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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

MAASER KESAFIM: ESROG

Aharon was a *kollel* fellow. He and his wife barely eked out enough to make ends meet, but Aharon felt fortunate to be able to dedicate his life to Torah. They were frugal with their money and avoided unnecessary expenses. Despite

their tight budget, Aharon and his wife set aside each month a tenth of their earnings for *tzedakah* as *maaser kesafim*.

As Sukkos approached, expenses mounted. "We need to sit down and review our budget," Aharon's wife said. "We gave additional donations for the Yamim Nora'im and we need new clothes and extra food for Yom Tov. We're coming to Sukkos with very little money left."

Aharon carefully reviewed with his wife the expenses for the remainder of the month. "We are at our limit," she said. "We can't afford anything beyond the Yom Tov shopping."

"What about *lulav* and *esrog*?" Aharon asked. "I could use someone else's, but I would like to buy my own!"

"Of course!" his wife replied. "But if we want to end the month without deficit, we have no available money to buy our own. If we cut back on certain other expenditures, we could afford \$50."

"That's not nearly enough for the kind of beautiful set I would like to buy," said Aharon. "It would cost about \$100."

"Maybe we can use some of our *maaser* money to buy the *esrog*?" his wife asked.

"I don't know whether I can use *maaser* money to purchase a *mitzvah*," said Aharon.

"Can you find out?" asked his wife. "It would make the situation much simpler."

"I'll ask Rabbi Dayan," replied Aharon.

Aharon met Rabbi Dayan in the *beis medrash*. "Can I use my *maaser* money to purchase an *esrog*?" he asked. "What about to purchase a more beautiful [*mehudar*] one?"

"A person is not allowed to fulfill his obligations, even *mitzvos*, with *maaser* money," replied Rabbi Dayan. "Rema cites from Maharil that a person should not use his *maaser* money even for optional *mitzvos*, such as sponsoring candles for the shul or purchasing *kibbudim*, but should give it to the poor. However, later authorities allow the person to do so if he stipulated initially that he would use the *maaser* money also for optional *mitzvos*, especially if he would not do the *mitzvah* otherwise or if



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SHARING AN ESROG

Q: If a family has only one set of *arbaah minim*, how should they

share it so that each family member can fulfill the *mitzvah*?

A: The Rema writes: Every person should endeavor to acquire his own *lulav* and *esrog* to properly fulfill the *mitzvah* (O.C. 658:9). Commentators explain that most people do not know the laws of conveying ownership to others (*Magen Avraham* 12; *M.B.* 42). It is therefore prudent to discuss this issue properly.

On the first day of Yom Tov one must own the *dalet minim* and does not fulfill the *mitzvah* with a borrowed set, or one owned in partnership. Therefore, rather than borrowing a set, it must be received as a gift (O.C. 658:3,7).

However, the gift need not be permanent. Gifting a set on condition that it is returned is also a gift, and the recipient fulfills the *mitzvah* if it is ultimately returned (*ibid.* 4). Most *poskim* maintain that gifting *dalet minim* for a limited duration of time (*matanah lizman*) is not sufficient, since a gift whose time expires is comparable to a loan (*ibid.* 3; cf. *Ketzos*, C.M. 241:4). The gift must be absolute for the recipient to be considered the owner. The condition that it must be returned does not undermine the validity of the gift, like any other condition attached to a sale or gift.

Poskim disagree regarding one who asked to "borrow" a friend's *dalet minim*. Some maintain that it is assumed that the intent was to gift it on condition that it is returned so that the "borrower" should be able to fulfill the *mitzvah* (*Magen Avraham* 14:4, 658:3). Others contend that one does not fulfill the *mitzvah* if he merely asked to borrow a friend's *dalet minim* (*Taz*, O.C. 14:5; *Beis Yaakov* 114).

The conclusion is that if it was not gifted

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STORY LINE

the proceeds of the *mitzvah* will ultimately benefit the poor" (Y.D. and Taz 249:1; Shach 249:3; Pischei Teshuvah 249:2).

"Is an *esrog* considered an obligatory *mitzvah* or an optional one?" asked Aharon.

"*Esrog* is an obligation; it is also for personal use, unlike purchasing *sefarim* and allowing public use of them," replied Rabbi Dayan. "However, since one does not need to purchase his own *esrog* and can use the communal *esrog* or a friend's, some consider purchasing an *esrog* an optional *mitzvah*" (Nachalas Shivah 8:7b; Minchas Yitzchak 8:82; B'tzel Hachochma 4:164).

"What about using *maaser* for *hidur mitzvah*, to buy a nicer *esrog*?" asked Aharon.

"The *Gemara* (B.K. 9b) states that one should be willing to add a third for *hidur mitzvah*," replied Rabbi Dayan. "Some allow even the initial third from *maaser*; some allow only beyond the initial third; and some don't allow using *maaser* money at all for *hidur mitzvah*" (Hilchos Maaser Kesafim 14:24-26).

"What is the *halachah*, bottom line?" asked Aharon.

"Harav Shlomo Zalman Auerbach rules that one who is very tight on funds should not purchase an *esrog* from *maaser* money, but rather use someone else's," replied Rabbi Dayan. "However, if he designated a maximum amount that he can afford to purchase an *esrog*, he may add part of his *maaser* to purchase a more *mehudar* one. Bear in mind, though, that the ideal is to give *maaser kesafim* to the poor. You need to carefully weigh the *hidur* of a beautiful *esrog* versus the *hidur* of supporting the poor" (Halichos Shlomo, Mo'adim 11:1).



MONEY MATTERS

INHERITANCE #14

Inheriting an Esrog

From the writings of Harav Chaim Kohn *shlita*

Q: A person was *niftar* shortly before Sukkos, leaving an *esrog*. Can one of his sons use the inherited *esrog* without receiving explicit consent from the other sons?

A: On the first day(s) of Sukkos, a person must own the four species completely ("*l'achem*"). Partners in an *esrog* can fulfill the *mitzvah* only if they grant their share to each other, in turn, for the duration of the *mitzvah* (O.C. 658:7).

Children who inherit an *esrog* are partners in the estate. Thus, they can use the *esrog* by granting their shares in turn.

If one son wants to take an *esrog* for himself, the *Gemara* (B.B. 137b) states that if there are multiple *esrogim* he can take one, even if they are not of identical quality, since the other sons presumably won't mind. However, if there is only one *esrog*, he needs their explicit consent. Rashbam writes that it suffices if there are *esrogim* readily available in the city or the others already have their own *esrogim* (O.C. 658:8; Aruch Hashulchan 658:18-19; Pischei Choshen, Shutfim 10:17).



BHI HOTLINE

explicitly, the "borrower" should take them again without repeating the *brachah* (M.B. 658:9; cf. M.B. 649:15). It is clear, however, that if the owner does not realize that it must be gifted on condition that it is returned and erroneously thinks that gifting it for a short period of time suffices, the "borrower" does not fulfill the *mitzvah* (M.B. 649:15).

Similarly, when returning the *dalet minim* it is necessary to convey ownership back to the owner and the owner must perform a *kinyan* (proprietary act) to reacquire it; for example, to lift it (*hagbahah*). Although some authorities require the "borrower" to state explicitly that he is conveying ownership back to the owner (*Pri Megadim*, *Eishel Avraham* 658:12; *Machatzis Hashekel* 6), others contend that we assume that the borrower's intent is to convey ownership back to the owner (*Shaar Hatziyun* 25; see *Toras Hakinyanim*, *Daled Minim*, pp. 55, 125 when the recipient was unaware of this *halachah*).

Regarding children below the age of bar *mitzvah*, on the first day one should not give them *dalet minim* before the adults fulfilled the *mitzvah*. (Some maintain that outside of Eretz Yisrael one should not convey ownership to a child at all on the first day, since the adults must own them on the second day of Sukkos as well; see *Pri Megadim*, *Eishel Avraham* 658:8; M.B. 2). The reason is that children can acquire when an adult conveys ownership to them but they can't convey ownership back. Since the child would have to convey ownership to the next adult and cannot do so, that adult would not own the set and thus cannot fulfill the *mitzvah* (op. cit. 658:6). Even if it was stipulated that the child must return it, since that condition cannot be fulfilled the condition is meaningless and the child acquires it unconditionally, thereby preventing subsequent adults from fulfilling the *mitzvah* (Ran cited by *Biur Halachah*, d.h. *Eino*).

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