

Parshas Behar: Shemittah Sheilos: Perplexing Puzzle of the Possible Purloined Peppers

By Rabbi Yehuda Spitz

As Parshas Behar contains the Mitzva of Shemittah, and as we are in the midst of a Shemittah year, the following recent sheilah is quite apropos to discuss. A short while after Chanukah, I received an interesting halachic query from a relative in Lakewood. Apparently she stopped and shopped at a local supermarket and purchased several bell peppers. Once she arrived home, she realized that they had a small sticker on them declaring each of them to be a "Product of Israel." Realizing that as this year is a Shemittah year there are complications with consuming these peppers, she decided to ascertain the proper recourse.

Although bell peppers are rich in antioxidants, low in calories, and are loaded with vitamins A and C, potassium, folic acid, and fiber, nonetheless these specific ones may not have been so halachically healthy, especially when located in New Jersey. This kashrus query is in fact quite complicated (and fascinating as well) and involves several aspects of Hilchos Sheviis, but there are several important characteristics that will shed some light on this issue.

Many of us know that all standard produce that grows in Eretz Yisrael during the Shemittah year is actually halachically hefker, considered ownerless,[1] yet, this important detail is only 'the tip of the iceberg.' There are rules governing the growing, picking, acquiring, eating, how long it may be kept in your house, and even the disposing of these Peiros Sheviis, as they are considered holy Shemittah produce, and hence containing inherent Kedushas Sheviis.

Although my relative was looking for a quick solution to her dilemma, there are numerous issues that need to be addressed in order to properly partake of the peppers. These include: Shishis vs. Sheviis produce, Sefichin, Shamor V'Ne'evad, Chutz La'aretz, Sechora, Kedusha exchange, and Biur. Sounds confusing? Don't worry, all will be explained as we endeavor to determine the din of these perplexing peppers. But first we must ascertain whether these specific peppers truly were Shemittah produce.

Which Fruits are Which?

It is important to note that not every Israeli fruit or vegetable that one acquires during Sheviis has Kedushas Sheviis. For example, if it were picked in the sixth year (Shishis), it would have no Kedushas Sheviis, and can be eaten regularly, even if bought during Shemittah.

An additional factor in determining whether or not the produce will contain Kedushas Sheviis would depend on the type of crop. Generally speaking, although the Shemittah year starts and ends on Rosh Hashanah, nevertheless, the deciding factor determining Kedushas Sheviis for fruit is that it follows its Chanatah, blossoming, when it is first considered edible, roughly when the fruit is one-third grown.[2] Any fruit that reaches this stage prior to the onset of Shemittah does not have Kedushas Sheviis, even if acquired during Shemittah.

On the other hand, Kedushas Sheviis for vegetables follows its harvesting (picking), Lekitah, regardless of when they started to grow.[3] Kedushas Sheviis for most legumes, as well as olives, grapes, and the five grains, is determined by when they are one-third grown, no matter when actually picked, plucked, or procured.[4] However, the Kedushas Sheviis status of rice, millet, poppy seed, and sesame, follows when it is fully ripened.[5] So, as peppers are vegetables, their Kedushas Sheviis status is dependent upon when they were harvested.

Shishis or Sheviis?

If these Israeli bell peppers would have been harvested prior to Rosh Hashanah, even though they made an appearance in Lakewood Chanuka time, they would nonetheless still be considered Shishis produce, and all that would need to be done to them would be separating the relevant Terumos and Maasros,[6] and then the remainder is permitted to join one's salad.

Yet, practically, Shishis peppers were already long gone even from the local Israeli stores by Chanuka time. And, more importantly, as peppers are classified as vegetables, their Kedushas Sheviis status is exclusively dependent on when they were picked. So although it may take anywhere from 60 to 90 days from planting until ripening,[7] Israeli peppers in Lakewood in the beginning of Teves were most assuredly picked after Rosh Hashanah, granting them Kedushas Sheviis status.

“Well,” one may ask, “Just because they are Shemittah produce, does that make them prohibited to be eaten? Didn't we say they are considered hefker? Once I acquired them, shouldn't I be allowed to eat them?”

Although a good question, there are several complications that would need to be ironed out before these peppers can halachically be served in Chutz La'aretz. You see, the fact that these peppers were purchased in the normal manner and sent to Chutz La'aretz, violates several key tenets of Hilchos Sheviis.

Sefichin Statutes

Yet, the biggest problem with this sheilah is that the Shemittah produce in question was a pepper - a vegetable, and not a fruit. This places the issue in a whole new category - that of Sefichin. Sefichin literally means after-growths, referring to plants that grew by themselves in the Shemittah year, ostensibly from leftover seeds that took root after the previous year's harvest. Biblically, there is a Mitzvah that these growths may not be harvested in the proper manner during Shemittah: "Es Sefiach Ketzircha Lo Siktzor,"[8] yet, their consumption is permitted.

However, M'Derabbanan, all Sefichin are strictly prohibited to be eaten.[9] The Rambam explains that this Gezeiras Chazal was instituted due to 'Ovrei Aveirah,' transgressors, who, not being able to withstand the temptation would secretly plant such produce, but when questioned, would pass it off merely as Sefichin that grew spontaneously with no human aid. Due to these concerns, the Chachamim prohibited outright all produce that can be considered Sefichin.

It is important to note that not all produce is considered the problematic Sefichin. For example, all fruit are not considered Sefichin. This is due to the fact that even if one would desire to plant a fruit tree during Shemittah, there is no way he would be able to benefit from its fruits during the entire year, as it would take too long to grow and produce fruit. One would have no reason to violate Shemittah for a potential fruit so far off.

Chazal were only concerned with a temptation that would be relatively quick to fulfill, such as vegetables and legumes (a.k.a. 'annuals'). Since the turnaround time from planting to harvesting is not that long, one may be tempted to transgress Hilchos Sheviis to ensure he has adequate food supply for several weeks or months down the line. Therefore, all vegetables and legumes that grew in the Shemittah year are considered Sefichin and consequently prohibited to be eaten.[10] On the other hand, it is important to keep in mind that even Sefichin contain Kedushas Sheviis and still must be according the proper respectful treatment.

Another important exception to this proscription is Sefichin that grew on land owned by a non-Jew. This is because Sefichin is essentially a kenass, a fine on those who unlawfully violated Shemittah to produce their produce. However, since a non-Jew has no commandment to rest the land, he cannot be included in the kenass either. Therefore, one may purchase vegetables from a non-Jew during Shemittah, as the prohibition of Sefichin does not apply to them.[11]

Back to our contemporary pepper perplexity, even those authorities who still allowed the produce to be consumed regarding other issues raised (as will be detailed shortly), would nevertheless prohibit it if it was considered Sefichin. In fact, this prohibition is so strong that the Rambam writes that Sefichin from the Shemittah year remain prohibited even the next year.[12]

Seventh But Not Sefichin

But, wait a minute – are these peppers truly Sefichin? There is some debate in the Rishonim as to when this prohibition starts. The Rambam and Ra"sh M'Sirlio, as well as the Mabit, are of the opinion that regarding vegetables, Sefichin status follows when they are picked (Lekitah). Accordingly, if our peppers were picked on Tzom Gedalya, the first weekday of the Shemittah year, even though 99% of its growth was in the previous year, it is still considered Sefichin and prohibited.[13]

However, Tosafos maintains that Sefichin status follows 'rov gedulo,' the majority of its growth. If it grew mostly in the 6th year then it is permitted; ergo if it grew mostly in the 7th year, prohibited. Most other Rishonim, including the Ra"sh, Ramban, and the Rosh, maintain that in order to be considered Sefichin, it must have at least sprouted during Shemittah.[14]

Following this shittah would mean that the Issur of Sefichin would only start several months into the Shemittah year. However, any vegetable harvested after Rosh Hashanah would still contain Kedushas Sheviis and must be treated accordingly, as regarding vegetables their Kedushas Sheviis status follows Lekitah (as cited previously). Most Acharonim, including the Pe'as Hashulchan, Rav Yechiel Michel Tukachinsky, Chazon Ish, Steipler Gaon, Minchas Yitzchok, Bris Olam, and Mishpetei Aretz, follow the more lenient opinion of the Ra"sh.[15]

This means that according to the majority opinion, although these Israeli peppers were assuredly harvested during Shemittah, nonetheless, as the majority of their growth had to be in the sixth year in order for them to make an appearance in Lakewood Chanuka time, they are not considered Sefichin, and technically permitted for consumption.

Indeed, according to the handy-dandy online Shemittah chart put out by Rav Yosef Efrati's renowned Beis Hamidrash L'Halacha B'Hisyashvus, the starting date for considering bell peppers as Sefichin in Israel is 2 Teves 5782 - Dec 6, 2021.[16] That would mean that such Israeli peppers purchased in Lakewood around this date would not actually be Sefichin, as it would have taken at least several weeks from the time of their harvesting in Israel to their being sold on store shelves in America.

However, as these peppers were picked during Shemittah – they would maintain an interesting dichotomy – non-Sefichin Kedushas Sheviis vegetables. Hence, although permitted for consumption, they still would need to be treated as befits 'Holy Shemittah produce.' This includes that its leftovers and residue must be disposed of in a proper manner, not simply dumped in the trash. A separate Pach Sheviis, a clean bin where the food waste is left untouched until decaying, is preferred. After that, the waste matter may be transferred, wrapped, into a garbage can.[17]

Shamor V'Ne'evad

Yet, although we can breathe a sigh of relief that our peppers were not Sefichin, we are not quite out of the woods. Parashas Behar details that during the Shemittah year the land must lay fallow and no main farming work may be done.[18] But what happens if the owner transgresses and ignores the Biblical commandment and instead works the land as usual or cultivated it via forbidden labors (Ne'evad)? Or what happens if he does not allow public access to his halachically hefker fruit (Shamor)? Obviously his actions were not permitted; yet, more importantly, and although this is debated, several authorities maintain that such produce that is Shamor V'Ne'evad becomes forbidden to be eaten.[19] Hence, if these Israeli peppers are considered Shemittah produce, and they were harvested in their normal manner, this may complicate their consumption.

No Fruit Flies

Several other issues may arise as well. Of the interesting halachos pertaining to produce containing Kedushas Sheviis is that they may not be taken out of Eretz Yisrael,[20] nor sold via the usual method.[21] These restrictions are based on several pesukim in Parashas Behar. The Torah, referring to the Shemittah year, states: "V'haysa Shabbos Ha'aretz Lachem L'achlah...V'livhemtachah V'lechayah Asher B'artzechah Tihyeh Kol Tevuasah Le'echol - And the Resting of the Land should be for you to eat... and for your domesticated animals and the wild animals in your fields, all the produce should be for consumption." [22]

Chazal derive several essential Shemittah halachos pertaining to preserving the sanctity of Kedushas Sheviis produce from these verses, several of them being:

L'achlah- for you to eat, and not for Sechora, merchandise or commercial use; this restriction includes paying a debt. Basically, one may not purchase Kedushas Sheviis fruits in the normal manner.[23]

B'artzechah- in your land, and not in Chutz La'aretz. Meaning that Kedushas Sheviis produce may not be taken out of Eretz Yisrael.[24]

Hence, as Shemittah produce was not permitted to leave the Land, nor to be sold in the normal manner, perhaps its consumption in Chutz La'aretz is prohibited.

Although practically it seems that mei'ikar hadin regarding the above Shemittah violations, one may still eat such produce even after transgression, nevertheless, there are authorities who forbid it.[25]

No Exchanges

Another interesting feature of Shemittah produce is that the Kedushah transfers to whatever item it is exchanged for, and even any further exchanges, no matter how many times it is transferred. For

example, if someone purchases Shemittah produce (even if it was sold in a permitted manner),[26] although the fruit still maintains its 'holy' status, the money that was used to purchase it now contains Kedushas Sheviis as well. If one now uses that money to buy fish, the money is no longer considered 'holy' but the fish now is. If the fish is exchanged for oil, the fish has lost its Kedushas Sheviis status, but the oil has gained it. This cycle continues ad infinitum, and Biur must be done on the last item on the chain, along with the original fruit.

"Biur" refers to taking Kedushas Sheviis produce out of the house to a public place and giving up all rights to the fruit, announcing it as 'hefker' (ownerless) in front of three people.[27] Every type of Shemittah fruit has its own specific Zman Biur, time of year when this must be performed, as it depends on when each species of fruit is no longer commonly available in the fields, in the eighth year.[28] Although Zman Biur would not be a factor regarding peppers Chanuka time this year, nonetheless, this certainly gives us reason to be vigilant regarding unwittingly purchasing potential Shemittah produce.

Peppers, Practically...

So, after all of this food for thought, what should our Lakewood resident do with her peppers? After all is said and done, there undoubtedly is what to rely upon to allow their consumption, as whatever potential transgressions occurred, they technically were not performed by her personally, but rather the Israeli farmers and exporters, American importers, and others involved in the supply chain who ensured that these Israeli peppers were picked, pocketed, packaged, posted, dispatched, peddled, and promoted in America, and especially if she would choose to rely upon the halachically controversial 'Hetter Mechira' (which is not such a simple proposition in of itself – see extensive footnotes),[29] [30] to permit these peppers.

On the other hand, with all of the halachic issues inherent in this sheilah, and with Poskei Hadoros uneasy at best with allowing their consumption each step of the way, it would seem that the preferred option here would be to let the halachically purloined (from the Land, and purchased in Lakewood) peppers sit out until they become inedible, and then wrap them up and dispose of them in a manner that befits Kedushas Sheviis produce.

This especially would hold true for any such peppers purchased post-Pesach time, as by this time of year, according to the aforementioned agriculture chart, these peppers, with almost full certainty, would be classified as the more stringent Sefichin, as they would have actually been grown and harvested during Shemittah. Indeed, there recently have been warnings posted to alert the public to this issue.[31] As Sefichin still maintains Kedushas Sheviis status, even though they are forbidden for consumption, the same respectful treatment would apply. Hence, in dealing with these Israeli Shemittah peppers in Chutz La'aretz, at this point it certainly seems that Chazal's famous dictum of 'Shev V'Al Taaseh'[32] (lit. 'sit and don't act'; meaning, remain passive by "sitting this one out") is the best option, leaving them out until they are no longer edible followed by disposal in a respectable manner.

According to the well-known Gemara in Sota (14a), being able to keep these special Eretz Yisrael-dik Mitzvos (Mitzvos Hateluyos Ba'aretz) is the very reason why Moshe Rabbeinu wanted to come to Eretz Yisrael. So although many may look at this pepper perplexity askance, conversely, perhaps this vigilance can be viewed as a way for those in Chutz La'aretz to personally glean at least a small taste (albeit perhaps not in the physical sense) of Mitzvas Shemittas Ha'aretz, as well as its Peiros L'Olam Haba'ah.

Recent letter on topic put out by Rav Chaim Kanievsky zt"l and his son Rav Yitzchok Shaul Kanievsky.

This article is dedicated L'iluy Nishmas Maran Sar HaTorah Harav Shmaryahu Yosef Chaim ben Harav Yaakov Yisrael zt"l (Kanievsky), this author's beloved grandmother, Chana Rus (Spitz) bas Rav Yissachar Dov a"h and uncle Yeruchem ben Rav Yisroel Mendel (Kaplan) zt"l, and l'zechus Shira Yaffa bas Rochel Miriam v'chol yotzei chalatzeha for a yeshua sheleimah teikif u'miyad!

Rabbi Spitz's serves as the Shoel U'Meishiv and Rosh Chabura of the Ohr Lagolah Halacha Kollel at Yeshivas Ohr Somoyach in Yerushalayim. His recent English halacha sefer, "Insights Into Halacha - Food: A Halachic Analysis," (Mosaica/Feldheim) contains more than 500 pages and features over 30 comprehensive chapters, discussing a myriad of halachic issues relating to food. It is now available online and in bookstores everywhere.

[1]Parashas Mishpatim (Ch. 23: 11); see Ramban (ad loc.), as well as Rambam (Hilchos Shemittah V'Yovel Ch. 4: 24), Sefer HaMitzvos (Mitzvos Asei 134) and Sefer Hachinuch (Mishpatim, 84). See also Sefer Dinei Sheviis Hashalem (Ch. 14) for extensive treatment describing how this hefker works and whether the owner is required to actively make his fields hefker.

[2]See Mishnah Bikkurim (Ch. 2, Mishnah 6), Gemara Rosh Hashanah (13b; and Rashi and Tosafos ad loc 12b), Rambam (Hilchos Shemittah V'Yovel Ch. 4: 9), Shulchan Aruch (Yoreh Deah 331, 125 and 126), Chazon Ish (Sheviis 7: 12), and Derech Emunah (vol. 4, Hilchos Shemittah V'Yovel Ch. 4: 86). Another understanding of this term is the first blossoming of the fruit after its flower has fallen off.

[3]Gemara Rosh Hashanah (13b-14b). See Tosafos (ad loc s.v. achar and on Sukka 39b s.v. ul'Sheviis), Rambam (Hilchos Shemittah V'Yovel Ch. 4, 12), Rash (Sheviis Ch. 5: 3; Ch. 6: 4; Ch. 9: 1), and Chazon Ish (Sheviis 14: 9 s.v. u'vetshuvos). Another understanding of this term is when it stops growing and fit to be picked, even if not yet actually picked.

[4]Gemara Rosh Hashanah (12b-13b), Rashi and Tosafos (12b s.v. v'hazeisim), Tosefta (Sheviis Ch. 2: 10), Yerushalmi (Sheviis Ch. 2, Halacha 5), Rambam (Hilchos Shemittah V'Yovel Ch. 4: 9), Chazon Ish (Sheviis 7: 15 s.v. tevuah).

[5]See Mishnayos Sheviis (Ch. 2, Mishnah 7), Gemara Rosh Hashanah (13b), Rambam (Hilchos Shemittah V'Yovel Ch. 4: 11), Ritva (Rosh Hashanah 13a), Tosafos Yeshanim (Rosh Hashanah 13b), Bartenura (Sheviis Ch. 2, Mishnah 7), Chazon Ish (Sheviis 7: 19 s.v. orez), and Derech Emunah (vol. 4, Hilchos Shemittah V'Yovel Ch. 4: 79). There is some debate among the Rishonim cited about whether the Mishnah was referring to the rice et al. being fully ripened (gemar pri) or taken root (hashrashah) to contain Kedushas Sheviis. The halacha follows the former opinion, which is the Rambam's shitta.

[6]As we are discussing produce grown in the sixth year, the relevant tithes for these peppers would be Terumah Gedolah, Maaser Rishon, Terumas Maaser, and Maaser Oni. After saying the proper nusach of the declaration (or the simple "as per the nusach found in the Siddur"), one should wrap up the separated amount in a dignified manner and place gently in the garbage for disposal. The rest may be eaten. The Star-K, cRc Chicago, and DinOnline.org all have easily accessible how-to guides for separating Terumos and Maasros from Israeli produce on their websites.

[7]As per www.almanac.com/plant/bell-peppers.

[8]Parshas Behar (Vayikra Ch. 25: 5).

[9]See Mishnayos Sheviis (Ch. 9, Mishnah 1), Gemara Pesachim (52b), Gemara Menachos (5b), Yerushalmi (Bava Basra Ch. 5, Halacha 1), Sifra / Toras Kohanim (Parshas Behar 1: 3), Tosafos (Taanis 19b s.v. Rabban), Rambam (Hilchos Shemittah V'Yovel Ch. 4: 2 and 3), Sefer Hachinuch (Parshas Behar, Mitzvah 328), Shaarei Tzedek (16: 3), Pe'as Hashulchan (Ch. 25: 1- 3), Torah Temimah (Parshas Behar Ch. 25: 110), Sefer HaShemittah (Ch. 6: 5, footnote 2), and Chazon Ish (Sheviis, 9: 17). Rav Moshe Sternbuch (Shemittah Kehilchasa Ch. 2: 1, footnote 1) explains that although we hold that the prohibition of Sefichin is strictly Derabbanan, that is only regarding to actual after-growths that grew by themselves. However, when referring to produce intentionally grown during Shemittah contrary to the halacha, many Rishonim are of the opinion that the proscription is indeed M'Deoraysa.

[10]Rambam (ibid. 3 and 10), Sefer HaChinuch (ibid.). See also the Chochmas Adam's Shaarei Tzedek (16: 3), Pe'as Hashulchan (Ch. 25: 1- 3), Torah Temimah (Parshas Behar Ch. 25: 110), Sefer HaShemittah (Ch. 6: 5, footnote 2), Chazon Ish (Sheviis, 9: 17), and Shemittah Kehilchasa (Ch. 2: 1 and 2).

[11]Rambam (ibid. 29; see also Kesef Mishnah ad loc. for a detailed defense against the Kaftor VaFerach's challenge), Shu"t HaRambam (5776 Machon Yerushalayim edition, vol. 1: 312), Shaarei Tzedek (16: 14), Chazon Ish (Sheviis, 20: 7), and Shemittah Kehilchasa (Ch. 2: 1). However, following the shittah of the Mabit and Chazon Ish (a.k.a. Minhag Bnei Brak), these goyish vegetables still contain Kedushas Sheviis and must be treated accordingly. There are other Sefichin exceptions as well, including being grown on land where that produce is not normally grown, if it was grown indoors, and in certain areas that are not fully considered part of Eretz Yisrael for this purpose.

[12]Rambam (ibid. 6). A similar assessment is given by the Yerushalmi (Sheviis Ch. 2, Halacha 5). See also Shaarei Tzedek (16: 5), Pe'as Hashulchan (Sheviis, Ch. 25: 5), and Aruch Hashulchan HaAsid (Hilchos Shemittah V'Yovel 22: 12). The Chazon Ish (Sheviis, 9: 13 s.v. v'ha) writes that we see from here that "im nilkatu baSheviis, asurin l'olam, if produce was harvested during Shemittah, it remains prohibited forever."

[13]Rambam (ibid. 11), Ra"sh M'Sirlio (Yerushalmi Ch. 9, Halacha 1 s.v. aval ha'emes), and Mabit (Shu"t vol. 3: 45).

[14]Tosafos (Kedushin 2b s.v. esrog), Ra"sh (Sheviis, Ch. 9, Mishnah 1), Ramban (Parshas Behar, Vayikra Ch. 25: 5 s.v. es sefiach), and Rosh (beg. Sheviis Ch. 9).

[15]Most Acharonim, including the Pe'as Hashulchan (22: 3), Rav Yechiel Michel Tukachinsky (Sefer HaShemittah Ch. 6: 2), Chazon Ish (Sheviis, 9: 13 s.v. yerek), Steipler Gaon (Orchos Rabbeinu, new edition vol. 3, pg. 289: 3), Minchas Yitzchok (Shu"t vol. 6: 125), Bris Olam (3: 3), and Mishpetei Aretz (Sheviis, 17: 8), follow the more lenient opinion of the Ra"sh. However, Rav Moshe Sternbuch (Shemittah Kehilchasa Ch 2; 2 and 3 and in footnote ad loc.) writes that although one may be lenient Mei'ikar Hadin, still 'ein lehakel ela b'shaas hadchak,' but otherwise should be machmir for Lekitah like the Rambam's view. Similarly, the Yalkut Yosef (Sheviis, Ch. 23: 13) writes that since Shemittah nowadays is derabbanan, therefore 'somchin al hameikil' but still, 'hamachmir tavo alav bracha.' Other poskim take a more stringent approach. For example, Rav Ben Tzion Abba Shaul (Ohr L'Tzion on Sheviis, Ch. 5: 1) concludes to follow the Rambam's opinion. This also seems to be the Badatz Eidah Chareidis' shittah (Devar HaShemittah 5775, pg. 53, 1: 4). There is also another opinion, that of Rav Shlomo Zalman Auerbach (Shu"t Minchas Shlomo, Kama vol. 1: 49 and 50) who maintains that a vegetable's Sefichin status should depend on whether the produce in question reached its 'onaas hamaseros' (basically a third-grown) in the sixth year or the seventh. He explains that several of the above-mentioned Rishonim actually mean to pasken this way. Following this would almost certainly put our peppers in the non-Sefichin category.

[16]Their English (as well as a Hebrew version) Shemittah chart can be found on their website – www.bhl.org.il. Don't be confused if you don't spot bell peppers on the list; although written in English, it seems that the common Israeli nickname for them - 'Gamba' was used instead.

[17]See Chazon Ish (Sheviis 14: 10), Derech Emunah (vol. 4, Hilchos Shemittah V'Yovel Ch. 5: 13), Shemittah Kehilchasah (Ch. 3: 3), Mishpatei Aretz (Ch. 23: 1), Dinei Sheviis Hashalem (5775, Ch. 16, Sheirios 1), and Yalkut Yosef on Sheviis (Ch. 15: 10, pg. 368). However, if stuck, one may wrap the leftovers nicely and place directly in a garbage can. According to Rav Yitzchak Berkovits (as heard from Rabbi Yehoshua Pasternak), the reason why the need for a 'Pach Sheviis' is only cited by later authorities is that a garbage can is not what it used to be. With the advent of garbage trucks that compress all garbage, merely placing unwanted Shemittah produce in a garbage might possibly be a question of hefsek, as one knows that it will soon be crushed, quite possibly before it will begin decaying. This is why letting the unwanted 'holy' fruit residue properly rot in a 'Pach Sheviis' prior to placing in a garbage can is the contemporary preferred option.

[18]Parshas Behar (Vayikra Ch. 25: 1-5). The Biblically prohibited work includes Zeriyah, Zemira, Ketzirah, and Betzira – see the Rambam's Sefer HaMitzvos (Mitzvos Lo Sa'asei 220-223).

[19]This is essentially a machlokes Rishonim in the end of Gemaros Sukkah (39b) and Yevamos (122a) with Rabbeinu Tam taking the stringent approach and arguing on his grandfather, Rashi, who was lenient. Many other Rishonim take sides as well. In fact, the Rambam (Hilchos Shemittah V'Yovel Ch. 1: 12; however, see his Shu"t Pe'er Hador 15, where he seemingly changes his mind) writes that any produce that was grown during Shemittah, whether intentional or not, must be uprooted! Other poskim who allowed it (as they held the issur is only on the seller, and not on the buyer) include the Mabit (Shu"t vol. 1: 21), the Kapos Tamarim (Sukkah 39a), the Noda B'Yehuda (Kama, Even Ha'ezer 77 s.v. umah shehavi mechutani), and the Rogatchover Gaon (Shu"t Tafnas Pane'ach HaChadashos 94 s.v. harbeh). On a more contemporary note and quite interestingly, although the Chazon Ish (Sheviis, Ch. 26 Seder HaSheviis 1 s.v. avar) explicitly rules that such produce is forbidden for consumption, nevertheless it is widely quoted that he really held that it was muttar me'ikar hadin. See Kovetz Igros Chazon Ish (vol. 2: 162), Kreina D'Igresa (vol. 1: 147), Orchos Rabbeinu (vol. 2, Sheviis 81 and 82; however, the Steipler Gaon was stringent), Shu"t Cheishev Ha'Eifod vol. 1: 22), Shu"t Mishnas Yosef (vol. 3: pg. 149), Dinei Sheviis Hashalem (Ch. 22: 1), Mishmeres HaSheviis (Ch. 11: 7), and Shevus Yitzchak (B'Dinei Sheviis U'Prozbol, end Ch. 9). However, Rav Moshe Feinstein (Shu"t Igros Moshe, Orach Chaim vol. 1: 186) and Rav Shlomo Zalman Auerbach (Shu"t Minchas Shlomo, Kama 44: 1 s.v. ela) both permitted the food to be eaten. See also Rav Elazar Kahanov's Toras HaSheviis (Ch. 1 - 3) who avers similarly at length. On the other hand, the Gedolei Yerushalayim of previous generations forbade it outright. This is indeed the position of Rav Yosef Shalom Elyashiv (cited in Shevus Yitzchak, B'Dinei Sheviis U'Prozbol Ch. 9, pg. 88 – 89), citing precedent of the Pe'as Hashulchan and the Vilna Gaon, as well as the Badatz of the Eidah Chareidis (in their Devar HaShemittah 5775, 5: 1 and 2, pg. 56), citing precedents of the Ridbaz and Rav Chaim Berlin, that any produce that is Shamor V'Ne'evad is strictly forbidden to be eaten. For more on this topic, see Mishpatei Aretz (Sheviis, 19: 13 and 14) and Minchas Asher (Sheviis, Tinyana 15: 2).

[20]Mishnayos Sheviis (Ch. 6, Mishnah 5; see also the Rash's and Vilna Gaon's Shnos Eliyahu commentary ad loc.), Sifra / Toras Kohanim (Parashas Behar 1: 9; see also the commentaries of the Raavad, Rash MiShantz, and Gr"a ad loc.), Tosefta (Sheviis Ch. 5: 1), Rambam (Hilchos Shemittah V'Yovel Ch. 5: 13), Pe'as Hashulchan (24: 18), Shaarei Tzedek (17: 24), Aruch Hashulchan Ha'Asid (Hilchos Shemittah V'Yovel 24: 25), Chazon Ish (Sheviis 13: 4 s.v. Pesachim), Shemittah Kehilchasah (Ch. 3: 17), and Mishpetei Aretz (Sheviis, 20: 2).

[21]Therefore one may only obtain Kedushas Sheviis produce in a non-standard way. Potential solutions include purchasing "B'havla'ah", "swallowing," or incorporating Kedushas Sheviis items as part of a package deal with non-Shemittah produce, and Otzar Beis Din. The institution of Otzar Beis Din and all related issues were discussed at length in a previous article titled 'Using Arbah Minim of Sheviis'. Basically, it is based on the Tosefta (Sheviis Ch. 8; 1-3) that explains that during Shemittah, Beis Din has the right to gather (hefker) Kedushas Sheviis produce to store and distribute it as they see fit in small quantities. Although one may not actually pay for Kedushas Sheviis produce, as it is halachically hefker, and there is an 'Issur Sechora' on business transactions with Shemittah produce, nonetheless, the Otzar Beis Din workers may get paid for their time and effort as well as distribution costs. However, this means that the price one pays for Otzar Beis Din Kedushas Sheviis produce must be significantly and substantially less than one would generally pay for such produce in an ordinary year. Additionally, such produce may not be bought in the regular manner, but rather acquired (as one is not actually purchasing, but rather receiving a distribution, with payment exclusively reserved for necessary operating costs) on credit or in advance, with no regard to the actual weight or amount of each individual item. Of course, since Otzar Beis Din produce contains Kedushas Sheviis it must be treated as such, with all of the nuances that entails. However, many poskim are wary of accepting 'Otzar Beis Din' as a practical means of allowing distribution of Kedushas Sheviis produce, as the system regrettably can lend itself to abuse by unscrupulous individuals, especially if it is not run properly. These issues, as well as those regarding havla'ah, were discussed at length in the aforementioned article.

[22]Parashas Behar (Vayikra Ch. 25:6-7).

[23]See Avodah Zarah (62a) and Bechoros (12b); see also Mishnayos Sheviis (Ch. 8, Mishnah 3).

[24]Mishnayos Sheviis (Ch. 6, Mishnah 5; see commentaries ad loc. - some maintain that this is Derabbanan).

[25]The Rambam (Hilchos Shemittah V'Yovel Ch. 5: 13 and Ch. 6: 1) implies that the actual produce is still permitted to be eaten. In fact, Tosafos (Kedushin 52a s.v. hamekadesh) explicitly rules this way regarding selling Shemittah produce and this is also the conclusion of the Mabit (Shu"t vol. 1: 21), the

Noda B'Yehuda (Shu"t Kama, Even Ha'ezer 77 s.v. umah shehavi mechutani), Kapos Tamarim (Sukka 39a, on Tosafos s.v. v'leisiv), Ridbaz (Beis Ridbaz glosses to Pe'as Hashulchan 5: 18; regarding taking abroad), the Chazon Ish (Sheviis 10: 6 s.v. v'im shulchan - regarding Chutz La'aretz; and Kuntress Seder HaSheviis 7 - regarding merchandise; this does not mean that the Chazon Ish held it was permitted to be sold, indeed it seems he held that the buyer would also have a part in the Issur of Sechora or at least Lifnei Iver - see Derech Emunah vol. 4, Hilchos Shemittah V'Yovel Ch. 6, Tzion Hahalacha 12 and ChutShani on Sheviis, Ch. 6: 1), Rav Moshe Feinstein (Shu"t Igros Moshe, Orach Chaim vol. 1: 186 and Orach Chaim vol. 5: 42), and Rav Shlomo Zalman Auerbach (Shu"t Minchas Shlomo, Kama 44: 1 s.v. ela). This is also how it is cited lemaaseh in Dinei Sheviis Hashalem (Ch. 17: 2 and Ch. 27: 1). However, Rav Moshe Sternbuch in his Shemittah Kehilchasa (Ch. 3: 17) cites several machmirim who forbid their consumption, including the Raavad, the Ra"sh and the Vilna Gaon, and cites that Rav Moshe Mordechai Epstein ruled that one should attempt to return them to Eretz Yisrael. He concludes that it is preferable not to consume them and rather leave them until they rot by themselves. Similarly, Rav Chaim Kanievsky (Derech Emunah vol. 4, Hilchos Shemittah V'Yovel Ch. 7, Tzion Hahalacha 125) concludes that it's preferable to rather try to send it back to Eretz Yisrael. Rav Yosef Shalom Elyashiv (Kovetz Teshuvos vol. 1: 232, 2; also cited briefly in Derech Emunah Ch. 6 ibid.) cites this issue as machlokes between the Noda B'Yehuda (ibid.) against the Sefer Hamakneh (Kiddushin 52a) and Rav Yitzchak Halevi (cited by the Makneh; see also his Metaamei Yitzchak, 17 and Ketzos Hachoshen 182: 2) whether or not the purchaser is also considered transgressing the Issur of Sechora. On the other hand, Rav Moshe Feinstein (Shu"t Igros Moshe ibid.) holds that lemaaseh there is no actual issur achilah of Shemittah produce once it reaches Chutz La'aretz (irrelevant how it got there), implying that one is not mandated to send it back to Eretz Yisroel. See also Rav Ezriel Auerbach's recent extensive maamar on topic in Machon Madaei Technologia B'Halacha's Aspaklaria (39; Nissan 5782) detailing the halachic issues with sechora of Peiros Sheviis.

[26] Mishnayos Sheviis (Ch. 8, Mishnah 7), Rambam (Hilchos Shemittah V'Yovel Ch. 6: 1, 6, and 7).

[27] See Ramban (Parshas Behar Ch. 25: 7), Rosh (Sheviis Ch. 9, Mishnah 8: 5), Rash (ad loc.), Minchas Chinuch (Parshas Behar, Mitzvah 329: 7), Shaarei Tzedek (19: 4), Pe'as Hashulchan (27: 3), Pnei Yehoshua (Pesachim 52b), Aruch Hashulchan HaAsid (Hilchos Shemittah V'Yovel 27: 8), Beis Ridbaz (Sheviis, Ch. 12: 7), Chazon Ish (Shemittah 11: 6 and 7), and Shemittah Kehilchasa (Ch. 3: 20). When the Zman Biur for a specific fruit arrives, the Mishnah (Sheviis, Ch. 9: Mishnah 8) teaches us that one may still keep enough of that particular fruit for three meals worth for every member of the household. However, there is another opinion, that of the Rambam (Hilchos Shemittah V'Yovel Ch. 7: 1-3) that Biur refers to actually destroying said produce when it is no longer available in the field. As mentioned, this is not the normative halacha and Ashkenazim certainly follow the shittah of the Rosh, Rash, and Ramban, of removing it from the house and making it hefker, as cited by the aforementioned poskim.

[Interestingly, the Chochmas Adam (Shaarei Tzedek Ch. 19: 4 and 6) expresses preference to fulfilling Mitzvas Biur al yedei Sereifah, like the shittah of the Rambam.] However, whether Sefardim need be machmir for the Rambam's shittah is a matter of dispute between contemporary Sefardic authorities, with Rav Ben Tzion Abba Shaul (Ohr L'Tzion on Sheviis, Ch. 3, Question 4) ruling to be machmir and Rav

Ovadia Yosef (cited in sefer Ma'ohr Yisrael vol. 2, pg. 105 and Yalkut Yosef on Sheviis, Ch. 21: 1, pg. 468) maintaining that making the produce hefker is sufficient.

[28]The Gemara (Pesachim 53a) informs us of the Biur dates of four types of fruit: dried figs on Chanuka, dates on Purim, grapes on Pesach, and olives on Shavuot - all in the eighth year. Although the Mishnah (Sheviis Ch. 9: 2 & 3) divides Eretz Yisrael into nine different 'zones' for Biur, nowadays since the exact locations are unclear and all types of fruit are readily available throughout Eretz Yisrael, the consumer must keep abreast of the actual Biur dates publicized in newspapers by the experts in the Agriculture industry.

[29]Some maintain that one may rely upon the halachically controversial method of circumventing Shemittah restrictions colloquially known as 'Hetter Mechira' (selling Israeli land and its produce for the duration of the Shemittah year to non-Jews), as utilizing this would technically mean that the Israeli produce does not maintain Kedushas Sheviis status and may be sold, and hence gifted as usual. However, historical possible reliance notwithstanding [see, for example, Rav Yechezkel Michel Tukachinsky's Sefer HaShemittah at length (who devotes the entire second half of his sefer to the nuances of reliance on 'Hetter Mechira'); Rav Avrohom Yitzchak Hakohen Kook - one of the prime proponents of 'Hetter Mechira' b'shaas hadchak - wrote numerous responsa on topic, including Shu"t Mishpat Kohen (86 and 87) and the preface to his Shabbos Ha'aretz (Ch. 14 and 15); and more recently, R' Sam Finkel's fascinating, historical Rebels in the Holy Land], nowadays, the vast majority of contemporary poskim [see, for example Chazon Ish (Sheviis, Ch. 21: 8 and 9, Ch. 24, and Ch. 27: 7), Kraina D'Igresa (vol. 1: 154), Shu"t Divrei Yoel (vol. 1: 96, 6), Shemittah Kehilchasah (Ch. 'Hetter Mechira Bizmaneu'), Derech Emunah (vol. 4, Hilchos Shemittah V'Yovel Ch. 8, Tziyun Hahalacha 7 and Michtavim M'Maran Zt"l 26-27), the Badatz Eidah Hachareidis' Dvar HaShemittah (and Kol Koreh printed in the beginning), Orchos Rabbeinu (new edition; vol. 3, pg. 258), and Chut Shani on Hilchos Yom Tov v'Chol Hamoed (Michtavim pg. 373-374) with Kol Koreh signed by Rav Yosef Shalom Elyashiv, Rav Shmuel Halevi Wosner, Rav Aharon Yehuda Leib Steinman, Rav Chaim Kanievsky, Rav Michel Yehuda Lefkowitz, Rav Nissim Karelitz, and Rav Yehuda Shapiro] categorically reject relying on or even utilizing the 'Hetter Mechira' for any purpose whatsoever, even as a 'snif lehakel.' On the other hand, it is known that several poskim including Rav Shlomo Zalman Auerbach (see, for example, Maadanei Aretz, Sheviis, Ch. 1; Shu"t Minchas Shlomo, Kama vol. 1: 44, 1 s.v. ela and vol. 3, 158: 4; and Shulchan Shlomo on Sheviis, end sec. 'Hetter Mechirah'), Rav Ovadia Yosef (Shu"t Yabea Omer vol. 3, Yoreh Deah 19: 7; vol. 10, Kuntress HaShemittah, Yoreh Deah 37-44, at length; Shu"t Yechaveh Daas vol. 4: 53, pg. 267, and his letter printed at the beginning of Yalkut Yosef on Sheviis and Ch. 25 ad loc. at length), and Rav Mordechai Eliyahu (Shu"t Ma'amar Mordechai vol. 5, 'V'shavsah Ha'aretz', 21), were of the opinion that there is validity to the sale b'dieved and that in extenuating circumstances one may indeed rely upon it, and the produce is permitted for consumption. It is also worthwhile to see Rav Meir Mazuz, Rosh Yeshivas Kisei Rachamim of Bnei Brak's impassioned defense of 'Hetter Mechira' nowadays (printed in Techumin vol. 35; 5775). Of course, the Israeli Chief Rabbinate relies upon it as well for their basic hashgacha. However, all things equal, it would certainly seem that with all of its inherent issues, using non-problematic produce would undoubtedly be a preferred option. See also Shu"t Igros Moshe (Y.D. vol. 3: 131) who refers those in Chutz La'aretz to ask Gedolei Eretz Yisrael, including the talmidim of the great

Rabbanim who lived there, such as the Chazon Ish and Brisker Rav, how they should treat Peiros Sheviis. A recent letter from Rav Chaim Kanievsky zt"l on topic is appended at the end of the article.

[30]This author has seen several recent accounts of farmers describing 'Hetter Mechira' as "signing some papers, and then business as usual – treating the Shemittah year just as any other." Rav Shmuel Bloom, in his recent excellent *On the Shoulders of Giants*, devotes several remarkable chapters detailing the incredible Mesiras Nefesh of Israeli farmers in letting their land lay fallow during Shemittah. Over Chol HaMoed Pesach this year, this author got to see this demonstrated firsthand by visiting the farm of Doron and Ilan Toweg in Moshav Azaria. Their rock-solid emunah, dedication, and sincerity is simply extraordinary! As part of a fascinating discussion about keeping Shemittah on their farm, they described how 'Hetter Mechira' is performed nowadays. In their words, "An agent from the Rabbanut comes by a few weeks before Rosh Hashanah with some papers and says "just sign here." We never see the new "owner" and have no idea who he is, just that we technically "sold" our land to him for the year and then we work it just the same as any other year. People say that "Hetter Mechira" is the same as Mechiras Chometz, which is acceptable by all, but although I am certainly not any sort of posek, in my eyes there are two very important differences. If the non-Jew would show up on Pesach and ask for the Chometz he bought, I would certainly let him have it. And more importantly, when I sell my Chometz, I am not enjoying it all Pesach long!"

[31]See, for example: <https://www.theyeshivaworld.com/news/general/2045374/shemita-alert-red-peppers-sold-in-ny-supermarkets-are-product-of-shmita.html>

[32]Eiruvin (100a). This maxim is also stated numerous times throughout Shas in a slightly different version; see for example Brachos (20a), Yoma (74b), Yevamos (90a-b), Sanhedrin (58b), and Makkos (13b).

Disclaimer: This is not a comprehensive guide, rather a brief summary to raise awareness of the issues. In any real case one should ask a competent Halachic authority.

L'iluy Nishmas the Rosh HaYeshiva - Rav Chonoh Menachem Mendel ben R' Yechezkel Shraga, Rav Yaakov Yeshaya ben R' Boruch Yehuda, and l'zchus for Shira Yaffa bas Rochel Miriam and her children for a yeshua teikef u'miyad!