



# שבת הארץ

בס"ד

## CHICAGO RABBINICAL COUNCIL MONTHLY SHEMITTAH NEWSLETTER 4

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### *Melachos D'oraisah*

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#### **Avos and Toldos**

As relates to *hilchos Shabbos* there is a concept of *avos* and *toldos*, which means that the Torah forbids 39 *avos* (primary *melachos*), and any action which has a similar effect as the *av* is equally forbidden *mid'oraisah* as a *toldah* (secondary *melachos*). That is not true as relates to *hilchos shevi'is*. The Torah specifies several *melachos* which may not be performed during *shemittah*, and only these are *assur mid'oraisah*; *toldos* of those *melachos* are only *assur mid'rabannan*. For example, planting a vegetable on *shemittah* is *assur mid'oraisah* as זורע, but watering a plant is only a *toldah* and is therefore only *assur mid'rabannan*.

Those *melachos* which are *assur mid'oraisah* are forbidden under all circumstances, but there is a significant

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### *Rav Ovadia Yosef's Heter Mechira Responsum: Part 1*

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#### **Introduction**

The *Heter Mechira* is a *halachic* instrument by which the land of Israel is sold to a non-Jew for the *shemittah* year, thereby eliminating many of the *shemittah* limitations from the original owner and those that purchase the produce grown. This concept, that originated at the end of the 19th century, was the center of fiery debate, and remains so till today. Some advocate for it, some accept it and others contest it.

Rav Ovadia Yosef *zt"l* was an advocate for the *Heter Mechira*. Although he did adjust his positions on some topics in the course of his life, on this subject though, his essential opinion did not change, and he always viewed the *Heter Mechira* as having a solid *halachic* base. Towards the end of his life, he did, however, sign proclamations stating that, for the one who was able, it was preferable to be strict and that one so opting would

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leniency for *melachos d'rabannan*. If not performing that *melacha* will cause the land or tree to be damaged, then that *melacha* may be performed during *shemittah*. This is called "אוקמי אילנא" (maintaining a tree). *Melachos d'rabannan* are therefore only forbidden when they are to improve land or a tree (אברויי אילנא).

The focus of this segment is the *melachos d'oraisah*, and in the next installment we will discuss the details of the *melachos d'rabannan*.

זורע, זומר, קוצר, בוצר

All agree that at least four *melachos* are *assur mid'oraisah* on *shemittah*, as will be described below. They are derived from the *pesukim* which say:

ובשנה השביעית, שבת שבתון יהיה לארץ שבת לה', שדך לא תזרע וכרמך לא תזמור. את ספיה קצירך לא תקצור ואת ענבי נזירך לא תבצר. שנת שבתון יהיה לארץ. (ויקרא כה:ד-ה)

The definition of these four *melachos* is as follows:

- זורע: Planting a vegetable or grain.
- זומר: Pruning grape vines so that they will grow better. The *issur d'oraisah* only applies to grape vines, and not to other trees.
- קוצר: Cutting branches either (a) to help the land be more suitable for further growing, or (b) in the way that people do when they are harvesting a whole

field as an owner would. [The Torah intended people to eat the produce of *shevi'is*. Therefore, the prohibition against harvesting is understood to be limited to these specific forms rather than to all harvesting.]

- בוצר: Cutting clusters of grapes from a grape vine. This is forbidden in the same manner as קצירה, except that בצירה is limited to grapes.

חורש ונוטע

In addition to these four *melachos*, there are different opinions whether two other *melachos* are *assur mid'oraisah*: חורש (plowing) and נוטע (planting trees).

Most *poskim* are of the opinion that plowing during *shemittah* is forbidden based on a *halacha l'Moshe m'Sinai*. That is to say, there is a *halacha l'Moshe m'Sinai* that only certain fields may be plowed just before *shemittah*, from which we derive that it is [*mid'oraisah*] forbidden to do so during *shemittah*.

In *lashon hakodesh*, זריעה refers to the planting of grains and vegetables, while the word נטיעה means the planting of trees. Thus, when the Torah says שדך לא תזרע, it means that you should not plant grains and vegetables, but that does not yet forbid the planting of trees. In fact, there is a *machlokes Rishonim* as to whether נטיעה is *assur mid'oraisah*: Rash cites Rabbeinu Tam as saying that it is a *toldah* of זורע and therefore only *assur mid'rabannan*, but Rash himself holds that it is *assur mid'oraisah*.

## Rav Ovadia Yosef's Heter Mechira Responsum – Part 1 (continued from page 1)

be the recipient of blessing. This however was intended for the individual, while for the public, namely the State of Israel, he was constant and unwavering in his view that the *Heter Mechira* should be executed.

As with all his *halachic* stances, this position stemmed from an exhaustive review and consideration of the subject from multifold facets,

as seen through the prism of the entire corpus of Rabbinic writings. Furthermore, as was his practice, he committed this *halachic* assessment to writing.

### Bibliographical Notes

Rav Ovadia Yosef, as is well known, was a uniquely prolific writer, who published some fifty volumes during his lifetime and left behind

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a true treasure-trove of manuscripts awaiting publication. His writings are known for their clarity, organization, thoroughness, and breathtaking erudition. Furthermore, it was his practice to continually update and annotate his writings. This particular responsum on the *Heter Mechira* has a somewhat unique distinction of being published in many iterations over some forty years, with the publication date of each version usually coinciding with a *shemittah* year. Each iteration builds, expands, and considers additional facets of the question. However, with all of that, the conclusion never changed.

The first version of this responsum was published in six installments in the *Kol Sinai* journal (Jerusalem, 5725-5726), corresponding to the 5726 *shemittah* year. Upon his elevation to *Rishon LiTzion*, Chief Rabbi of Israel, and corresponding to the 5733 *shemittah* year, he lectured on the subject of the *Heter Mechira* for the prestigious *Torah SheBa'al Peh* lecture series organized by Mosad HaRav Kook, and that lecture was published in the *Torah SheBa'al Peh* journal (volume 15).<sup>1</sup> He returned to the matter in anticipation of the 5740 *shemittah* year and published an updated and expanded version of the responsum in *Minchat Aharon*, a memorial volume dedicated to Rav Aharon Shwecky (Jerusalem 5740). In conjunction with the 5754 *shemittah* year, he once again lectured on a related topic for the *Torah SheBa'al Peh* lecture series, and that lecture appeared in the *Torah SheBa'al Peh* journal (volume 35).<sup>2</sup> It was only in 5764, close to forty years after the first version of the responsum was printed, that he finally published this significant responsum in his magnum opus, *Yabia Omer* (Volume 10). He titled it *Kuntres Hashemittah* (the treatise on *shemittah*) and split it into seven chapters (*Yoreh De'ah* numbers 37-43). Importantly, here (at the end of the *Yoreh De'ah* section) he saw fit to attach a

*Kol Koreh* (proclamation) from the year 5747 noting that while the *Heter Mechira* may be relied upon in a case of need, still those who are able to not do so will be blessed.

Since his passing in 2013, the *Me'or Yisrael* Institute, overseen by his youngest son Rav Moshe Yosef *shilit"á*, has been devoted to publishing his extensive manuscripts. This effort includes the reissuing of his published works with additions from his manuscripts and copious marginalia. As such, the full set of *Yabia Omer* was republished in 5775, and within that publication the *Kuntres Hashemittah* has many of these additional notes. Finally, in anticipation of this year's *shemittah* cycle (5782), the *Me'or Yisrael* Institute has republished the *Chazon Ovadia – Pruzbol/Shemittah* volume. As opposed to their previous issuance of this volume in *shemittah* year 5775, this volume contains the *Kuntres HaShemittah* from *Yabia Omer* Volume 10.

Mention should be made that Rav Ovadia Yosef's son, the present *Rishon LiTzion*, Rav Yitzchak Yosef *shilit"á*, has appended his father's responsum to his *Yalkut Yosef* volumes on *Shevi'it*. See for example his *HaShivi'it ViHilchoteha* (Jerusalem 5753) where, at the end of the volume, he attached a photo-offset of the *Minchat Aharon* version of the responsum and *Yalkut Yosef – Mitzvot HaTiluyot BaAretz* Vol. 1 (5761 edition, page 639 and further). Interestingly, in this latter publication, he prefaces the responsum by writing that it is being printed there at his father's request.

For our purposes, we will be using the most recent iteration of the responsum, as printed in *Yabia Omer*, Volume 10 (*Me'or Yisrael* version) and the 5782 edition of *Chazon Ovadia – Pruzbol/Shemittah* (pages 213-312).

It should be noted that this particular responsum

1 This version was later reprinted in the compendium of Rav Ovadia Yosef's *Torah SheBa'al Peh* lectures entitled *Masa Ovadia* (Mosad HaRav Kook 2007, page 98 and further).

2 Similarly, this article was subsequently republished in the *Masa Ovadia* compendium (page 148 and further).

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## Rav Ovadia Yosef's *Heter Mechira* Responsum – Part 1 (continued from page 3)

with its pertinent timeliness was the subject of spirited debate, with some penning treatises devoted to rebutting Rav Ovadia Yosef's position,<sup>3</sup> and others writing defenses of it.<sup>4</sup>

### Prefatory Remarks

The responsum itself is particularly lengthy, with the version in the *Chazon Ovadia – Pruzbol/Shemittah* reaching 100 pages, and contains thousands of citations. With his inimitable thoroughness and incomprehensible erudition, Rav Yosef encapsulates and incorporates essentially all printed sources and arguments relevant to this matter.<sup>5</sup> Obviously, our effort in this brief treatment will not be to summarize this responsum, but rather to share a general overview with various discussions contained in the responsum. Accordingly, for the most part, we will not share the citations because, as mentioned, there are many thousands of them.

### Chapter One – Is *Shivi'it* Today of Torah or Rabbinic Origin?

In this chapter, Rav Yosef carefully reviews the varied

opinions on the origin status of *shivi'it* in our days. He identifies essentially three views: that *shivi'it* is of Torah origin, that *shivi'it* is of Rabbinic origin, and a unique view that *shivi'it* does not apply in our times. Particular attention is given to determining the position of the Rambam and Maran Rav Yosef Karo since there are diverging views regarding them. Rav Yosef seems to conclude that the majority of the authorities consider *shivi'it* to be of Rabbinic origin in our times, and this would include the Rambam and Maran Rav Yosef Karo as well. Additionally, the opinion that *shivi'it* is not in application in our days, while not the accepted view, is still a view espoused by a number of significant *poskim*. This conclusion, that *shivi'it* is of Rabbinic origin nowadays, is the first step in building the foundation of the *Heter Mechira*, because there exists greater leniency with a law of Rabbinic origin.

*Be'ezras Hashem* in Issue 8 of the *Shemittah Newsletter*, Rabbi Raccah will further elaborate on Rav Ovadia Yosef zt"l's view of *heter mechira*. The *Shemittah Newsletter* will also feature a broad overview of this topic by Rabbi Dovid Cohen.

3 For example, Rav Reuven Sofer, *Kuntres Al Isur HaMechira BaShivi'it* (Jerusalem 5747). See as well, Rav Emanuel Toledano, *Oteh Or, Kuntres Shevi'it BaZiman HaZeh* (5740).

4 See Rav Moshe Levi, *Divar HaShimitah* (5744).

5 See our collaborator in this series, Rabbi Dovid Cohen, the cRc's Administrative Rabbinical Coordinator, in his *Imrei Dovid – Shemittah* (introduction to Chapter 23 and note 1 there, page 155).



## WE WOULD LIKE TO HEAR FROM YOU!

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