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Three Leniencies of *Chazon Ish*

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During *shemittah*, farmers cannot work their fields in the normal manner, and anything which grows is *hefker*. One significant way to mitigate the financial burden that this causes is through the "*Otzar Beis Din*." We will delve into that topic in a future installment, but for now we will briefly note the following. *Otzar Beis Din* is a mechanism whereby the community (i.e., *Beis Din*) appoints people to take care of the fields where *hefker* fruit grows during *shemittah*, collect/harvest that fruit when it is ripe, and bring it to the cities where people live so that they can partake of the fruit.

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Mishloach Manos with *Kedushas* *Shevi'is* Products

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Although this Purim-related *shemittah* question is less prevalent outside of the land of Israel (and even in the land of Israel it is usually more common in the year following the *shemittah*), *halachic* authorities do address a fascinating issue: Can one fulfill his or her obligation of *mishloach manos* with food items that possess *kedushas shevi'is*?

Rambam (*Hilchos Shemittah V'yovel* 6:10) rules that one may not repay debts with *kedushas shevi'is* money and, by extension, with *kedushas shevi'is* food products (*Derech Emunah* ibid. 68). This ruling emerges from the Talmud (*Avoda Zara* 62a) that teaches *shevi'is* fruits should be eaten and not transacted, "*li'achlah v'lo lischorah*" based on the *pasuk* in *Sefer Vayikra* (25, 6). Interestingly, Rambam, in the continuation of the aforementioned *halacha*, writes that one may similarly not bring bird offerings purchased with *shevi'is* money. This ruling has its basis in the *Mishna* (*Shevi'is* 8, 8). While

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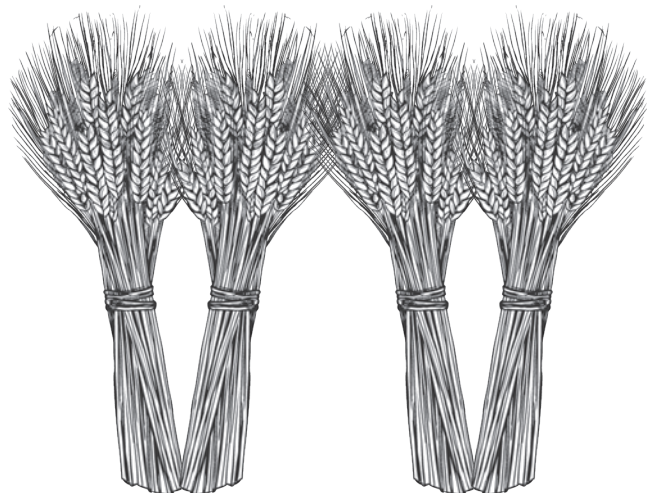
The fruit per se is *hefker*, but people who want some of it are charged for all the labor which was expended (i.e., care, harvest, and delivery of the fruit). The farmer is the one most experienced in these tasks, so the community hires him to do those jobs. Thus, although no one pays for the fruit, they do pay for all the services rendered to get them the fruit, and that money provides some income to the farmer.

In this installment we will see three lenient positions which *Chazon Ish* adopted which

greatly expanded the applicability of *Otzar Beis Din*. In turn, this encourages many more farmers to follow the halachos of *shemittah*.

The **first** relates to the type of work which one can do on his field. In

Issue 5 we saw that one may perform *melachos d'rabannan* which prevent loss to the field or tree (אוקמי אילנא). What about if the *melacha* will prevent the fruits themselves from being ruined? Rav Kook says that since all produce of *shemittah* is ownerless, the owner has no "rights" and cannot do anything to save a crop



from loss. In contrast, *Chazon Ish* argues that even the loss of a current crop is enough basis to allow the performance of *melacha*. Although the *Gemara* and *poskim* refer to the leniency as "אוקמי אילנא" (maintaining a tree) and although Rambam says that the reason *Chazal* permitted אוקמי אילנא is because otherwise the land will be barren and all the trees will die (תעשה הארץ מלחה וימות כל עץ שבה), he suggests that the truth is that a loss of fruit is also justification for performing *melacha*.

As a result of this position, the *Otzar Beis Din* farmers perform *melachos* that result in crops that are "marketable"; otherwise, the fruit would be inferior, and no one would pay for them, even at the reduced *Otzar Beis Din* price.

At first glance, vegetable farmers cannot possibly participate in *Otzar Beis Din* since (a) they cannot plant during *shemittah*, and (b) anything which grows on its own is forbidden as *sefichin*. However, *Chazon Ish* has a second and third leniency which makes this possible.

The **second** leniency begins with the fact we saw in Issue 1 that a vegetable harvested in the *shemittah* year is "*shemittah* produce" regardless of when it was planted. This is true for most *halachos*, and Rambam is of the opinion that it also applies to the prohibition of *sefichin*. Rash agrees with this ruling as relates to grains and "*kitnios*," but argues that for most vegetables (those classified as "*yerek*") the rule is different: so long as they began growing before *shemittah*, they are not forbidden as *sefichin*.

Here again, Rav Kook appears to accept Rambam and accordingly forbids any vegetable harvested during *shemittah*. In contrast, *Chazon Ish* says that since *sefichin* is merely an *issur d'rabannan*, one may rely on the opinion of Rash. Based on this position of *Chazon Ish*, farmers plant

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some commentators (see *Tosfos Yom Tov* *ibid.*) understood this ruling based on the idea that *korbanos* must come from *chulin* (unsanctified property), Rambam seems to have interpreted it differently. Apparently, the prohibition of using *kedushas shevi'is* money to pay off debts extends beyond personal obligations and into the realm of mitzvah obligations according to Rambam.

Based on this observation, Rav Yaakov Betzalel Zolty (*Mishnas Yaavetz, Shemittah V'yovel* pg. 93) writes that one would not fulfill his or her mitzvah of *mishloach manos* on Purim with *kedushas shevi'is* food items. After all, because one is obligated to send *mishloach manos*, using *kedushas shevi'is* food items is tantamount to paying off a debt or obligation with *shevi'is*, a prohibited form of transacting. Rav Shmuel Vosner (*Shevet Halevi* 7,183) rules similarly, forbidding the use of *kedushas shevi'is* for *mishloach manos*. However, Rav Vosner notes that this prohibition only applies to the first *mishloach manos* sent because the technical obligation is to send two items to only one person. Rav Ovadiah Yosef (*Chazon Ovadiah, Purim, Dinei Mishloach Manos* 21 and footnote 43) rules similarly that after fulfilling the primary mitzvah of *mishloach manos*, the custom to send multiple *mishloach manos* does not fall under the category of an obligation such that sending *shevi'is* products would violate the prohibition of *sechorah*.

On the other hand, Rav Shlomo Zalman Auerbach (*Halichos Shlomo, Moadim* vol. 1 Purim, 19, 10) ruled that one may fulfill his or her obligation of *mishloach manos* using *shevi'is* products (provided that the recipient is made aware of the *kedusha* status and will treat the products accordingly). He reasoned that because this obligation is not collectable in a *beis din*, it differs from a classic debt. Instead, its classification as an obligation



comes from its status as a *mitzvah* and therefore does not fall within the framework of prohibited *sechorah*. This is also the recorded opinion of Rav Yaakov Yisrael Kanievsky (see *Orchos Rabbeinu* vol. 2 page 334) and the ruling of Rav Yitzchak Weiss (*Minchas Yitzchak* 10, 57). Rav Yosef Rimon (*Shemittah Min Hamekoros v'ad Lihalacha Limaaseh* page 389) concludes that according to the strict letter of the law, the practice is to allow for *mishloach manos* from *shevi'is* products. However, if one prefers to follow the strict opinion, it would suffice to make sure that his or her first *mishloach manos* contains two food items that do not possess *kedushas shevi'is*.

Even those who rule leniently on extending *mishloach manos* that consist of *kedushas shevi'is* products acknowledge that the accepted custom of reciprocating *mishloach manos* to someone who first gave to you may be more problematic (see Rav Weiss, *ibid.*). This is based on Rambam's ruling (*ibid.*) that returning a favor with *shevi'is* fruits is also prohibited. In other words, according to the Rambam, one may only give *shevi'is* fruits to another as a pure gift, not to repay a debt or even to return a favor. However, some Sephardic authorities argue and allow reciprocating with *shevi'is* items because reciprocating *mishloach manos* still constitutes a *mitzvah* performance and as such is considered to have been given wholeheartedly and not as payment for a debt or favor (see Rav Ovadiah Yosef, *ibid.*).

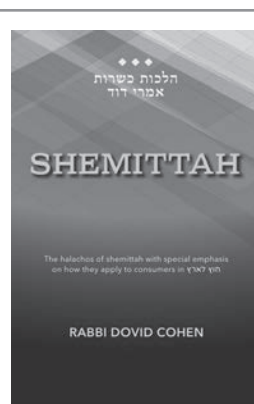
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potatoes, tomatoes, and other vegetables just before Rosh Hashanah of *shemittah* and harvest them on *shemittah*. The vegetables, referred to as having had a זריעה מוקדמת, "an early planting," have *kedushas shevi'is* and are *hefker*, but, as with fruits, the farmers can earn money by participating in an *Otzar Beis Din* for them.

Rash is only lenient for *yerek*/vegetables, but not for grains. However, *Chazon Ish* suggests a novel (**third**) leniency which even allows farmers to harvest wheat during *shemittah* as part of *Otzar Beis Din*. *Yerushalmi* says that there are four types of fields where the prohibition of *sefichin* does not apply. One of them is a שדה ניר, which is a field that was "overplanted" and will benefit from being left fallow this year. [*Chazal* were confident no one would plant in a שדה ניר and therefore did not prohibit *sefichin* that grow on their own.]

Chazon Ish suggests that farmers can take advantage of this by planting grains (particularly, wheat) in their field during the winter before *shemittah* in a way that agriculturally would preclude planting wheat/grain again during the next winter. This gives the field the status of a שדה ניר

ניר where *sefichin* will not apply during *shemittah*. Then the farmer can plant wheat before Rosh Hashanah of *shemittah*, and the wheat which he harvests on *shemittah* will not be forbidden as *sefichin*. It will have *kedushas shevi'is* and be *hefker*, but – once again – it provides the farmer a way to earn money as the representative of *Otzar Beis Din* to care for, harvest, and process the grain until it is usable for consumers. While some question this ruling, others say that it is a critical element in making it financially viable for farmers to follow the traditional *halachos* of *shemittah* observance.



A comprehensive treatment on the subject of *shemittah* is available in the recently released *sefer*, *Shemittah*, by Rabbi Cohen.

For more information on the *sefer*, please visit ShopcRc.org.



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