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

Overview

Siman 649 Seif 2:

A borrowed *lulav* is also invalid since we require ownership. One who vows not to benefit from a friend's *lulav* or from his own *lulav* does not fulfill his obligation on the first day with that *lulav* since it does not belong to him.

- It is preferred for one to specify that he is giving his *lulav* as a gift on condition that it is returned but *b'dieved* if it was borrowed to fulfill the *mitzvah* without specifying the conditions, it is assumed that it was given in a manner that allows the borrower to fulfill the *mitzvah*. Shulchan Aruch refers to where the owner specified that he was only lending it rather than giving it as a gift or that the owner is ignorant of the *halacha* and thus the borrower does not fulfill his obligation. (M.B. 15)
- Although *mitzvos* are not designed for benefit, nevertheless, since it is prohibited for benefit he is not considered its owner. (M.B. 16)
- On the second day since it is not necessary that it belong to him it may be used since fulfilling the *mitzvah* is not considered benefit. (M.B. 17)

Siman 649 Seif 3:

If the species come from an *ir hanidachas* or an *asheirah* owned by a Jew it is invalid but if it belongs to a gentile, *l'chatchila* it should not be taken but if it was taken after the 1st day he fulfilled the *mitzvah* since it is not necessary to own it. This assumes he did not intend to acquire it but if he intended to acquire it, it belongs to a Jew and is prohibited. This applies before the idolatry was nullified but if it was nullified by the gentile, even if he intends to acquire it afterwards, *b'dieved*, he fulfills the *mitzvah* and see above *siman* 586.

- Since it must be burned it does not possess the minimum size and thus is invalid even for the 2nd day. (M.B. 18)
- Since the gentile's nullification is ineffective to permit it for benefit, it remains designated for burning. (M.B. 20)
- Even though the gentile nullified it so that it is permitted for mundane use, nevertheless, it is unfit for sacred use. (M.B. 21)
- Rema is stringent there even though it belongs to a gentile and it may not be used for the *mitzvah* even *b'dieved* and regarding the *halacha* see Mishnah Berurah *siman* 586:18. (M.B. 24)

Halacha Highlight

A *lulav* prohibited for benefit

Rema Siman 649 Seif 2

והמדר הנאה מלולבו של חברו

Someone who vows against benefitting from a friend's *lulav*

Rema (סע' ב') addresses two cases of someone who took a vow. One case is a person who vowed not to benefit from his friend's *lulav* and the second case is one who vowed not to benefit from his own *lulav*. In both cases Rema ruled that the vower may not use the specified *lulav* on the 1st day. The rationale behind the ruling is that on the 1st day of Sukkos one must own his *lulav* and something that is prohibited for benefit cannot be considered as though it is his (מ"ב ס"ק ט"ז). Even though *mitzvos* are not for benefit, nevertheless, since ownership is a prerequisite to fulfill the *mitzvah*, the *mitzvah* cannot be fulfilled since he cannot own what is prohibited to him for benefit. However, since ownership is a prerequisite only for the first day, he may use a *lulav* that is prohibited to him for benefit on the subsequent days.

Biur Halacha (ד"ה אינו יוצא) notes that Shulchan Aruch rules (סע' ה') that an *esrog* that is prohibited for consumption is invalid for all 7 days of Sukkos. Accordingly, if one vowed against benefitting from a *lulav* it should be invalid for all 7 days of Sukkos. Biur Halacha then suggests that perhaps there is a distinction between something that is prohibited for consumption for everyone (as discussed in *seif* 5) which is invalid for all 7 days and something that is prohibited for consumption for an individual (our *seif*) which will only be invalid for that person on the 1st day since he cannot have ownership but it is not considered destroyed (כתותי מכתת שעורה). Kaf HaChaim (אות ל"ז) suggests another distinction. The requirement that one of the ד' מינים must be *halachically* fit for consumption is limited to those items that are edible such as an *esrog*. In contrast, since a *lulav* is not edible, there is no requirement that it should be *halachically* fit for consumption and thus in our *seif* the only shortcoming is that something prohibited for benefit is not his possession.