

Lighting the Menorah with Kedushas Sheviis Oil

By Rabbi Yehuda Spitz

Although we are currently in the Eighth year (Shnas Hashminis) of the Shemitta cycle, and hence actually post-Shemitta, all the same, now is the time when many Shemitta Sheilos first occur, as much Kedushas Sheviis produce only now starts flooding the marketplace and becoming commercially available. The vigilant consumer must remain on high alert to know how to properly deal with these 'holy fruit'.^[1] This includes "Holy Olive Oil" for Chanukah that is currently easily obtainable.

As detailed at length in previous articles,^[2] Chazal derived several essential Shemitta halachos from several pesukim in Parshas Behar that pertain to preserving the sanctity of Kedushas Sheviis produce.

Regarding to the Shemitta year the Torah states "V'haysah Shabbos Ha'aretz Lachem L'achlah...V'livhementachah 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."^[3]

Personal Uses

One important halacha that is inferred from these pesukim is:

Lachem- for you, lechol tzarcheichem, for all of your needs. (Sukkah 40a and Bava Kamma 102a)

According to the Mishnah, and duly codified as halacha,[4] Kedushas Sheviis produce is not only permitted to be eaten, it is even allowed to be utilized in whichever manner the owner deems it necessary: including drinking, anointing, dyeing, and even lighting.

However, there is a very important caveat, namely that the owner's use of it during Shemitta must be that product's main use year round. Otherwise, it would be considered 'ruining' the 'holy' fruit and duly prohibited.[5]

But what happens when the owner needs it for a purpose that is one that he may not halachically benefit from? For example, there is a well known Talmudic dictum that "Mitzvos lav lehenos nitnu, [utilizing something by] fulfilling a Mitzvah is not considered receiving benefit.[6] Although regarded as a 'need,' a Mitzvah is not deemed an actual personal benefit. If so, may one use Shemitta produce to fulfill such a Mitzvah or obligation?

Previous articles discussed several Mitzvos involving actually eating or drinking the Shemitta produce, such as using Kedushas Sheviis wine for Kiddush, Havdalah, and the Arba Kosos at the Pesach Seder, which since involving direct bodily benefit (hana'ah), as long as one sticks to the guidelines of not 'ruining' the 'holy wine,' it would be permissible to use for these Mitzvos.[7] But what about Mitzvos containing indirect benefit? Are they included in the 'personal use leniency'?

Kedushah Kindling ?

The issue in this category most commonly addressed issue by contemporary authorities involves Shemitta oil. We know that it may be used for lighting up a dark room, as that is an actual need and personal use. And according to most Poskim one may even light Shabbos and Yom Tov candles with Shemitta oil,[8] as

the purpose of this Mitzvah is Shalom Bayis[9] and is therefore considered a true personal need.

But can Shemitta oil be used for lighting Chanukah candles?

This question is even more complicated than it seems at first glance, as according to most Poskim it is entirely prohibited to derive any benefit from Chanukah oil at all.[10] This is one of the reasons why common practice is to have a 'shamash' candle lit as well, so any potential hana'ah one receives can be assumed to be coming from it, as opposed to the Chanukah lights.

To summarize: If one cannot obtain any actual benefit from the Chanukah candles, how then may one possibly use Kedushas Sheviis oil for this purpose? Additionally, is the prohibition against "ruining" Shemitta produce transgressed by the oil burning as fuel for light, albeit that being its natural use?[11] Moreover, technically, the instant one lights, he has already fulfilled his Chanukah obligation. Wouldn't that mean that the remainder of Shemitta oil burned might be considered 'wasting'?

Chanukah Shemitta Lights?

This halachic dilemma is the reason why many contemporary authorities, including the Ridbaz, the Imrei Yosher, Rav Menachem Ziemba HY"D, Rav Yechiel Michel Tukachinsky, the Chazon Ish, Rav Yosef Shalom Elyashiv, Rav Chaim Kanievsky, and Rav Yisrael Yaakov Fischer, rule that one may not use Kedushas Sheviis oil for Chanukah lights.[12] Rav Moshe Sternbuch even writes that if one did so, he would not have fulfilled the Mitzvah of lighting Chanukah candles, even b'dieved.[13]

On the other hand, several authorities, including the Maharash Engel, Rav Ezra Alteshuler, Rav Shlomo Zalman Auerbach, and Rav Ben Tzion Abba Shaul, argue

that one may indeed use Shemitta oil for Chanukah candles.[14] They explain that kindling for a Devar Mitzvah is certainly considered a proper use.[15] What greater hana'ah is there than being able to fulfill a Mitzvah? Additionally, they counter that even if one may not technically benefit from the light due to a different reason, this should not preclude it from being considered a normal use vis-à-vis its Shemitta status. Moreover, one may indirectly benefit from Chanukah lights.[16] Why, they argue, should this matter be considered any different?

In the words of Rav Shlomo Zalman Auerbach zt"l, although one may not use Shemitta produce for medicinal purposes,[17] still, if one wants to use Shemitta oil to light a candle to be able to see in order to put on a bandage, to learn Torah, or even to smash all of his dishes, does that mean that that lighting was in fact prohibited, as these are not proper enough uses? He concludes definitely not. He maintains that it is sufficient that one has a need to enable the use of Kedushas Sheviis produce. What the actual need is should be deemed irrelevant.[18]

Rav Chaim's Chiluk

However, Rav Chaim Kanievsky disagrees with Rav Shlomo Zalman's logic, countering that although one may certainly learn Torah by Shemitta oil light, even though we hold "Mitzvos lav lehenos nitnu," that is because 'the use' involved is using the light to see. What one wishes to see or read are indeed irrelevant. On the other hand, regarding Neiros Chanukah, receiving benefit from their light is prohibited. Aside from the performance of the actual Mitzvah itself in a manner that is fitting for Persumei Nissa (publicizing the Chanukah miracle), the Mitzvah is for seeing the candles lit, but not utilizing the actual light of the candles.[19] As such, that is not considered receiving tangible benefit from the lighting, as opposed to the other cases Rav Shlomo Zalman cited, and in Rav Chaim's estimation, any other use would still be deemed prohibited.

Practically speaking, whichever luminary one decides to follow regarding his own personal Chanukah illumination, we see that there are great authorities on both sides of this debate. The bottom line seems to be that although if one has no other oil to light with or in extenuating circumstances, one may indeed rely on using Kedushas Sheviis oil for Chanukah lights. However, due to the strength of arguments of the machmirim, it would certainly be preferable to purchase non-Shemitta oil for the Neiros Chanukah.[20]

Chutz La'aretz Complications

It is important to note that all of the above is referring to those of us zocheh to be in Eretz Yisrael that such a dilemma whether or not to use Shemitta oil for Chanukah light exists. However, for those of us in Chutz La'aretz, such a question presents a plethora of problems; a downright cornucopia of complications, even regarding Otzar Beis Din Olive Oil. You see, Otzar Beis Din produce also maintains Kedushas Sheviis status.[21] As such, even if such oil was permitted to be obtained, it still may not be taken to Chutz La'aretz or sold in a normal manner. Such produce being sold in Chutz La'aretz violates several key tenets of Hilchos Sheviis.

The Torah teaches us that Shemitta sanctity applies L'achlah- for you to eat, and not for sechora, merchandise or commercial use;[22] and B'artzechah - in your land, and not in Chutz La'aretz, meaning that Kedushas Sheviis produce may not be taken out of Eretz Yisrael.[23]

Although it seems that me'ikar hadin regarding both of these Shemittah violations, one may still eat such produce even after transgression, nevertheless, there are authorities who forbid it.[24]

Moreover, Kedushas Sheviis olive oil in Chutz La'aretz may be even more problematic due to the prohibitions of "Shamor V'Ne'evad." We all know that during the Shemittah year the land must lie fallow and no work may be done.[25] Similarly, all fruit trees and their produce are halachically considered hefker, ownerless, and anyone may partake of the fruit. But what happens if the owner transgresses and ignores the Biblical commandment and instead works the land as usual or cultivated via forbidden labors (Ne'evad)? Or what happens if he does not allow public access to his halachically hefker fruit (Shamor)? Obviously, it is not permitted; yet, more importantly, several authorities maintain that such produce that is Shamor V'Ne'evad becomes forbidden to be eaten![26]

This would similarly make utilizing Shemitta oil for Chanukah lighting in Chutz La'aretz quite questionable, as aside for any prohibitions involved with their growth and or shipping, they might be forbidden, period.[27]

Keeping Abreast of the Biur Necessities

Another important issue relevant to using Shemitta olive oil is that it is subject to the laws of Biur. This 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' in front of three people.[28] Every type of 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.

The Gemara 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.[29] Although the Mishnah divides Eretz Yisrael into nine different 'zones' for Biur,[30] 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.

That means that one who uses his Shemitta olive oil for Chanukah lighting may not just save the leftover oil in the bottle for the years ahead, but must do a proper Biur prior to this Shavuos. Afterwards, it may be re-acquired.[31] If one neglects to properly perform Biur in its appropriate time, the oil will actually become prohibited. Just another matter of concern when dealing with Kedushas Sheviis produce and all the more of a reason why it is worthwhile for all of us to be proficient in Hilchos Sheviis.

It is apropos that for the most of us, the illuminating holiday of Chanukah falls out during the doldrums of winter. Whether or not we use Kedushas Sheviis oil in our Menorahs, when contemplating the lights of Chanukah, it behooves us all to internalize their message that Hashem's hashgachah in this world, showing us the triumph of light over darkness, is eternal and everlasting.

Note: This article is not intended to serve as an exhaustive guide, but rather to showcase certain aspects of the intricate and myriad halachos of produce imbued with Kedushas Sheviis.

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comprehensive chapters, discussing a myriad of halachic issues relating to food. It is now available online and in bookstores everywhere.

[1]Kedushas Sheviis status for olives, grapes, and the five grains, is determined by when they are one-third grown, no matter when actually picked, plucked, or procured. See Gemara Rosh Hashanah (12b - 13b), Rashi and Tosafos (ad loc. s.v. v'hazeisim), Tosefta (Sheviis Ch. 2: 10), Yerushalmi (Sheviis Ch. 2, Halacha 5), Rambam (Hilchos Shemittah V'Yovel Ch. 4: 9), and Chazon Ish (Sheviis 7: 15 s.v. tevuah). Hence, although technically post-Shemittah, now is the time when such "Holy Olive Oil" abounds.

[2]Shemitta Basics: 'Kedushas SheviisProduce' and 'Fruit Use and Fruit Juice'.

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

[4]See Mishnayos Sheviis (Ch. 8: Mishna 2), Tosefta (Sheviis, Ch. 6: 1-3), Rambam (Hilchos Shemittah V'Yovel Ch. 5: 1-5), Rash (on Mishnayos Sheviis ibid.), Aruch Hashulchan Ha'asid (Hilchos Shemittah V'Yovel 24: 3; however he classifies this as a separate issur and not that of 'ruining'), Chazon Ish (Sheviis 10: 4), and Shu"t Minchas Yitzchak (vol. 8: 102).

[5]See Mishnayos Sheviis (Ch. 8: Mishnah 2), Yerushalmi Sheviis (Ch. 7: Halacha 1), Tosefta Sheviis (Ch. 6: 1-3), Rambam (Hilchos Shemittah V'Yovel Ch. 5: 1-5), Ra"sh (on Mishnayos Sheviis ibid.), Aruch Hashulchan HaAsid (Hilchos Shemittah V'Yovel 24: 3; however he classifies this as a separate issur and not that of 'ruining'), Sefer HaShemitta (Ch. 7: 4), Chazon Ish (Sheviis 10: 4), and Shu"t Minchas Yitzchak (vol. 8: 102). This topic was delineated at length in a previous article titled 'Kedushas SheviisProduce'.

[6]Eruvin (31a).

[7]See Sefer HaShemittah (Ch. 7: 3 and footnote 4), Shabbos Ha'aretz (Kuntress Acharon to Ch. 5: 3), Derech Emunah (vol. 4, Hilchos Shemittah V'Yovel Ch. 5, Tziyun Hahalacha 19), Halichos Shlomo (Moadim vol. 2, Pesach Ch. 9: 35), Chut Shani (Shemittah, pg. 218), Shu"t Mishnas Yosef (vol. 2: 40), Shu"t Rivevos Efraim (vol. 2: 137), Shu"t Tzitz Eliezer (vol. 6: 36), the Steipler Gaon's Haggada shel Pesach Kehillas Yaakov (pg. 559), Shemittah Kehilchasah (Ch. 3: 11), Ohr L'Tzion (Sheviis, Ch. 2: 6, pg. 42), Yalkut Yosef on Sheviis (Ch. 15: 55), Mishpetei Aretz (Ch. 21: 5), Mishmeres HaSheviis (Ch. 16: 30), and Dinei Sheviis Hashalem (Ch. 16, s.v. Shimushei Mitzva 4 and Ch. 32, Pesach 15 - 17). Aside for the issue of potential waste, there are those who maintain that one is not supposed to drink the wine spilled for the 'Esser Makkos' - see for example, Chok Yaakov (Orach Chaim 473: 37) and Kaf Hachaim (ad loc. 165), citing the Pesach Me'uvin (261) - perhaps this is applicable here as well. See also Shaar Hatziyun (ad loc. 81), Kaf Hachaim (ad loc. 163), and Moadei HaGra"ch (vol. 1, pg. 57-58). This topic was discussed at length in an article titled 'The Complicated Case of Shemitta Wine on Pesach.'

[8]Shu"t Mishnas Yosef (vol. 1: 26), Shu"t Even Yisrael (vol. 9: 114), Toras Ha'aretz (vol. 1, Ch. 8: 7), Derech Emunah (vol. 4, Hilchos Shemittah V'Yovel Ch. 5: 49), Chut Shani (Shemittah Ch. 5: 8), Mishpetei Aretz (Sheviis, Ch. 24: 8), Yalkut Yosef (Sheviis, Ch. 15: 62), Sefer Dinei Sheviis Hashalem (Ch. 16, Shimushei Mitzvah 7 and Ch. 32, Shabbos 1), and Mishmeres HaSheviis (Ch. 16: 44). However, Rav Moshe Sternbuch (Shemittah Kehilchasa Ch. 3: footnote 12) advises not to rely on using Shemittah oil for Neiros Shabbos. He maintains that with the advent of electricity we do not really depend on the Shabbos Licht as an actual source of light. Therefore, he maintains that it possibly may be no longer considered a true 'use' to allow using Kedushas Sheviis oil.

[9]Gemara Shabbos (23b and 25a), Rambam (Hilchos Shabbos Ch. 5: 1), Tur and Shulchan Aruch (Orach Chaim 263: 3).

[10]See Tur, Shulchan Aruch and Rema (Orach Chaim 673: 1) and relevant commentaries. This is essentially a machlokes Rishonim. The Rosh (Shabbos Ch. 1: 3 and 6) and Ran (Shabbos 9a s.v. halachos; in the Rif's pages) maintain that since the Chanukah neis occurred with a Menorah, we are not allowed to benefit at all from our Menorahs. However, the Baal HaItur (vol. 2 pg. 115a; cited by the Tur) and Shibolei Leket (185) maintain that nevertheless, a Tashmish shel Kedushah with the Chanukah lights would indeed be permitted. [See Biur Halacha as loc. s.v. v'yesh for a machlokes Acharonim as to whether the Baal HaItur meant to permit exclusively a tashmish ara'ei or even a tashmish keva.] Either way, we conclusively see that all non-Mitzvah uses of Chanukah lights are certainly forbidden.

[11]Especially as the Gemara in Bechoros (12b) teaches regarding a Shemitta animal (ostensibly one that was redeemed with Shemitta produce, thus transferring the Kedushas Sheviis to the animal as well; this was addressed in a previous article titled 'ShemittahShailos: The Case of the Contraband Carrots,' that it is exempt from being brought as a Korban. The Gemara derives this rule from the pasuk:"L'achla velo Lesreifah, to eat and not to be burned". This implies that one may not perform a Mitzvah that involves burning, with an item imbued with Kedushas Sheviis. This would seemingly prohibit using Shemitta oil for Chanukah lights as well.

[12]Ridbaz (Beis Ridbaz glosses to Pe'as HaShulchan, Sheviis Ch. 5: 9), Shu"t Imrei Yosher (vol. 1: 100; also cited lemaaseh in Shu"t Levushei Mordechai, Telita'ei Orach Chaim 53, and later by the Shaarim Metzuyananim Behalacha, 139, 3 s.v. uv'inyan), Chiddushei HaGaonRav Menachem Ziemba [HaGRM"Z] (16; he holds that since we hold 'Hadlakah Oseh Mitzvah' - the second one lights he has technically

already fulfilled his Mitzvah of Chanukah lighting and therefore all the remainder of Shemitta oil that is burned would be considered hefsek), Sefer HaShemitta (Ch. 7, 4: 2), the Chazon Ish (cited in Orchos Rabbeinu vol. 2, pg. 334, 52; citing proof from a Tosefta in Menachos, end Ch. 8, regarding that one may not bring Menachos or Nesachim from Shemittah produce; the same should apply to Chanukah candles as well), Rav Yosef Shalom Elyashiv (in his ma'amar in Kovetz Halichos Sadeh vol. 122, pg. 11 s.v. kal [and not as quoted in Kovetz Halichos Sadeh vol. 50, pg. 80 footnote 34]; he does however give dispensation to allow it according to the Baal HaItur's opinion, but concludes that if one lights Chanukah Licht outside, it would be prohibited since that is not way people are generally meshtamesh from light), Rav Chaim Kanievsky (Derech Emunah vol. 4, Hilchos Shemittah V'Yovel Ch. 5: 49), and Rav Yisrael Yaakov Fischer (Shu"t Even Yisrael vol. 9: 114 and Halichos Even Yisrael, Moadim vol. 2, pg. 359: 7 and footnote 9; maintaining that since there is a non-Shemitta oil shammash candle used, one is not receiving any hana'ah from his Chanukah lights, and to use Shemitta oil for them would thereby be considered 'mafsid,' wasting, and thus prohibited). Other poskim who ruled this way include the Shaarei Deah (Shu"t vol. 2: 9; cited lemaaseh by the Piskei Teshuva, vol. 1: 94), Pischei She'arim (on Gemara Shabbos 21a; although he concludes that according to the Baal Hamaor (Rosh Hashana 7a in the Rif's pages s.v. amar Rava) who holds that 'Mitzvos Derabbanan lehenos nitnu', lechoirah he would allow lighting Chanukah candles with Kedushas Sheviis oil; [this is similar the opinion of the Mareh Panim on Yerushalmi Terumos (Ch. 11, end Halacha 5); on the other hand, see Shaar Hamelech (Hilchos Lulav Ch. 8) who understands this Machlokes Rishonim differently], the Mishnas Yosef (Shu"t vol. 1: 26; and in Kovetz Tenuvas Sadeh vol. 15; however, he later allowed some leniency, see footnote 15), Rav Moshe Sternbuch (Shemittah Kehilchasa Ch. 3: 12; see also next footnote), Toras Ha'aretz (vol. 1, Ch. 8: 40), Mishpetei Aretz (Sheviis, Ch. 24: 8), and Mishmeres HaSheviis (Ch. 16: 44). Several of these authorities maintain that lighting Yartzeit

candles or candles for Shul share the same status - that one may not use Kedushas Sheviis oil for these purposes. They explain that since these types of lights are not kindled for one's personal hana'ah, but rather l'iluy nishama and lichvod Beis Knesses, Shemitta oil would likewise not be permitted for such uses.

[13] Moadim U'Zmanim (vol. 2: 145 s.v. amnam).

[14] Shu"t Maharash Engel (vol. 2, Yoreh Deah 4), Rav Ezra Alteshuler (author of 'Takkanas Ezra'; cited in Kerem Tzion, Sheviis pg. 52, Gidulei Tzion 6; 5698, and Halichos Shlomo, Moadim vol. 1, Chanukah Ch. 15: 7, footnote 20), Rav Shlomo Zalman Auerbach (Shu"t Minchas Shlomo, Kamma vol. 1: 42 and Halichos Shlomo ibid.), and Rav Ben Tzion Abba Shaul (Ohr L'Tzion on Sheviis, Ch. 2: 7, pg. 42). Rav Abba Shaul cites precedence from a diyuk in the Rambam (Hilchos Terumos Ch. 11: 18), as well as the Mishneh L'Melech (Hilchos Terumos Ch. 2: 14), and Pnei Moshe (on the Yerushalmi, Terumos Ch. 11, Halacha 7) regarding Hilchos Terumah, that lighting Chanukah lights is considered a hana'ah. Hence, he asserts, the same should apply regarding Hilchos Shemitta. [He concludes "v'chein shmaati shehorah Echad M'Gaonei Zmaneinu," ostensibly referring to Rav Shlomo Zalman Auerbach.] Other poskim who ruled leniently were the Strasbourger Rav (Shu"t Kinyan Torah Behalacha vol. 3, 17: 2) and Rav Shlomo Amar (Shu"t Sheima Shlomo vol. 3, Inyanei Zeraim 23 and 24 at length, and in Kovetz Tenuvas Sadeh vol. 3). Rav Shmuel Halevi Vosner (Shu"t Shevet HaLevi, vol. 1, 184: 1) writes several reasons why it should theoretically be permitted as well. See also footnote 20.

[15] There is precedent to allow this as well, regarding lighting candles on Yom Tov, even though any melachah on Yom Tov is only permitted 'Lachem.' See Gemara Beitzah (19-20), Rambam (Hilchos Shevisas Yom Tov Ch. 1), Tur and Shulchan Aruch (Orach Chaim 495: 1). However, it is important to note that said fire cannot actually be lit, just transferred from a pre-existing flame [see Shulchan Aruch

(Orach Chaim 502: 1)]. For more on the topic of whether fulfilling a Mitzvah with Shemitta produce is considered 'Lachem', see Shu"t Har Tzvi (Orach Chaim vol. 2: 68).

[16]See Mishnah Berurah (673: 11) and Shaar Hatziyun (ad loc. 11), quoting the Shaarei Teshuvah (ad loc. 3), who cites the Pri Chodosh (ad loc.), Maharikash (Erech Lechem ad loc.), and Shu"t Pnei Aryeh (47), that one is allowed to sit in his house when Chanukah lights are lit, as just basic seeing (without iyun) is not considered an actual tangible prohibited benefit.

[17]See Mishnayos Sheviis (Ch. 8, Mishnah 1), Gemara Sukka (40a) and Bava Kamma (102a), Yerushalmi (Sheviis Ch. 8, Halacha 2), Rambam (Hilchos Shemittah V'Yovel Ch. 5: 10 and 11), Pe'as Hashulchan (24: 14 and 17), Minchas Chinuch (Parashas Behar, Mitzvah 329, 6), Shaarei Tzedek (17: 20), Aruch Hashulchan Ha'Asid (Hilchos Shemittah V'Yovel 24: 22), Sefer HaShemittah (Ch. 7, 4: 9), and Chazon Ish (13: 6 and 7). However, it must be noted that if the Kedushas Sheviis produce is only suitable for fodder it may be then used for medicinal purposes for humans, as this is not considered hefsed. See the Pnei Moshe's commentary on the Yerushalmi (Sheviis Ch. 7, Halacha 1), Pe'as Hashulchan (Ch. 24: 17), Chazon Ish (ibid. and 27: 3), and Sefer Dinei Sheviis Hashalem (Ch. 16: Kilkil V'hefsed 24). This is also implied by the Rambam (Hilchos Shemittah V'Yovel Ch. 5: 11). Similarly, as taught by the Yerushalmi (Sheviis Ch. 7, Halacha 1; and not as implied in Ch. 8, Halacha 1) and cited by many Acharonim including the Chazon Ish (Sheviis 14: 5), Har Tzvi (Shu"t, Zeraim vol. 2: 55), Minchas Yitzchak (Shu"t vol. 8: 101), and Minchas Asher (Sheviis, Tinyana 29: 2 and 3), any produce that is grown exclusively for medicinal purposes does not contain Kedushas Sheviis. [On the other hand and quite interestingly, there are several Acharonim including the Tiferes Yisroel on Mishnayos Sheviis (Ch. 7, Mishnah 2: 20) and Shu"t Minchas

Shlomo (Tinyana, 123: 2), who seem to infer from the Yerushalmi's question in Ch. 8, that even such produce can contain Kedushas Sheviis.]

[18]Shu"t Minchas Shlomo and Halichos Shlomo (ibid.).

[19]Derech Emunah (ibid, Biur Hahalacha s.v. shemadlik). Rav Chaim additionally maintains (see Moadei HaGra"Ch vol. 1, pg. 292, 634 and vol. 2 pg. 330-331, 679 and 680) that even if that is the only oil available, it is nonetheless preferable not to light at all! Similarly, he held if one accidentally lit the Menorah with Shemitta oil it is considered a 'Mitzvah Haba'ah B'Aveirah.' Ergo, he holds that one may use Shemitta oil to light the 'shammash' as one is supposed to benefit from its light. However, see Halichos Shlomo (Moadim vol. 1, Chanukah Ch. 15: 7, in the footnotes) for a possible defense of Rav Shlomo Zalman's position against Rav Chaim Kanievsky's challenge.

[20]See Shu"t Shevet Halevi (vol. 1, 184: 1), who although writing that m'sevarah it should be permitted, nevertheless l'maaseh concludes that since Gedolei Hora'ah of the previous generation (the Imrei Yosher, Shaarei Deah, and Ridbaz) prohibited it, one should follow their ruling. A similar assessment is given by the Mishnas Yosef in his later teshuvah on topic printed in Shu"t Sheima Shlomo (vol. 3, Inyanei Zeraim 24), as well as the Yalkut Yosef (Sheviis Ch. 15: 62), who after citing both sides of the machlokes, concludes that if one has no other oil with which to light, he may use Kedushas Sheviis oil.

[21]Many contemporary Gedolim, most notably the Chazon Ish, championed the cause of setting up Otzar Batei Dinim to enable distribution of Kedushas Sheviis produce, which still has to get from the field to the consumer, as well as ensuring proper Shemitta observance. See Chazon Ish (Sheviis 11: 7 and 12: 6 and 8) and Kovetz Igros Chazon Ish (vol. 2: 73). Orchos Rabbeinu (old print vol. 2; new print

vol. 3) dedicates an entire chapter (titled 'Otzar Beis Din') describing how the Chazon Ish attempted to set up properly run Otzar Batei Dinim across Eretz Yisrael every Shemitta. Mishpetei Aretz (Sheviis pg. 230-232) prints the Chazon Ish's actual instructions to storekeepers and suppliers on how to properly set up and distribute Otzar Beis Din produce. See also Shu"t Mishnah Halachos (vol. 9: 319) as well as the 'Michtavim' printed in the back of Chut Shani on Hilchos Yom Tov v'Chol Hamoed (pg. 371-372) from Rav Yosef Shalom Elyashiv and Rav Nissim Karelitz on the importance of establishing Otzar Batei Din. For more on the nuances of Otzar Beis Din and its relevant halachos and how they are properly applied, see the 'Kuntress Otzar Beis Din' in Chut Shani on Shemitta, Derech Emunah (vol. 4, Hilchos Shemitta V'Yovel Ch. 6: 19), Orchos Rabbeinu (old print vol. 2; new edition vol. 3 - Ch. 'Otzar Beis Din'), Shemitta Kehilchasah (Ch. 3: 16), Mishpetei Aretz (Sheviis Ch. 13), Dinei Sheviis Hashalem (Ch. 20), Yalkut Yosef (Sheviis Ch. 18, 'Otzar Beis Din'), Shu"t Minchas Shlomo (Tinyana 123: 11), Shu"t Mishnah Halachos (vol. 9: 319), Minchas Shlomo (Sheviis Ch. 9: 8, pg. 250), Rav Tzvi Cohen's 'Shemitta' (Ch. 23), and Kara Shemitta (Ch. 9: 6, 'Otzar Beis Din'; he also details the first Otzar Beis Din set up in modern times - in 1910, for the Rechovot vineyards of Rav Tzvi Hirsch Kahn, author of Imrei Tzvi, by the Badatz of Yerushalayim, consisting of such luminaries as Rav Yosef Chaim Sonnenfeld, Rav Chaim Berlin, and Rav Tzvi Pesach Frank). On the other hand, many Poskim were and are wary of the Otzar Beis Din system, as it unfortunately lends itself to abuse. See the Badatz's Dvar HaShemitta (5775, pg. 30-31 and 50), citing Rabbanei Yerushalayim of over 100 years ago, that they never accepted '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. They cite examples of 'Otzar Beis Din' produce somehow finding its way into supermarkets and being sold in the normal manner, quite counter-indicative of its halachic Kedushas Sheviis status. Unfortunately not an

uncommon occurrence, this author has seen Otzar Beis Din produce being sold in regular stores (ostensibly with reliable hechsherim) this past Shemitta year by weight and price. The Star-K's Kashrus Kurrents article titled 'Shemitta 5775' refers to a great deal of wine produced under the auspices of Otzar Beis Din that ended up in supermarkets... in the United States. See also Minchas Asher (Sheviis, Tinyana 48b) who cites an example of Esrog merchants abusing the Otzar Beis Din system by reserving top quality Esrogim for 'Admorim and Mechubadim'. Similarly, Orchos Rabbeinu (new print vol. 3, pg. 260-261: 3-4) relates that certain years the Steipler Gaon would not rely on an Otzar Beis Din for Esrogim, as he held that they (perhaps those specific ones) were improperly run, and charging too high of a price to only include actual expenses. Unfortunately, abusing the Hetter of Otzar Beis Din seems to be the norm nowadays (or at least 'a norm'), to this author's great consternation. Other contemporary poskim who were wary of 'Otzar Beis Din' include Rav Moshe Sternbuch (Shemitta Kehilchasah Ch. 3: 16, Moadim U'Zmanim vol. 8, Lekutei Ha'aros to vol. 6: 54, and Teshuvos V'Hanhagos on Sukkos pg. 345 and pg. 357 - 358), Rav Mordechai Eliyahu (Shu"t Maamar Mordechai vol. 5, V'shavsah Haaretz, 11; he additionally notes that the Rambam did not cite such a provisio) [Others however, 'answer up' that 'Otzar Beis Din' is an 'eitzah', not a chiyuv, and that is why the Rambam did not need to mention it], and the Karlsberg Rav, Rav Yechezkel Roth (Shu"t Emek Hateshuvah vol. 2: 1). See also Rav Yirmiyohu Kaganoff's excellent recent article titled 'Otzar Beis Din or Hetter Otzar Beis Din?'.

[22]Gemara Avodah Zarah (62a) and Bechoros (12b); see also Mishnayos Sheviis (Ch. 8, Mishnah 3 and 4), Tosefta (Sheviis Ch. 7: 6), Rambam (Hilchos Shemittah V'Yovel Ch. 6: 1 & 10), Bartenura's commentary on the Mishnah (ad loc.),Pe'as Hashulchan (24: 56), Shaarei Tzedek (17: 24), and Sefer HaShemittah (Ch. 8: 1).TheAruch Hashulchan (Ha'Asid, Hilchos Shemittah V'Yovel Ch. 25)dedicates an

entiresiman to the many nuances of the Issur Sechorah of Peiros Sheviis. Hence, one may exclusively obtain Kedushas Sheviis produce in a non-standard way.

[23]Mishnayos Sheviis (Ch. 6, Mishnah 5; see also the Rash's and Vilna Gaon's Shnos Eliyahu commentary ad loc.), Sifra / Toras Kohanim (Parshas Behar, Perek 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 HaAsid (Hilchos Shemittah V'Yovel 24: 25), Sefer HaShemitta (Ch. 8: 1), Chazon Ish (Sheviis 13: 4 s.v. Pesachim), Shemittah Kehilchasah (Ch. 3: 17), and Mishpetei Aretz (Sheviis, 20: 2).

[24]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 Mabot (Shu"t vol. 1: 21), the Noda B'Yehuda (Kama, Even Ha'ezer 77 s.v. umah shehavi mechutani), 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), 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 not to eat the produce but rather try to send it back to Eretz Yisrael. See footnote 26.

[25]Parshas Behar (Vayikra Ch. 25: 1- 5).

[26]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 Shemitta V'Yovel Ch. 1: 12; however, see his Shu"t Pe'er Hador 15, where he seemingly changes his mind) writes that any produce being grown during Shemitta, whether intentional or not, must be uprooted! Yet, lemaaseh, he implies that the actual produce is still permitted to be eaten (Hilchos Shemittah V'Yovel Ch. 5: 13 and Ch. 6: 1). In fact, Tosafos (Kedushin 52a s.v. hamekadesh) concludes similarly. 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 Temarim (Sukkah 39a), the Noda B'Yehuda (Kama, Even Ha'ezer 77 s.v. umah shehavi mechutani), Ridbaz (Beis Ridbaz glosses to Pe'as Hashulchan 5: 18; regarding taking abroad), 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), Derech Emunah (vol. 4, Hilchos Shemittah V'Yovel Ch. 6, Tzion Hahalacha 12), ChutShani(Sheviis, Ch. 6: 1), 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 outright permitted the food to be eaten. See also Rav Elazar Kahanow's Toras HaSheviis (Ch. 1-3) who avers similarly at length. This is also how it is cited lemaaseh in Dinei Sheviis Hashalem (Ch. 17: 2

and Ch. 27: 1). On the other hand, it is known that many Gedolei Yerushalayim of previous generations forbade such produce outright. Indeed, 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 such Shemitta produce in Chutz La'aretz, but 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. However, Rav Elyashiv's practical position (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 that of the Badatz of the Eidah Hachareidis (in their Dvar HaShemitta 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 Mishpetei Aretz (Sheviis, 19: 13 and 14), Minchas Asher (Sheviis, Tinyana 15: 2), Mv"R Rav Yaakov Blau zt"l's recent posthumously published Divrei Yaakov (vol. 1: 147), and Rav Eziel 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.

[27]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 Yechiel 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 Bizmaneinu'), 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 Vosner, 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 Ovadiah 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. 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. 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!" Taking all of the above into account, it would certainly seem that with all of the inherent issues with Kedushas Sheviis olive oil in Chutz La'aretz, using a non-problematic oil

to light Chanukah licht, would undoubtedly be a preferred option. For detailed treatments on these subjects, see previous articles titled 'The Perplexing Puzzle of the Possibly Purloined Peppers' and 'Shemitta Sheilos: Using Arbah Minim of Sheviis.'

[28]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 Kehilchasah (Ch. 3: 20). 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. However, 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 Ovadiah Yosef (Ma'ohr Yisrael vol. 2, pg. 105; also cited in Yalkut Yosef on Sheviis, Ch. 21: 1, pg. 468) maintaining that making the produce hefker is sufficient. Either way, 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. For more on the topic of Biur, see Rav Yechiel Michel Tukachinsky's Sefer HaShemitta (Ch. 9), and Mv"R Rav Yaakov Blau zt"l's recent posthumously published Divrei Yaakov (vol. 1: 145).

[29]Pesachim (53a).

[30]Sheviis (Ch. 9: 2 and 3).

[31]Once one properly performs Biur he may actually reacquire the fruits himself, as the halacha follows Rabbi Yosi's opinion - see Mishnayos Sheviis (ibid.), Tosefta (Sheviis Ch. 8: 4); Yerushalmi (Sheviis Ch. 9, Halacha 4), Sefer HaShemitta (Ch. 9: 8), Chazon Ish (Hilchos Sheviis 11: 6 and 26, Seder HaSheviis 1 s.v. pri), and Shu"t Minchas Shlomo (Tinyana 123: 10 and vol. 3: 132, 13).

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.