

## Shemitah & Pruzbul: Part III

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### HASHEM'S FRUITS:

The verses that deal with the prohibitions of working the fields on *shemitah*, as well as the limitations of how one can use produce that grows during the seventh year, are found in Parshas Behar; however, the first mention of crops grown during *shemitah* is in Parshas Mishpatim. At the end of the Parshas Mishpatim, the Torah says that one may work his fields for six years, but on the seventh year he must abandon his field and let poor people eat the crops, with any leftovers being forsaken to be eaten by animals.

We see that the mitzvah of *shemitah* entails to make the fruits of the land *hefker*, to be eaten by anyone who comes across them. It is certainly forbidden to work the land or to keep the fruit after the time when it must be abandoned. Fruits that grew after the owner of the field worked on *shemitah* in violation of halacha are known as "*ne'evad*", fruits that came through [forbidden] work. Produce that is taken into one's home in a forbidden manner, rather than being made *hefker* is known as "*shamur*", protected fruit.. There is a discussion in halacha regarding what should be done to the produce once it is *shamur* or *ne'evad*. In any event, it certainly is forbidden to create either type of case.

### IS HEFKER AUTOMATIC?

There is a famous dispute between the Mabit and the Bais Yosef regarding whether the produce of *shemitah* becomes *hefker* automatically or if the owner is obligated to declare them *hefker*. The Mabit says that the Torah makes the fruits *hefker*, and the owner doesn't have to do anything for it to happen. Since the fruits are inherently *hefker*, there would automatically be no obligation on the owner to separate *terumos* and *ma'asros*. The Bais Yosef disagrees and says that one is commanded to make his fruits *hefker*, but it does not happen by itself. He goes so far as to say that until the owner declares his produce ownerless, they still belong to him. Accordingly, until the owner makes the produce *hefker*, he would have an obligation to separate *terumos* and *ma'asros*.

Another ramification of this dispute between the Mabit and Bais Yosef would be the status of produce grown in Eretz Yisroel on land owned by non-Jews. According to the Mabit, all the land in Eretz Yisroel is inherently *hefker*, including land owned by non-Jews, which would mean that even these fruits have *kedushas sheviis*. According to the Bais Yosef, the land is not *hefker* until the owner declares it *hefker*; therefore, land owned by non-Jews would not have *kedushas sheviis*.

### L'ACHLAH:

In Parshas Behar, it is stated that the fruits of *shemitah* are "for you and everybody else to eat" [*l'achlah*]. It then says that whatever is left should be left out for animals to eat. Chazal learn from this verse that the way people use the produce must be similar in a certain sense to the way animals use it. This halacha is known as "*l'achlah*" and has a number of ramifications.

First of all, included in the halacha of "*l'achlah*" is that a person can only eat the fruits of his field insofar as animals are able to eat them. To give an example: Let's say that the harvesting season for peaches is in August. Until that time, peaches can be found on trees and both people and animals could eat them. After all the peaches are harvested, no more would be found on trees. At that time, the only peaches to be found would be in an individual's personal possession. Since at this time no peaches remain that animals can eat in the field, if a person would continue to eat them in a normal way, it would be perceived as an expression of ownership, which is forbidden. While eating these peaches is not forbidden, showing ownership on them is; therefore, once the time of harvesting has passed, one must make all the peaches in his possession *hefker*. This time is known in halacha as the "*zeman biur*".

Some Rishonim actually say that one must destroy the produce after the *zeman biur*; however, the accepted *p'sak* is in accordance with those who say that it does not need to be destroyed but must be made *hefker*.

Also included in the rule of "*l'achlah*" is that the produce may

not be used for selling for profit. Buying and selling the fruits would be a form of showing ownership, which is forbidden. Additionally, if one were to exchange *shemita* fruits for money, the *kedusha* would transfer from the fruit onto the money as well, which would create restrictions on how the money can be used. So how is it possible for stores to sell produce on *shemita*? The Halacha is that it cannot be bought and sold for money in the regular sense, but it can be bought and sold with a method known as "*havla'ah*". This means that the cost of the *shemita* produce is "swallowed" into the price of another item that is permissible to sell. For example, if someone wants to sell apples that grew on *shemita*, he cannot sell them directly. Instead, he can sell another item that is not a fruit grown on *shemita*, charge a bit more for that item, and throw the apples into the deal for free.

As we mentioned, *shemita* produce grown by a Jew must be made *hefker*, so it would be forbidden to sell in any case. The leniency of *havla'ah* would only be applicable in cases where it is permitted to sell the fruit. One example of this would be if it were fruits grown by a non-Jew according to the opinion that these fruits have *kedushas sheviis*.

One more ramification of a fruit having *kedushas sheviis* is that the peels and any other part of the fruit that is not eaten cannot simply be thrown away. It has to be treated with proper respect and placed in a special place until it rots. Once it is no longer edible, it no longer needs to be used only "*l'achlah*" and can be disposed of.

## LULAV AND ESROG;

A very practical application of these laws comes into play when purchasing an esrog. If the esrog grew on the seventh year, it has *kedushas sheviis* and cannot be bought or sold. (Whether "growing" is defined by when the fruit sprouted from the ground or when it was picked is a discussion that is beyond the scope of this overview.)

A lulav is not a fruit and does not have *kedushas sheviis*. The Gemara actually says that a lulav does have *kedushah*; however, the reason it says this is because *lulavim* were used in those days as brooms. Today, no one uses them in such a

manner; therefore, a lulav is merely akin to a piece of wood.

Since the lulav has no *kedushas sheviis* and the esrog does, one would have to sell the lulav at an inflated price and throw in the esrog for free.

## OTZAR BEIS DIN:

As we said, the fruits of the seventh year must be made *hefker*, and anyone who wants can come and take some. This, however, is not a practical way of obtaining fruits and vegetables for most people. Most people do not live near farms and cannot just go and take some fruit. So how should they get produce during *shemita*?

To deal with this problem, Chazal instituted something called Otzar Beis Din. This concept, which is mentioned in the Tosefta, means that a *beis din* has the ability to hire workers to pick the fruit from the trees, transport it to population centers and distribute it to the people. Since they are doing this for the public benefit, and not for a profit, and it is being done by a *beis din* and does not include any private ownership, it is permitted on *shemita*. They also can charge a minimal price to cover the expenses of paying the workers and the transportation and other costs, as long as they are not selling it at a profit.

This is how most people in Eretz Yisroel obtain produce during the seventh year.

## HAVDALLAH WINE:

There are many other applications of the rule of "*l'achlah*"; however, we will mention just one more fascinating one.

By Havdalah, many people are accustomed to spilling out a bit of wine to use to put out the candle. Some also have a custom of taking some wine and placing it in their eyes or pockets. When using *shemita* produce, it must be disposed of in a respectable manner and cannot be used in a destructive way; therefore, it would not be permitted to spill out *shemita* wine for either of these purposes.

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