



שבת הארץ

בס"ד

CHICAGO RABBINICAL COUNCIL MONTHLY SHEMITTAH NEWSLETTER

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13

Shemittas Kesafim

by Rabbi Dovid Cohen

Administrative Rabbinical Coordinator, cRc Kosher

At the end of the *shemittah* year, lenders must "withdraw" (שמוט) their right to demand repayment of outstanding loans, thereby allowing borrowers to keep the money. *Chazal* refer to this *mitzvah* as "שמיטת כספים." *Shemittas kesafim* is not a land-based *mitzvah* (מצוה התלויה בארץ) and therefore it applies both in *Eretz Yisroel* and in *chutz la'aretz*, but nowadays it only applies (in all places) *mid'rabannan*.

Shemittas kesafim does not apply to wages which one owes an employee, to a store for items purchased on credit, or similar "obligations." Rather, it is limited to traditional loans, or to obligations that were "converted" into a loan (זקפן עליו במלוה).

The *mitzvah* has two elements: the lender may not demand repayment, and he must verbally refuse any payment offered. If the borrower nonetheless says he wants to pay, the lender may accept it, and in fact,

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Shemittah Esrogim for Sukkos

by Rabbi Yona Reiss

Av Beth Din, cRc

1. Calculating the *Shemittah* Year for *Esrogim*

As we approach the end of the *shemittah* year, we need to think about whether it is a good idea to utilize *esrogim* from *Eretz Yisroel* for the upcoming holiday of *Sukkos*. *Esrogim* from Israel are often viewed as superior in terms of their pedigree for purposes of fulfillment of the *mitzvah* of the *arba minim*.

On the other hand, the *esrogim* from Israel on the market for this coming year are likely endowed with *kedushas shevi'is* (sanctity of fruit from the *shemittah* year), which occurs at the point in time that the *esrog* has *chanatah* (a certain early stage of ripening) in the tree (see *Rosh Hashanah* 15b).

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לזכות רפואה שלימה בעבור מרים די של בת גאלדא

Chazal encourage borrowers to insist on paying (and suggest he say that the "repayment" is a present).

Sefer HaChinuch says that the *mitzvah* of *shemittas kesafim* is intended to teach us to be generous with others and have *bitachon* that Hashem will give us what we deserve. Just as we allow people to take the fruit of our fields during *shemittah*, so too, we learn to give freely to others by allowing them not to repay the money which we loaned to them. A person can only bring himself to do this by strengthening his *bitachon* that Hashem is the One Who determines how much money he will have and therefore it is “financially savvy” to give away money based on Hashem’s orders, rather than keep it for himself. This difficult task is a strong lesson in *bitachon*.

However, *Hillel* saw that people were withholding loans towards the end of *shemittah*

so they would avoid the cancellation of those loans via *shemittas kesafim*. To avoid this, he instituted *pruzbul* which would (allow for loan collection such that it would) get people to lend money even at the end of the *shemittah* cycle. *Pruzbul* is related to the halacha that *shemittas kesafim* does not apply to someone who gives his loan documents to *beis din* (מוסר שטרותיו לבית דין) and asks the court to collect the money for him. *Pruzbul* is similar in that it is a short document where the lender declares that the *beis din* will collect for him, and once he has written this, he may collect his loans as usual.

There are different opinions of how *pruzbul* is like and not like מוסר שטרותיו לבית דין, and that leads to practical differences in how a *pruzbul* is written, as follows:

- *Shulchan Aruch* rules that the *pruzbul* must be written with a *beis din* that is appointed by

the public and is familiar with the halachos of *shemittah* and *pruzbul*, but *Rema* says that the common custom is to allow any three people to serve as the “*beis din*” for the *pruzbul*.

- In a standard case, the *dayanim* of a *beis din* cannot be related to the parties, and *Acharonim* discuss whether that also applies to *pruzbul*. *Minchas Yitzchok* is lenient, and that position is generally followed.
- *Rema* accepts the opinion that the lender does not have to present himself before the *beis din*, as would be required in any other court case.

Additionally, a *pruzbul* is effective only if the borrower owns land. If the lender has land but the borrower does

not, the lender can “give” the borrower a piece of land against his will to allow the *pruzbul* to be effective. This “gift” is effective even if the borrower has not expressed interest in having it. If neither the borrower nor lender own land, the lender should speak with his rabbi regarding if/how he can write a *pruzbul*. Other details of *pruzbul* are that (a) it can even be written for loans which never had a loan document, (b) it must be written before the end of *shemittah*, and (c) it is not effective for loans which occur after it is written.

BETH DIN ZEDEK
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for issue #5 of the *Shemittah
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the subject of *shemittas kesafim*
and *pruzbul*.**

Even according to the authorities that the defining moment for *esrogim* is also measured from the time of *lekitah*, i.e., when they are plucked from the tree (see Rambam, *Shemittah* 4:12), the available *esrogim* on the market for this upcoming Sukkos will most likely have had both *chanatah* and *lekitah* during the *shemittah* year. Additionally, even if they were plucked afterwards, they would have the sanctity of *shemittah* produce by virtue of having ripened during the *shemittah* year.

2. Three Issues for Consideration

There are three issues that need to be addressed in this regard:

(i) the prohibition of removing *shemittah* produce from Israel to a location outside of Israel (and the related issue of whether the *shemittah* produce in question was properly harvested in accordance with *shemittah* laws);

(ii) the prohibition of doing “*sechorah*” – business – with *shemittah* produce, which precludes the ability of a merchant to do business with *esrogim* endowed with *shemittah* sanctity, and the related concern that money may not be paid for this purpose to an ignorant seller since the sanctity of *shemittah* produce would be superimposed upon the funds, requiring that the funds only be used in a fashion consistent with the sanctity of *shemittah*; and

(iii) the restrictions relating to *shemittah* produce, including that such produce may not be used in a manner of “*hefsed*” – that would ruin or compromise the produce, and that they be made ownerless prior to the time of “*biur*” – when the produce is no longer found in the fields, and one is obligated to declare the produce to be ownerless – which in the case of *esrogim* occurs during the month of *Shevat*.

3. The Prohibition of Removing Shemittah Produce from Israel

In terms of the first issue, the *Mishna* in *Shevi'is* (6:5) states that it is prohibited to remove *shemittah* produce from Israel to outside of Israel. However, the Chazon Ish notes (*Shvi'is* 10:6) that even if the removal of the *esrogim* was prohibited, it is still permissible for someone living outside

of Israel to use such *esrogim* for the fulfillment of the *mitzvah* of *arba minim*. Similarly, Rav Moshe Feinstein points out (*Igros Moshe, Orach Chaim* 1:186 and 5:42, *teshuvos* that were written in connection with the *shemittah* years of 5712 and 5726, back in 1952 and 1966, respectively) that according to one answer in *Tosafos* in *Pesachim* (52b, s.v. Rav Safra), it is permissible to import *shemittah* produce so long as it is not for food consumption purposes. Rav Moshe adds that even though one may not use an *esrog* for the *mitzvah* of *arba minim* if the *esrog* is forbidden to be eaten (see Rambam, *Hilchos Sukkah* 8:9), the vast majority of *Rishonim* hold that even *shemittah* produce that was removed from Israel without justification may still be eaten.

Also, there may not be as great a concern in this case even from the standpoint of removing the *shemittah* produce from Israel in the first place, especially since the *esrogim* are being imported for the purpose of fulfilling a *mitzvah*. There are two reasons given for the prohibition of removing *shemittah* produce outside of Israel: (i) the produce requires *biur* in Israel (see, e.g., *Rosh, Shevi'is* 6:5), and (ii) one may easily mix up the *shemittah* produce with non-*shemittah* produce, and thus forget to treat the *shemittah* produce with the requisite sanctity of the *shemittah* year (Ra'avad and the *Rash Mishantz*, commentary to *Toras Kohanim, Parshas Behar*, 1:9, cited by *Derech Emunah, Hilchos Shemittah* 5:13 – *Biur Halacha*, s.v. *ein motzi'in*). With respect to the first concern, namely that the *esrog* needs to receive *biur* in Israel, (a) many authorities hold that the *biur* can be performed outside of Israel (see Rambam, *Shemittah* 7:12); (b) even according to the *Rosh*, it would be possible to send the *esrogim* back to Israel prior to the time of *biur*; and (c) it is also possible to sidestep the problem by eating the *esrogim* immediately after Sukkos prior to the time of *biur* (see *Derech Emunah*, ad locum – *Tzion Ha'Halacha* 179, citing the Chazon Ish). With respect to the second concern, there is less of a fear that the *esrog* will be confused with other food produce since the *esrogim* are specifically earmarked for *mitzvah* purposes, and therefore

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Shemittah Esrogim for Sukkos (continued from page 3)

it is not likely that one will use the *esrog* in an improper fashion.

Based on these extenuating considerations, some *poskim* aver that not only is it acceptable to utilize *shemittah esrogim* that have been imported from Israel, but it is even permissible to export the *esrogim* from Israel in the first place. See, e.g., Rav Shlomo HaKohen Gross, 16 *Neizer Ha-Torah* (5768). While many *poskim* are uncomfortable with the idea of a mass import of such *esrogim*, many eminent authorities hold that it would be permissible to import an *esrog* on an individualized basis for the purpose of fulfilling the *mitzvah* of *arba minim* (see *Shemittah K'hilchaso* 3:17; *Derech Emunah* 5:96). An additional lenient consideration is that some authorities hold that the prohibition does not apply to an amount of *shemittah* produce that would be insufficient for more than three meals (based on *Tosafos Pesachim* 52b, s.v. *misba'arin*). In any event, the consensus among rabbinic authorities is that even if the importation of the *esrogim* was

prohibited in the first place, the use of such an *esrog* outside of Israel would certainly be permitted.

In fact, Rav Moshe Feinstein (ibid) felt that it was preferable to rely upon the lenient considerations to use only Israeli *esrogim* for the *shemittah* year, because of the concern that *esrogim* from other locations are more likely to be "*murkavim*" (grafted together with other fruit) and hence unfit for the *mitzvah* (see also *Sefer Arba'as Minim*, p. 323, which includes an undated letter from the Chazon Ish reflecting a similar sentiment, although he also wrote that the *esrog* should not be *meshumar*, as discussed *infra*). Rav Moshe added that for these purposes, one could also not be criticized for relying upon the "*heter mechirah*" for *esrogim* that were imported from orchards that were sold to non-Jews during the *shemittah* year.

Some authorities raise the additional issue that the *esrogim* in question may have come from a field that

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Shemittah Questions for further discussion.

Take Produce to Arava?

Chazal decreed that *shemittah* produce should not be exported from *Eretz Yisroel* out of a concern that produce brought there would not be treated in the proper manner. Accordingly, it is understandable why one may not take *shemittah* produce into "*Suria*" – a location which is only obligated in *shemittah mid'rabannan* – because there are leniencies in how *shemittah* is practiced in that area. If "standard" *shemittah* produce was taken to *Suria*, people might treat that produce with the leniencies associated with *Suria*-based produce. As such, although *shemittah* is observed to some degree in *Suria*, one may not export *shemittah* produce from *Eretz Yisroel* to *Suria*.

What about bringing *shemittah* produce to the Northern Arava, where *shemittah* is observed by some people and not others? There are many indications that it is not in the *halachic* borders of *Eretz Yisroel*, but there are some who are *machmir* to treat it with the status of *Eretz Yisroel*. Would those *machmirim* be permitted to bring produce from areas which are surely *Eretz Yisroel* into the Northern Arava? Is it justifiable to consider those lands as *Eretz Yisroel* in a manner which leads to a leniency (bringing *shemittah* produce there)?

Is this like taking produce to *Suria*? Or should we view this from the perspective of the person taking the produce to the Northern Arava, which he treats as "*Eretz Yisroel*"? This question requires further consideration.

Shemittah Esrogim for Sukkos (continued from page 4)

was improperly guarded during the *shemittah* year (*"meshumar"*) or that was improperly worked upon during the *shemittah* year (*"né'evad"*). However, although Rabbeinu Tam (*Sukkah* 39b, s.v. *bameh devarim amurim*) held that *shemittah* produce that was *meshumar* becomes prohibited, and the Ra'avad (*Hilchos Shemittah* 4:15) held that produce which was *né'evad* becomes prohibited, many rabbinic authorities held that these improprieties would not cause the *esrog* to be forbidden for consumption (see *Derech Emunah* 4: 107, 184; *Igros Moshe* *ibid*), and hence not forbidden for use to fulfill the mitzvah of *arba minim* (see, however, *Shemittah K'hilchaso* 2:4, citing the dissenting view of the Satmar Rebbe). Even the Chazon Ish who wrote in one place (*Shemittah* 9:17) that *esrogim* that were guarded or worked upon during *shemittah* are prohibited, ruled elsewhere (*Shemittah* 10:6) that it would be strictly permissible to take an *esrog* that was *meshumar* or *né'evad* for the mitzvah of *arba minim*.

In terms of whether using the *esrog* that was *meshumar* or *né'evad* would constitute a *"mitzvah haba'ah b'averah"* (fulfilling a mitzvah through a transgression), which would be impermissible, R. Chaim Naeh held that since the *esrogim* would have grown anyway without these violations, this would not create a disqualification (see R. Yitzchak A. Yisroeli & R. Avrohom Steiglitz, *Esrogim B'Shvi'is*, 20 *HaYoshor veHaTov*, 327-330, 5776).

Nonetheless, there is no question that it is highly preferable to purchase *esrogim* that are neither *meshumar* nor *né'evad*. Thus, the Chazon Ish is quoted as having said that it is better to make a blessing on an Israeli *esrog* from the *shemittah* year that was treated in accordance with all the

laws of *shemittah* even if it has *"bletlach"* (i.e., beige leaf marks) rather than upon a perfectly clean *esrog* that was not treated with the requisite sanctity (see *Sefer Arba'as Minim*, p. 322, n. 8).

4. Doing Business with Esrogim

The second issue relates to the requirement that one not perform *"sechorah"* – business – with the *esrogim* from the *shemittah* year (see *Avoda Zara* 62a), and not render payment to an ignorant merchant in a fashion that will cause the money to become endowed with *shemittah* sanctity and thus susceptible to mistreatment. However, this concern can be largely averted by using *Otzar Bet Din esrogim*, where payment is not rendered for the actual fruit but rather for the work that was done in harvesting and preparing the *esrogim* for the consumer (based on *Tosefta Shevi'is* 8:1-2).

Even if the *esrogim* do not come from *Otzar Bet Din* produce, there is a solution proposed by the *Talmud* (*Sukkah* 39a) to pay *b'havla'ah* – namely, for the consumer not to pay

specifically for the *esrog* but rather to pay a higher price for the *lulav* or *hadassim* (which, even if they are also from the *shemittah* year in Israel, do not present an issue with respect to *kedushas shevi'is*, primarily because the conventional use of *lulav* branches in modern times – through burning them rather than using them as a broom – does not present an immediate benefit of the sort that would cause them to have the sanctity of *shemittah*, and because the *hadassim* are not harvested specifically for their smell and therefore would also not have *shemittah* sanctity), thus "swallowing up" the payment for the *esrog* in the payment for the *lulav* or *hadassim*. When the



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esrog is purchased in this fashion, no "business" or payment is being conducted with respect to the esrog itself, which is essentially being given as a gift (see *Rashi ad locum*).

Rav Chaim Berlin (in a letter from the year 5670 (1910 – sixteen *shemittah* seasons ago) proposed a different solution, based on that favored by his father, the Netziv (see *Meishiv Davar* 2:56) – namely, that the money for the esrog should not be paid until following the Sukkos holiday, after the esrog has already been fried and eaten, so that in this case the *shemittah* sanctity of the esrogim will no longer be in existence at the time that the money is paid, and thus will not be transposed onto the funds. However, this only resolves the issue of ensuring that the money not receive *shemittah* sanctity, but not the issue of the seller doing business with *shemittah* produce. This solution

also creates a question as to whether the esrog is truly owned by the purchaser during the first days of Sukkos, when there is an obligation of "la-chem," that the *arba minim* must be in the ownership of the person performing the *mitzvah*.

Others suggest that payment be rendered at the time of purchase but with a credit card (*b'hakafah*), which also would not transfer the sanctity of the *shemittah* produce to money (although this too would not necessarily eliminate the *sechorah* issue from the standpoint of the seller; see Chazon Ish, *Shevi'is* 10:6).

5. Treating the Esrogim with the sanctity of Shemittah

The third and final issue relates to the restrictions pertaining to *shemittah* produce. An esrog

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Shemittah Questions from Rav Chaim Kanievsky zt"l

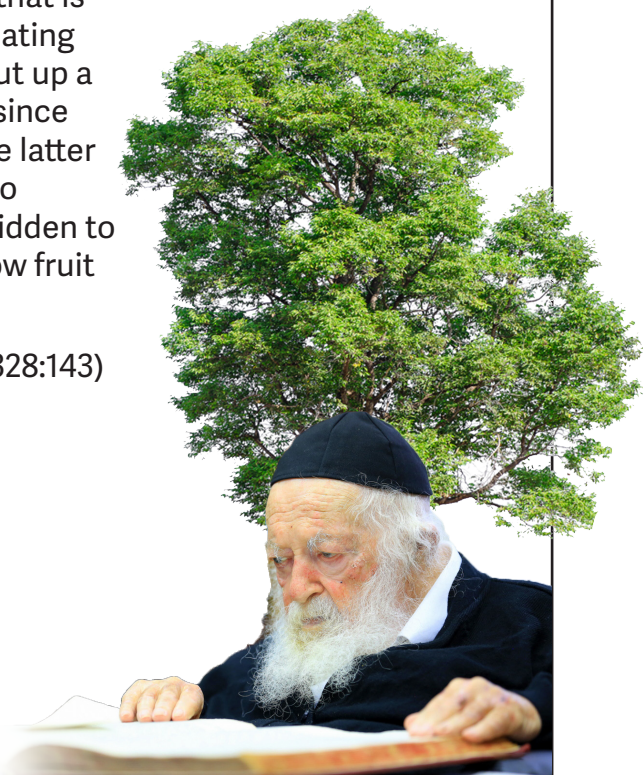
Daven for Rain

Yerushalmi (*Shevi'is* 4:4) says that a person is allowed to hang a sign up on a tree to encourage people to *daven* that the tree should not lose its fruit, since that is considered *אוקמי אילנא* (maintaining a tree, which justifies violating certain Rabbinic *shemittah* prohibitions), but one may not put up a sign asking people to *daven* that the tree should grow fruit, since that is *אברויי אילנא* (strengthening a tree) and is forbidden. The latter half of that *halacha* seems to show that not only is it *assur* to perform traditional *melacha* on *shemittah* but it is even forbidden to use mystical methods (*עניינים סגוליים*) such as *davening* – to grow fruit on *shemittah*. This raises two questions:

1. How is that different than the *halacha* (*Mishnah Berurah* 328:143) that one may say an incantation (*לחש*) on Shabbos that traps an animal. If using words to effect a *melacha* is not meaningful for Shabbos, why is it for *shemittah*?

2. The *Gemara* (*Ta'anis* 19b) states that if there is a drought during *shemittah* one can *daven* for rain so that fruit will grow. If it is truly forbidden to use words to be *אברויי אילנא*, why is this permitted?

Derech Emunah, Be'or HaHalacha 1:7



Shemittah Esrogim for Sukkos (continued from page 6)

endowed with the sanctity of *shemittah* may not be used "*le-hefsed*" – in a fashion that directly causes them to be ruined (see *Pesachim* 52b). In this vein, some authorities expressed concern that the handling of the *esrog* while performing the *mitzvah* could cause the *esrog* to precipitously rot. However, this concern is attenuated based on a couple of considerations: (a) any such wearing out of the *esrog* would be indirect in nature, and therefore not forbidden (see *Maharit* 1:83; however, others disagreed); and (b) even if the outer layer of the *esrog* becomes diminished, since the inner core remains intact, there is no real corrosion (see *Esrogim B'Shvi'is*, supra, p. 328). Nonetheless, one would still have to be careful not to discard the *esrog* after the *Sukkos* holiday, but either to eat the *esrog* in accordance with the sanctity of *shemittah* or allow it to dry out on its own and then discard it.

In terms of *biur*, the simplest solution would be to consume the *esrog* (without wasting any usable part of it) prior to the time of *biur*, which is generally assumed to be in the month of *Shevat*. Otherwise, it would be ideal to send the *esrog* back to Israel for the *biur* to be performed there, or to rely upon those authorities (upon consultation with one's *posek*) that *biur* can be performed outside of Israel. The performance of *biur* would require the person to relinquish ownership of the *esrog* in front of three individuals, after which it can be reclaimed and left to dry out naturally. If the *esrog* in question is from *Otzar Bet Din*, the Ramban (*Vayikra* 25:7) would hold that no *biur* is

necessary. However, that dispensation is likely not applicable in this case when the produce is already in the possession of the consumer at the time of *biur* (see *Minchos Shlomo* 1:51:17).

6. Conclusion

Based on the foregoing discussion, it seems that if one observes the rules of avoiding doing business with an *esrog* from a *shemittah* year, and treats it with the requisite sanctity, there should be no impediment to buying an *esrog* from Israel that is endowed with the sanctity of the *shemittah* year, particularly if it can be verified that the *esrog* is neither *meshumar* nor *né'evad*. In fact, as Rav Moshe Feinstein writes, it is preferable to purchase such an *esrog* if it comes from an orchard known not to have grafted *esrogim*, as opposed to orchards outside of Israel that have less of an established reputation in this regard.

While there were authorities who held that it was best to avoid using *esrogim* from Israel following the *shemittah* year, Rav Feinstein concludes (*Igros Moshe, Orach Chaim* 1:186) that one need not be concerned about this opinion.

Indeed, some argue that it is preferable to use an *esrog* that has been subject to the performance of the *mitzvah* of *shemittah* to perform the *mitzvah* of *arba minim* (see, e.g., *Shabbos* 117b), so that the *mitzvah* of *arba minim* can be adorned even more beautifully through the sanctity of *shemittah* produce. Of course, each person should conduct himself in accordance with the instructions of his *Moreh Hora'ah* with respect to this question.



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2701 W. Howard Street, Chicago, IL 60645
773.465.3900 | office@crcweb.org | www.crcweb.org

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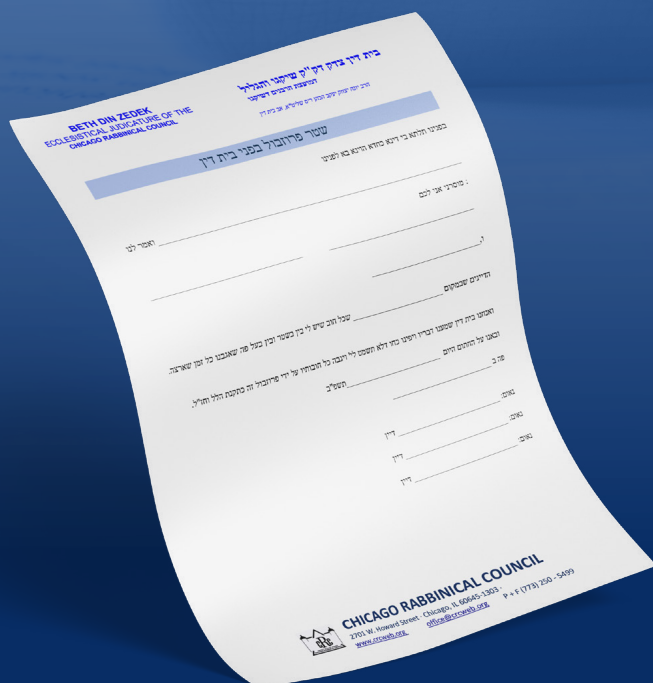
9:30AM – 11:00AM
Congregation Or Torah
3800 Dempster Street
Skokie, IL

Sunday, Sept. 18

5:00PM – 6:45PM (Mincha)
Bais Chaim Dovid
3462 W. Devon Avenue
Lincolnwood, IL

Sunday, Sept. 25

9:30AM – 11:00AM
Congregation K.I.N.S.
2800 W. North Shore
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As this Shemittah year comes to a close, the Beth Din of the cRc will be providing **three opportunities** for פרוזבול signing.



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