

# BUSINESS WEEKLY

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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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## STORY LINE

by Rabbi Meir Orlan

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## A Lulav for Levi

Mr. Freilich examined the array of lulavim and esrogim. He chose a set for himself and one for his oldest son, who was learning in yeshivah. He had two other boys, one in high school and one, Levi, not yet bar mitzvah.

Mr. Freilich thought back to the time when he was a child, when many families had only one set. He tried to imagine what it was like centuries ago, when often the entire community would all share one set! Now, however, most people in the shul had their own set of lulav and esrog.

"I want my own set, Abba!" said Levi when his father returned home with the two lulavim and esrogim. "My friend Elimelech said that his father bought him a set this year!"

Mr. Freilich smiled at Levi. "I'm glad that you would like a set of your own," he said.

"However, we can't afford a third set. I'll let you use mine, which is anyway a much nicer set than what I would buy for you."

"But my rebbi taught us that on the first day(s) of Sukkos you must own the lulav and esrog that you use," said Levi. "If I borrow yours, how can I fulfill the mitzvah?"

"Rabbi Tzedek also mentioned this halacha on Shabbos," replied Mr. Freilich, "but for centuries, Jews have shared arbaah minim. Would you like to come with me and ask him about this?"

"I'd love to!" exclaimed Levi. "When?"

"I'm taking this esrog over now to have him check it," replied Mr. Freilich. "We can also ask your question."

The two went to Rabbi Tzedek's office. Mr. Freilich showed him the esrog, which was declared mehudar.

"Levi raised a question about what you said

on Shabbos," Mr. Freilich said. "Can I share my lulav and esrog with him on the first day(s) of Yom Tov?"

Rabbi Tzedek answered, "You can give your lulav and esrog to another adult as a gift on condition that he returns it, but you should not grant it to a child below bar-mitzvah age unless all the adults have already fulfilled the mitzvah on the first (two) day(s) of Sukkos."

Rabbi Tzedek then explained, "Since the Torah states: 'ul'kachtem lachem bayom harishon — you should take for yourselves...', a person must own the four species on the first day of Yom Tov in order to fulfill the mitzvah. Outside of Eretz Yisrael, this also applies to the second day of Yom Tov.

"When we share or 'lend' someone our lulav on the first day(s), we actually give it to

*continued on reverse side*

## The Ruined Esrog

*Submitted by P. M.*

I found a beautiful esrog for \$200. The merchant agreed that I may first confirm with my Rav that the esrog is mehudar and then pay. Since my friend was going to the Rav anyway, I asked him to take my esrog as well.

The Rav ruled that it was mehudar, but upon his return, my friend ran up the stairs and tripped, rendering the esrog invalid.

**Q: Am I responsible to pay the merchant for the esrog? And if so, is my friend obligated to reimburse me for damaging it?**

**A:** You are certainly obligated to pay the merchant for the esrog. Taking merchandise that has a predetermined price for examination is essentially purchasing it with the option to return. If, regardless of the reason, the potential buyer cannot return it to the seller, he is fully responsible

and must pay the full price (C.M. 200:11; see also Nesivos 186:1). Accordingly, you are responsible to pay the merchant in full, even though the esrog is now invalid.

The issue that requires clarification is whether your friend is liable for damaging the esrog and has to pay you. This depends on whether your friend tripped and fell on the esrog, damaging it by the weight of his body, or if he tripped and dropped the box. Falling on the object and bodily

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him as a gift; when he returns it, we reacquire it from him. To protect our ownership, we typically give the lulav as a matanah al menas l'hachzir - a gift on condition that the person returns it afterwards (C.M. 241:6; O.C. 658:3-5, 9)."

"So why can't I give my lulav to Levi, and then acquire it back?" asked Mr. Freilich.

"This is problematic with children who are not yet bar mitzvah, thirteen years old," replied Rabbi Tzedek. "According to many authorities, minor children have the Torah ability to receive a gift when granted by others. However, they do not have the Torah ability to confer legal ownership in return, only rabbinical ability, depending on their age and maturity (C.M. 235:1, 2). For this reason, the Gemara (Sukkah 46b) says not to give the lulav to a child on

the first day(s) of Sukkos if the adults have not yet fulfilled the mitzvah (see O.C. 658:6; B.H. s.v. "lo")."

"What about my wife and older daughters?" asked Mr. Freilich.

"They are the same as other adults," answered Rabbi Tzedek. "Although women are not obligated in the mitzvah of lulav, if they want to fulfill the mitzvah and make a brachah, as many do, they must have ownership on the first day(s)."

"So what do I do about Levi?" asked Mr. Freilich.

"You can either buy Levi his own set, which should not be used by adults on the first day(s)," said Rabbi Tzedek, "or, you can let Levi use yours without actually granting him ownership. The Shulchan Aruch indicates that this suffices for the mitzvah of chinuch (training) (O.C. 657:1; M.B. 658:28)."

damaging it is an act of adam hamazik (damage caused by a person), and the damager is liable for damages even under circumstances beyond his control (oness) (C.M. 378:1).

However, if the esrog dropped from his hands as he tripped while walking up the stairs, his liability is not that of an adam hamazik but that of a shomer (custodian).

In this case, his liability depends on whether tripping and dropping an item that is in his care constitutes negligence (Machaneh Efraim, Shomrim 39).

Most authorities maintain that tripping is not an act of neg-

ligence, and in such a case, only a paid custodian (shomer sachar) would be liable, whereas an unpaid custodian would be exempt (C.M. 412:4, 304:1). Although some opinions contend that tripping on level ground must have been due to negligence, all opinions agree that one was not negligent if he tripped walking up a slope (see Sma and Shach 304:1).

Consequently, had he tripped while walking up the stairs in a normal manner, he would not need to pay, but it seems that your friend tripped running up the stairs. Accordingly, he is liable even though he was an unpaid custodian.

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## Shomrim: Guardians #26

**Q: My roommate went away for a week and asked me to keep an eye on his belongings. What should I do with perishable items with approaching expiration dates?**

**A:** If the item will still be edible when the owner returns, albeit not fresh, you should leave it for him. This is especially true of homemade food, since a person prefers his

own food to that of others (Pischei Choshen, Pikadon 2:[90]).

If the food will spoil, you should notify the owner. If you are unable to contact him, you should try to sell the food, if you are able to, as a form of hashavas aveidah (C.M. 292:15).

If you made no attempt to salvage the food and it spoiled, there is a dispute whether this is considered negligence (see Mishnah

Berurah 443:12).

You are allowed to use the proceeds of the sale meanwhile, and therefore are responsible for the money as a shomer sachar. If you use the money, you are fully liable as a borrower (292:19).

Even if the food already spoiled, if the container or pot is one that might get permanently ruined, you should empty the food from it (292:16).

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