.

Rashi understands the Gemara to mean that the reason *shemitas kesafim* is *d'rabanana* is because *shemitas karka'os* is

d'raban. One reason why *shemita* may be *d'raban* today is because it is only *d'oraysa* when Eretz Yisroel has a *kedushas ha'aretz*. According to some Rishonim, that *kedusha* may not exist today, which would render *shemita* a *d'raban*. Another possible reason is that *shemita* is only *d'oraysa* in times when *Yovel* is practiced. *Yovel* is only practiced when most of Klal Yisroel lives in Eretz Yisroel, which is not the case today. According to this explanation, since *Yovel* is not practiced today, *shemita* would not be a *d'oraysa*.

While the Gemara does say that *shemita* today is *d'raban*, some Rishonim learn that this is only a *hava aminah* of the Gemara. They say that the conclusion of the Gemara is that *shemita* today is *d'oraysa*.

Tosafos learn this Gemara completely differently and say that it was never speaking about *shemitas karka'os* at all. Although according to them there is no indication in this Gemara whether *shemita* of land is *d'raban* or *d'oraysa*, they rule based on other sources that it is indeed *d'raban*.

The Rambam clearly says that Eretz Yisroel still has the full amount of *kedushas ha'aretz* even today. He, therefore, rules that it is forbidden to go onto the *Har Habayis*, and one who does so is *chayav kareis*. Others disagree with this ruling. The Ra'avad says that the *kedushah* of the land was annulled at least partially, which means that there is no *chiyuv kareis* to go onto *Har Habayis*, even though it is still prohibited. Other Rishonim say that the *kedushah* was annulled completely.

In regards to *shemita*, we find a seeming contradiction in the Rambam. In one place, he says that *shemita* today is

d'oraysa. In other places, he seems to say that it is *d'raban*. Many explanations have been offered to try to answer this contradiction in the Rambam.

One possible answer is that the Rambam may hold that the prohibition to work the land on *shemita* may not be a *d'oraysa* today. We find that separating *terumos* and *ma'asros* is not a *d'oraysa* today because the Torah only commands us to tithe the produce when Klal Yisroel has made a "*biyas aretz*", which we do not have in our times. For the same reason, the biblical prohibition to work the land on *shemita* may not apply and doing so is only forbidden *m'deraban*; however, since the Rambam holds that *kedushas ha'aretz* still exists today, he may also hold that the produce that grows on *shemita* has *kedushas sheviis m'dohraysa*. This would mean that although it is not biblically forbidden to work the land on *shemita* today, the produce that grows from this work would have to be made *hefker m'doraysa*.

The Rambam also seems to contradict himself in this matter. In *Maseches Gittin*, he says that *shemita* today is *d'oraysa*, but in *Chumash* he says it is *d'raban*. He also quotes the minority opinion of the Ra'avad as saying that it is neither *d'raban* or *d'oraysa* and is merely a "*middas chasidus*".

The Gemara in *Moed Katan* (Daf 2) does say that working the land on *shemita* is *d'raban*, and that Gemara is clearly speaking about *shemitas karka'os*. The Tur and Mechaber in *Choshen Mishpat* also both say that *shemitas karka'os* and *shemitas kesafim* today are both *d'raban*. It appears that this is the mainstream opinion and that this is how we *pasken*.



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