

## ONE VOTE FOR THE HETER MECHIRA

A Sermon delivered on Parshat Chayei Sara, November 3, 2007

by

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The current year, 5768 is a sabbatical year – a *shemita* year. In the land of Israel all forms of work in the fields are forbidden including, among others, plowing, planting, cultivating, reaping, and selling the produce. There is a prohibition on the farmer to do all of these things and to exercise ownership on his property which is supposed to be free for all during the sabbatical year. There is also a prohibition on the consumer to purchase produce which is grown on Jewish land in *Eretz Yisrael*. In addition, at the conclusion of the year, all debts are cancelled.

How then can farmers survive and how can consumers consume? How can farmers sell what they grow for local consumption and for export? How can they retain their customers, both locally and internationally?

This problem did not exist in the Land of Israel for centuries because the land was essentially taken away from the Jews and was occupied by others. With the rise of the Zionist movement and the subsequent settlement of *Eretz Yisrael* by pioneers, the problem presented itself, at the end of the 19<sup>th</sup> century, particularly for the grape growers of Rishon L'Tzion, whose wine was being used not alone in the Land of Israel but in the Jewish world abroad. How was that wine, made from grapes grown during the *shemita* year by Jews, to be allowed to be used by religious Jews?

This question was brought before Rabbi Isaac Elchanan Spektor of Kovno before the *shemita* year of 1889. The problem was acute, somewhat analogous to the problem that Hillel faced in the first century of the Common Era when it was clear that the

cancellation of debts at the conclusion of the sabbatical year would lead to creditors refusing to lend money to people for fear of losing their equity. Hillel and his Beit Din created the *Halachic* fiction of Prozbol, a practice whereby the loan was transferred by the creditor to the *Beit Din*, and the *Beit Din* then collected from the borrower. Rav Yitzchak Elchanan provided a different kind of legal fiction to solve the problem of the Jewish *chalutzim* in the Land of Israel who were living on the produce of the fields and vineyards of Palestine. He feared that if there were no *heter* found, the land might become desolate, the properties would turn into a wasteland and the pioneers would have to leave *Eretz Yisrael*. He developed what is called a *heter mechira*, a formal sale of all the Jewish owned fields and vineyards to non Jews in order to permit the cultivation of the Land during the *shemita* year. He was supported in this dramatic, innovative approach, by some of the giants of his generation including Rabbi Yehoshua of Kutna, Rabbi Yehuda Leib Diskin, the *Sochachaver* Rebbe and Rabbi Shmuel Moholiver.

Rabbi Yitzchak Elchanan, in a statement which he issued permitting this transaction, indicated that the *heter* would be good for only the *shemita* year of 1889, but not for future *shemiot*. He wrote “Further meditation will be necessary and a new *heter* will be required; and may the Lord help his people so that they should not need any *heter* and should observe *shemita* in accordance with the law...”

In fact, for succeeding *shemita* years, the *heter mechira* was renewed 16 times by the decisions of the first Chief Rabbi of Palestine Avraham Yitzchak haCohen Kook and those who followed him, including Rabbi Yitzchak Isaac Halevi Herzog, Rabbi Isser Yehuda Unterman, Rabbi Shlomo Goren, Rabbi Ovadia Yosef, and Rabbi Avraham Shapira. All of these were giants compared to whom, in the words of Rav Shlomo Chaim Ha-Cohain Aviner, there is no one in our generation who can even reach their ankles and refute their decisions. With all due respect to the current chief Rabbis, they are relative pygmies

standing in the shadow of these giants. Nevertheless, the Chief Ashkenazic Rabbi, Rabbi Yonah Metzger has refused to participate in the *heter mechira* for the current *shemita* year and has allowed rabbis all over Israel to make up their own minds on this matter. The result is destructive chaos.

To be sure, there have always been *machmirim*, people who followed a very strict interpretation of the law and did not accept the *heter mechira*. There have always been farmers who did not cultivate their fields during the *shemita* years and consumers who refrained from buying Jewish produce and bought only from non-Jews. Rabbi Avi Shafran, spokesman for Agudath Israel in America, in an article in the Jerusalem Post last week, praised these *machmirim* for being more meticulous in their observance. As proof of the validity of this *chumra* he pointed to all of the American Kashrut organizations which are endorsing only produce made according to this stricter interpretation and who will not endorse as Kosher, products farmed under the *heter mechira*.

There are several things that trouble me about this so called stricter interpretation. First, one has to ask: stricter than who? Is Rabbi Shafran or Rav Metzger and those whom they support more strict and pious than Rav Kook or Rav Herzog or Rav Unterman or Rav Goren or Rav Ovadya Yosef? Maybe they are wrong in taking the stricter approach. Rabbi Tarphon is cited in the Mishna in *Berachot* as lying down at night to say the *Shema* according to the view of *Beit Shammai*, who says that the *Shema* is to be said not only when you go to sleep but in the same form in which you go to sleep i.e. lying down, rather than according to the view of *Beit Hillel* who says that the phrase “when you lie down” is a matter only of time and not of form. The Mishna then records that Rabbi Tarphon once lay down in the fields to say *Shema*, according to the writing of *Beit Shammai*, and was assaulted by muggers. When he came back to the *Beit Midrash* and complained about how he was treated, he was told that he had it coming to him, because he followed the stricter

view of *Beit Shammai* and not the *Halachic*, normative view of *Beit Hillel*. We are suffering in our day from such a holier than thou syndrome and it is particularly aggravating to see people who act as if they are holier than Rav Kook, Rav Herzog and others of that stature.

But, it is not only disrespect for these giants that worries me; it is also the failure of the so-called *machmirim* to recognize that when one is exceptionally strict, more so than the *Halacha* requires, one has to be extremely sensitive to the ramifications of such strictness. Rabbi Moshe Chaim Lutzatzo in his classic work, *Mesilat Yesharim*, chapter 20, says that when one follows an extreme view in *Halacha*, one must be careful that it doesn't lead to unintended leniencies. Rabbi Aviner points out some of those leniencies in an article that he published for last Shabbat in Jerusalem. They are as follows:

1. Casting aspersions on the behavior of those who are simply following the decisions of the giants of the past.
2. The violation of the principle of *lo t'chaneim* – which means that one should not give non Jews a stronghold in *Eretz Yisrael*. By purchasing from Arabs rather than from Jews, one is giving strength to the Arab holdings of land in *Eretz Yisrael*, something that the Torah indicates we are not supposed to do.
3. Produce is being bought from the owners of land in what was formally known as *Gush Katif*. We know who owns the land in *Gush Katif* today; Hamas owns the land there – terrorists, people who are bombing *Sderot*. How can so called strict constructionist Jews support those who practice terror against our own people?
4. All the land that belongs to the Arabs may very well be, *Halachically* speaking, Jewish land. There were no Arabs in the Land of Israel in ancient times. The lands that are occupied by Arabs today are lands that originally belonged to Jews who were driven out from the Land of Israel. *Halachically* speaking, these lands are still Jewish lands which are simply being occupied by Arabs. So when so called strict

constructionist Jews buy produce from Arabs, they are buying it from people who are sitting on Jewish land. We, therefore, have a strange paradox; the Arab fields are, *Halachically* speaking, Jewish, and one is forbidden to buy from them. The actual Jewish fields, which are sold to non-Jews through the *heter mechira*, are the only ones from which Jews can buy, and observe *shemita* properly. Here we have a classic case of a *chumra* which leads to a *kula* – a so-called stricture which leads to a *Halachic* leniency.

To summarize, the people who are being strict and not accepting the *heter mechira* are repudiating the views of the giants of past generations, beginning with Rabbi Isaac Elchanon; they are embarrassing the religious Jews who are relying on the legal decisions of those giants; they are giving Arabs a greater stronghold in *Eretz Yisrael*; they are supporting terrorists in *Gush Katif*, and they are actually buying produce grown on Jewish lands on which Arabs happen to be sitting. This is all done in the name of being more *frum*.

Finally, Rabbi Avi Shafran in his article, tried to demonstrate how authentic this strict constructionist view is by saying that all of the *Kashrut* organizations in North America adhere to this view and only endorse products which follow the stricter observance of *shemita*. This is, actually, not only disingenuous; it's almost a cruel joke. The *kashrut* organizations in America have no choice whatsoever. They have to adhere to the strictest standard of Jewish legal decisions, because if they don't, they will lose their market share in America. The *Haredim* will not buy OU or Kaf K or OK or any of the national brands if they don't adhere to the *Haredi* standard. That explains a lot of *chumras* in the *kashrut* industry, among them, the anti *heter mechira* policy, which, as Rav Aviner points out, may not even be a *chumra* at all. This is simply a business decision on the part of the *kashrut* agencies in America. It has nothing to do with *Halacha*; it has everything to do with market share. The whole thing is very sad, sad in Israel, and sad in America.

There is one silver lining in all of this. There is a new group of absolutely Orthodox Rabbis called *Rabbanai Tzohar*, including some of the finest Rabbis in Israel, who are giving *kashrut* endorsements to establishments that buy produce from farmers using the *heter mechira*. They are defying the Rabbi Yona Metzgers of this world. They are standing up against the tyranny of the so-called *machmirim*. They actually may be setting a wonderful example for some of us rabbis in America who may have to reach a decision that we cannot simply follow the current Orthodox establishment on some of the critical issues of our day.

So here is one vote for the *heter mechira*, a vote which coincides with that of Rabbi Shlomo Chaim HaCohen Aviner and the *Rabbanai Tzohar*.