The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן תרנ"ח סעיף ד'

Overview

<u>Siman 658 Seif 4:</u>

If it was given on condition that it is returned, the recipient fulfills the mitzvah and must return it since a gift given on condition that it is returned is considered a gift. If he does not return it, he does not fulfill the mitzvah even if he repays the owner for it and even if it cannot be returned as a result of an *oness*. Similarly, if it is returned after the time to fulfill the *mitzvah*, he does not fulfill the *mitzvah*. It is permitted to give someone an *esrog* on condition that the recipient does not sanctify it since such a condition is no worse than stipulating that the recipient must return it.

- The same is true if it becomes invalidated while in his possession. (M.B. 13)
- We do not consider its cash value comparable to the item itself since he needs the item to fulfill the *mitzvah*. (M.B. 14)
- Although when an *oness* occurs to an object that one received as a gift with the condition that it must be returned the recipient is not liable, nevertheless, since the condition was not fulfilled, it is not considered as though it was his *esrog* which is a necessary prerequisite to fulfill the *mitzvah*. Chaye Adam expresses uncertainty whether the recipient fulfills the *mitzvah* in this case if the owner says, "I will consider it as though it was returned." Meiri, however, writes that in such a case the *mitzvah* is fulfilled. (M.B. 15)
- If the owner gave it away after he fulfilled the *mitzvah* it must be returned by the next day when the owner would like to fulfill the *mitzvah* again. *Poskim* write that the owner must say, "On condition that you return it **to me**," because if he merely stipulated that it must be returned without adding **"to me,"** the recipient may return it even after Yom Tov since that would be a fulfillment of the condition. (M.B. 16)
- Meaning if the owner stipulated that the recipient may not sanctify it, it is still considered a gift and the recipient fulfills the *mitzvah*. (M.B. 17)

Halacha Highlight

<u>Receiving a *lulav* as a gift on condition that it is returned</u>

Shulchan Aruch Siman 658 Seif 4
נתנו לו על מנת להחזירו

If it was given to him on condition that it is returned

Shulchan Aruch rules that a gift given on condition that it is returned is considered a gift and when the recipient takes the *lulav* it is considered his for that period of time and he fulfills the *mitzvah* even on the first day of Sukkos. However, if the *lulav* is not returned to the owner or if it becomes invalidated while in the possession of the recipient (מ"ב ס"ק י"ג), he does not fulfill the *mitzvah*, even if he repays the owner the value of the *lulav* and even if the reason it is not returned is due to circumstances beyond his control. The reason he does not fulfill the *mitzvah* if it is returned invalidated is that it is understood that the condition was that it should be returned in a condition in which it can be used to fulfill the *mitzvah* and not in an invalidated condition (כף החיים אות כ"ז).

Mishnah Berurah (ס"ק ט"ו) points our attention to Choshen Mishpat 241:8 where Shulchan Aruch rules that one who receives a gift on condition that it is returned is exempt from liability if due to circumstances beyond his control (אונס) he cannot return the "borrowed" object. Seemingly, if the borrower is exempt from liability, he should fulfill his obligation. He answers that the reason he has no liability when something happens to the "borrowed" object is that it entered his possession as a gift rather than to watch it as a custodian and thus he does not have the liability of a custodian. In contrast, concerning the condition that the gift must be returned, any time that condition is not fulfilled, retroactively it was not a gift, and therefore, he did not fulfill his obligation. Teshuvas Har Tzvi (ח"ב סי' קי"ב) asserts that this ruling is limited to where the recipient received it as a gift. However, if the recipient borrowed it to fulfill the *mitzvah* but in order to fulfill the *mitzvah* it had to be officially given to him as a gift, for purposes of liability he is considered a borrower and carries the same liability as a standard borrower.