**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

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**Halakha and Jewish History**

**Rav Aviad Tabory**

**Shiur #29**

**1889: *Pulmus Ha-Shemitta***

***“Selling” the Land to Non-Jews***

During the end of the 19th century, between 25 thousand and 35 thousand Jews made their way to *Eretz Yisrael*. They came mostly from Russia, Iraq, and Yemen, from 1881 to 1882 and later from 1890 to 1891. These waves of immigration, referred to as the “First *Aliya*,”[[1]](#footnote-1) were responsible for establishing many new towns and settlements around the country, including [Rishon Letzion](https://en.wikipedia.org/wiki/Rishon_LeZion), [Rosh Pina](https://en.wikipedia.org/wiki/Rosh_Pinna), [Zikhron Yaakov](https://en.wikipedia.org/wiki/Zikhron_Ya%27akov), and [Gedera](https://en.wikipedia.org/wiki/Gedera).

Most of the *olim* were religious Jews who came for ideological reasons. The newcomers were motivated by the new Zionist ideology that had begun to spread in eastern Europe, through movements such as *Chovevei Tzion*, and inspired by Zionist leaders such as Dr. Leon Pinsker. The terrible pogroms which occurred in Russia (Ukraine of today) in 1882 served as a catalyst for many of them to make *aliya*.

The *olim* worked the land and became farmers. 1882 was a *shemitta* year, which meant most agricultural work was not allowed. The newcomers were not affected much by the restrictions that year, as they had only just arrived; however, the next *shemitta*, in 1889, challenged the new settlements. Abstaining from working the land threatened to destroy all the achievements of the new Jewish farming industry, as the competing Arab produce would take over the market.

Representatives from the new settlements sought halakhic advice. The newly appointed Chief Rabbi of Yaffo, Rav Naftali Hertz, reached out to the *poskim* of Europe to ask their opinion. Rabbis Shmuel Mohliver (1824-1898), Yisrael Eliyahu Yehoshua Trunk of [Kutno](https://en.wikipedia.org/wiki/Kutno) (1821-1893), and Shmuel Zanvil Klapfisch (1820-1902) found a solution, with the support and approval of one of the greatest halakhic authorities at the time, Rav Yitzchak Elchanan Spektor (1817-1896), that would permit working the Land of Israel during the *shemitta* year.[[2]](#footnote-2)

These prominent rabbis ruled that, under these specific circumstances, it would be permitted to “sell” the land of Israel to a non-Jew; this sale would “remove” the *kedusha* of *Eretz Yisrael*, thus allowing agricultural work to be done. This solution became known as the *heter mekhira* (permission of sale).

The *heter* is based on a few halakhic assumptions which are not universally accepted. One is the opinion of Rav Yosef Karo that fruits and vegetables which grow in Israel on Arab-owned land during the *shemitta* year do not possess *kedusha*.[[3]](#footnote-3) This was a matter of dispute between Rav Karo and Rav Moshe ben Yosef di Trani (Mabit,1500-1580). Both rabbis lived in Tzefat, and Rav Karo testifies that during the *shemitta* year of 1573, the sages of the city announced that Rav Karo’s ruling should be accepted and the followers of the Mabit were threatened with excommunication![[4]](#footnote-4)

Another issue disputed by the rabbis was the biblical rule of *lo techanem* (*Devarim* 7:2), which prohibits selling the land of Israel to non-Jews.[[5]](#footnote-5) Rav Avraham Yeshaya Karelitz (Chazon Ish, 1878-1953) considered this one of the more difficult halakhic obstacles preventing the use of *heter* *mekhira*.[[6]](#footnote-6) The rabbis who supported the *heter* suggested many reasons why this prohibition does not apply in our case.[[7]](#footnote-7)

The *heter mekhira* has continued to be a matter of dispute among halakhic authorities ever since. At the time (1889), the rabbis of Yerushalayim disagreed with the solution and declared their opposition to the *heter*. Years later, Chief Rabbi Avraham Yitzchak Kook composed an entire book (*Shabbat Ha’aretz*) in support of it. Since then, the Chief Rabbinate of Israel has consistently endorsed the solution and has personally handled the sale.

Some rabbis have argued that the original *heter* might have been the correct solution for the difficulties of pioneers who made *aliya* before there was a Jewish state, but that it is very difficult to accept that an entire independent country could sell its land for a year to another person. This approach questions the validity of the sale because it seems obvious that such a sale is a farce and the “owners” of the state do not have real intention to sell the land.[[8]](#footnote-8) Rav Goren, for instance, argued that even after the sale of parts of land, the land is still under Israeli sovereignty. Interestingly, he argued that since the Israeli government has yet to claim sovereignty over the areas of Yehuda ve-Shomron, it is possible to apply the *heter* to these lands; in fact, perhaps they do not even require a sale of land in order to permit agricultural work![[9]](#footnote-9)

However, there is also a broader objection raised against this type of solution to halakhic challenges.

**Turning to non-Jews to solve halakhic difficulties**

The *heter mekhira* is not the first case in which rabbis have suggested asking non-Jews for their help in solving a halakhic challenge. Other examples include selling *chametz* to a non-Jew before Pesach and hiring non-Jews to milk cows on Shabbat. These methods have been used by Jewish communities for centuries. However, some have questioned whether these so-called solutions are practical or perhaps even suitable for use in a modern Jewish state.

In 1951, Professor Yeshayahu Leibowitz (1903-1994) published an article claiming that the current halakhic system does not have the practical attitude nor the relevant mindset to respond to a modern state which is required to observe Shabbat.[[10]](#footnote-10) One of his arguments was that reliance on non-Jews is no longer practical and belongs in the past. This type of solution, he claimed, is completely invalid; it would be seen “as proof of a connection between the Torah and the exile (mentality), and as a contradiction between the Torah and (the idea of) national independence.” In his view, relying on non-Jews negates the basic idea of Jewish independence; furthermore, he believes it cannot be that the Torah would expect a Jewish state to need non-Jews in order to function.

Rabbis within the Religious Zionist community generally criticized these claims.[[11]](#footnote-11) For instance, Rav Moshe-Zvi Neria (1913-1995) composed an entire essay against Leibowitz’s theory.[[12]](#footnote-12) Rav Neria argued that non-Jews are welcome in the State of Israel and that there is room for them in the new country. He explained that the State of Israel is responsible for their welfare, and that the non-Jew who works on Shabbat would be considered a respectable citizen with full rights. Rav Neria and other Rabbis accepted the idea that the Torah would have expected non-Jewish involvement in running a Jewish State, perhaps within the conceptual realm of *ger toshav* (resident foreigner).

In a 1931 *teshuva*, Rav Avraham Yitzchak Kook responded to suggestions that cows could be milked on Shabbat in ways that would perhaps involve only Rabbinic violations, rather than hiring non-Jews.[[13]](#footnote-13) He explains in the *teshuva* that milking cows is a clear violation of Shabbat with no room for leniency. He adds that the only solution known to him is to hire non-Jews, and that they (non-Jews) can always be found within Jewish communities.

Some cite this *teshuva* to prove that even today, despite new innovations, there is no alternative to hiring non-Jews on Shabbat.

However, many religious *kibbutzim* in Israel have adopted the *gramma* (indirect) method to milk cows on Shabbat rather than hiring non-Jews. This technique was developed by the Tzomet institution, which is dedicated to solving modern halakhic challenges. Rav Yaakov Ariel discusses whether *gramma* methods of *melakha* are preferable to hiring non-Jews on Shabbat. After assessing various opinions, Rav Ariel rules according to Rav Shaul Yisraeli, who prefers *gramma*.[[14]](#footnote-14)

I believe this debate is not a purely halakhic discussion; rather, it involves a matter of principle regarding running a modern Jewish state.

Surprisingly, some of Leibowitz’s ideas received support from one of the greatest *poskim* of the State of Israel. Chief Rabbi Shlomo Goren similarly believed that we must find alternative solutions to halakhic challenges without involving non-Jews.

Rav Goren makes this argument in connection with the practice of acquiring cadavers from abroad for Israeli medical students.[[15]](#footnote-15) He cites cases in the Gemara where the Rabbis were faced with challenges and turned to alternative methods rather than resorting to the use of non-Jews. For instance, regarding *shemitta*, Rav Goren argues that the Rabbis in the time of the Gemara could have hired non-Jews to work the land, yet they preferred not to. Why was that? He explains:

It seems that the Torah was given to (the people of) Israel for it to be observed without the help of a non-Jew who will violate the law (for the Jew).

As of today, rabbis and halakhic institutions are working hard to create practical alternative solutions for the State of Israel to observe *shemitta* in the best way possible without having to “sell” the land; however, it seems the *heter mekhira* will be around for some time before such solutions become completely practical.

1. Much debate has been raised about this name, as it disregards earlier waves of *aliya* – especially of the *chasidim* and the Gra’s students. Ben Gurion himself challenged this phrase. For further reading, see David Ben Gurion’s article, *Rishonim*, which can be found online at <https://benyehuda.org/read/19061>. [↑](#footnote-ref-1)
2. Rav Yechiel Michel Tucazinsky, *Sefer Ha-Shemitta*, Mosad HaRav Kook, Jerusalem 1993, pp.59-60. [↑](#footnote-ref-2)
3. *Kessef Mishneh* on Rambam *Hilkhot Shemita Ve-Yovel* 4:29. [↑](#footnote-ref-3)
4. *Shut Avkat Rochel* 25. [↑](#footnote-ref-4)
5. See Rambam *Hilkhot Avoda Zara* 10:3. [↑](#footnote-ref-5)
6. *Chazon Ish* 24:4. [↑](#footnote-ref-6)
7. Some argued that a sale to Arabs (who are not considered idol worshippers) is not prohibited and some raised the claim that a sale that is limited in time is permitted, see Sefer Ha-Shemitta p.106 [↑](#footnote-ref-7)
8. See Rav Zeev Vitman, Likrat Shemitta Mamlachtit B’Medinat Yisrael, Machon Tzomet 2006, pp.40-46 as well as Rav Goren, Torat Ha-Moadim, Avraham Tzioni, Tel Aviv 1964 pp.624-639 [↑](#footnote-ref-8)
9. Rav Goren, Torat Ha-Medina, pp. Haidra Raba, Jerusalem 1996, pp.454-455 [↑](#footnote-ref-9)
10. The article was published in his book, *Yahadut, Am Yehudi, U’Medinat Yisrael*, Shoken 1979, and can be found online at <http://www.leibowitz.co.il/leibarticles.asp?id=3>. [↑](#footnote-ref-10)
11. See Rav Yisrael Rozen’s article on this topic which appears in *Halakha Tzionit*, edited by Yedidya Stern and Yair Sheleg, HaMachon HaYisraeli LeDemocratia,Israel 2017, pp.370-393.  [↑](#footnote-ref-11)
12. *Kuntres HaVikuach*, Or Olam Jerusalem, 1952. The essay can be found online at <https://hebrewbooks.org/41265>. [↑](#footnote-ref-12)
13. *Da’at Cohen* 235. [↑](#footnote-ref-13)
14. *Techumin* 19, p.348. [↑](#footnote-ref-14)
15. *Torat Ha-Medina*, pp.328-334. [↑](#footnote-ref-15)