The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן תרמ"ט סעיף א'

Overview

Siman 649 Seif 1:

All four species are invalid if they were stolen or robbed, regardless of whether the owner despaired or not. However, if they were stolen and acquired without the assistance of the *mitzvah*, for example, if one stole a *lulav* and smoothed it, it is valid since it was acquired by physically changing it but the *beracha* should not be recited on it. There is an opinion that maintains that one stolen or robbed is invalid for use only for the thief or robber but it is fit for use for others after the 1st day. For this reason a Jew should not detach one of the four species for his *lulav* himself since land cannot be stolen and the average כותי steals land and the Jew will be the one stealing the produce. Instead the כותי should cut it and the Jew should acquire it from him. There is no difference between Eretz Yisroel and outside of Eretz Yisroel. A *lulav* that was bound and prepared by a כותי is valid the same as a *sukkah* constructed by a כותי.

- Semag writes that one should pay a gentile a little extra to acquire a *lulav* so that the gentile will not be deterred and refrain froam importing a *lulav* in the future.
- Despair by itself does not constitute a *kinyan*. (M.B. 2)
- Meaning, the *kinyan* that was performed before the fulfillment of the *mitzvah*. If the *mitzvah* is fulfilled at the time of the *kinyan* it is considered a *mitzvah haba'ah b'aveirah*, therefore, it is necessary to lift it a second time to fulfill the *mitzvah*. (M.B. 3)
- This is effective even if the owner did not despair and may even be used on the 1st day since it is considered לכם and the thief owes money. The same is true if the owner despaired and the stolen item changed possession, for example, if the thief sold it or gave it to someone else. (M.B. 5)
- Since he initially acquired it via theft we are stringent concerning the *beracha*. Magen Avrohom maintains that if there is despair with something else it is permitted to recite the *beracha* but Taz and Gra contend that under no circumstances should the *beracha* be recited. (M.B. 6)
- Shulchan Aruch maintains that the thief may not use the stolen item, even on the other days of Sukkos since it is a *mitzvah haba'ah b'aveirah*. (M.B. 7)
- The reason others may not take it is that Shulchan Aruch refers to where the owner did not despair so that it does not belong to the one who bought it but it is valid for use on the other days since he did not steal it. Magen Avrohom disagrees and disqualifies it for use even on the other days but Elya Rabba follows the lenient opinion. This dispute relates to using the item to fulfill the *mitzvah* but according to Gra it is prohibited to recite a *beracha* on it. (M.B. 8)
- The Jew should not cut it from the gentile's property even with permission out of concern that the land was stolen and if the Jew detaches the fruit he is performing the act of theft. Therefore, the gentile should detach it so that the owner will despair and then give it to the Jew. (M.B. 9)
- This is *l'chatchila* but *b'dieved* if it came from a gentile's property he may even recite the *beracha*. One who conquers property in war becomes the owner of that property. (M.B. 10)
- It is also acceptable if a Jew detaches it and then gives it to his friend. (M.B. 11)
- If the gentile gives it to him as a gift it is also acceptable and it is permitted to recite the *beracha* since it is only a concern that the land may have been stolen and thus we are not concerned once the Jew has possession of it. (M.B. 12)
- Magen Avrohom writes that *l'chatchila* a gentile should not bind them together and a woman should also not bind the species together. Biur Halacha writes that technically there is no concern but nevertheless, it should be avoided when possible. (M.B. 14)

Halacha Highlight

Buying ד' מינים on credit

Shulchan Aruch Siman 649 Seif 1
פסולים בגזול וגנוב
Are invalid if they were stolen or robbed

Shulchan Aruch rules that if any of the four species were stolen or robbed they are unfit for use for the *mitzvah*. The reason is that the Torah mandates that one must own his ד' מינים and if they were stolen, they are not his possession. Biur Halacha (ד"ה כל הארבעה) instructs us to look at what Mishnah Berurah writes in *siman* 11:27 since it is relevant here as well. Mishnah Berurah there addresses the case of one who purchased *tzitzis* on credit and the merchant is seeking payment from the customer who does not want to pay for them. He rules that in such a case the *tzitzis* are not considered the customer's and he does not fulfill the *mitzvah*. Mishnah Berurah (סי' תנ"ד ס"ק ט"ו) rules the same way concerning one who purchased *matzos* on credit and refuses to pay the merchant who is seeking collection.

Rav Shlomo Zalman Auerbach (הליכות שלמה סוכות פי"א סע' ג') discusses one who purchased his set of ד' מינים with the intent to pay the merchant before Sukkos and the merchant indicated that he needs the money. Rav Auerbach rules that even though the customer does not acquire the *esrog* until he pays the merchant, nevertheless, shortly before the onset of Yom Tov he does acquire them, even though he has still not paid for them. The rationale is that once it is close to Yom Tov so that the merchant would not be able to find a customer for that set of ד' מינים, it is clear that the merchant is not interested in the customer returning to him that set since there is nothing he can do with it. Therefore, at that point it is considered as though the merchant is not pursuing his money and thus the customer is considered the owner of that set of ד' מינים since the merchant would rather this customer pay him late than to not receive payment for the set altogether. Rav Yosef Shalom Elyashiv (הציק בהלכה פי"ג ענף א' אות י') disagrees and contends that even if the merchant would not be able to sell the set to another person it is still considered as though the merchant is pursuing his money and the customer is not the owner of that set.