

BUSINESS WEEKLY

RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



Issue #528 | Sukkos | Friday, October 2, 2020 | 14 Tishrei 5781

Donated L'Zchus those in Klal Yisroel seeking a shidduch



CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה



BHI HOTLINE

לע"נ ר' שלמה ב"ר ברוך וזוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

GOUGED ESROG

Sruli was learning for the year in Israel. His father had always bought the *lulav* and *esrog* for him, so this was the first time Sruli was going to buy for himself.

The market of four species had many stands. "This is amazing!" Sruli said to one of his friends. "In our shul, we have only a few sellers."

"I remember what it was like last year!" said his friend. "There were three times as many stands, and the place was hustling and busting with throngs of people. This year, things are quieter because of corona."

Their *Rebbi* had given the boys a *shiur* about the four species, and Sruli tried to remember all the *halachos* as he browsed the stands. He found an *esrog* that seemed OK and was not expensive. There were a couple of small spots and scratches on it, but he did not think they were a problem.

"I think I'll take this," Sruli said to the seller, "but I'd like to check it with my *Rebbi*. If it turns out to be a problem, can I return it?"

"If your *Rebbi* says that it is not kosher to make a *brachah* on it, you can return it," the seller answered.

Sruli took the *esrog* to his *Rebbi*. "Overall, it looks OK, but there is a small gouge," his *Rebbi* said. "We mentioned that such an *esrog* is called *chaser* (missing a piece), and I'm afraid that it's not kosher."

"So I should return it to the seller?" asked Sruli.

His *Rebbi* thought for a minute. "In a regular year, when the first day of Yom Tov is on a weekday, I would say yes," he replied. "However, this year the first day of Yom Tov falls on Shabbos, so the *halachah* may be different. I'd like you to speak with Rabbi Dayan about this."

Sruli contacted Rabbi Dayan and asked:

"Should I return the *esrog* to the seller because of a small gouge?"

"As *esrog* that is gouged and missing even a small amount is considered *chaser* and invalid for the first day of Yom Tov according to most opinions," replied Rabbi Dayan. "However, it is *kosher* on *Chol Hamoed*, when the obligation of *lulav* and *esrog* is Rabbinic"

Did You Know?

A non-Jew doing work for you on Shabbos, even unsolicited, can be a Shabbos violation?

Ask your Rav or email
ask@businesshalacha.com for guidance.

BREACHED BY A BRANCH

Q. To build a *sukkah*, we had to cut down branches of a tree that were hanging over our porch from an adjacent property. My son, a yeshivah *bachur*, brought one of his friends to help him. He climbed onto the tree with a saw, and his friend stood on a ladder next to him to hold and pull downward a large, protruding branch so my son could cut it. They weren't careful, and it crashed onto the porch of my downstairs neighbor, destroying an awning and some electrical wires he had on his porch.

I am prepared to pay for the damage, but I'm just curious: From a halachic standpoint, is my son responsible for only half the cost of the damage – which is quite significant – because his friend was also a party in causing the damage? And does it make a difference that his friend doesn't have the money to pay for his portion of the damage, and if we would insist on paying only my son's portion, my neighbor would bear the loss of half of the damage?

A. The *poskim* deal with several cases that resemble this question. The root source for this case is the *Gemara* (B.K. 53a) that discusses a *shor tam* (ox that does not tend to cause damage) that gored another ox and knocked it into a pit, where it died. The *halachah* is that the owner of the ox and the owner of the pit are considered partners in causing the damage.

Generally, two people who cause damage together are each required to pay half of



CASE FILE

(O.C. 648:1; Rama 649:5).

"Outside of Israel, we treat the second day of Yom Tov with a stringency similar to that of the first day for most *halachos* of the four species (such as regarding the requirement to own them). However, since there is a minority opinion that an *esrog* with a small gouge is kosher even on the first day, we allow making a *brachah* on it on the second day, but it is not *mehudar*" (*Mishnah Berurah* 648:8).

An *esrog* that is *pasul* is a *mekach taus* (defective merchandise), and can be returned to the seller, similar to food that proves non-kosher (C.M. 232:11-12; Sma 232:28).

Even if for some people the *esrog* is kosher, if it is *pasul* for the buyer it is also *mekach taus*. Moreover, if a person is known to be stringent to buy only a *mehudar* *esrog*, it is considered a *mekach taus* for him, even if it is minimally kosher" (see Rama, C.M. 233:1).

"Thus, had the *esrog* been *pasul* for one who observes two days, it would be a *mekach taus* even though it is kosher for Israelis who observe only one day," concluded Rabbi Dayan. "However, since *chaser* does not disqualify the *esrog* from a *brachah* on the second day, and the amount you paid is not reflective of a stringency to buy only a *mehudar* *esrog*, you cannot demand a refund."

Verdict: An *esrog* that is *pasul* is a *mekach taus*. A small gouge makes it *pasul* on the first day of Yom Tov, but it can be used on Chol Hamoed, and even on the second day of Yom Tov. Nonetheless, for one who is known to use only a *mehudar* *esrog*, it is considered a *mekach taus*.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

APOTROPUS #18

FIDUCIARY GUARDIAN

Mitzvos Expenditures

לע"נ ר' יחיאל מיכל ב"ר חיים דו"ג חי' בת ר' שמואל חיים ע"ה

Q: Should the *apotropus* use the orphans' assets to buy *lulav* and *esrog* or *tefillin* when reaching *bar mitzvah*? What about tuition payment to yeshivah?

A: The *apotropus* is responsible for the religious development and education of the orphans, just as the father was. Therefore, he should pay any fixed-expense *mitzvah* needs of the orphans, whether d'Oraysa or d'Rabbanan, such as to buy for them *lulav* and *esrog* or *tefillin*. Although they are still minors, the responsibility to train them exists (C.M. 290:15; Aruch Hashulchan 290:30; Imrei Yosher 1:3).

Similarly, the *apotropus* should use the estate to pay the tuition expenses of the orphans, as well as *sefarim* and educational material. This includes Jewish education for daughters.

All this applies whether the *apotropus* was appointed by the father, *beis din* or relied on by the orphans. The same is true if the mother is responsible for them. It is questionable whether the *apotropus* should give *maaser kesafim* from the investment profits of the assets (*Minchas Yitzchak* 5:34).



BHI HOTLINE

the total cost of the damage (*Shulchan Aruch*, C.M. 383:3). We cannot obligate the owner of a *shor tam* to pay for half of the actual cost of the damage, however, because the Torah specifically limits his liability to half the amount of damage his ox caused. In this case, since the owner of the pit is responsible for half of the damage, the owner of the *shor tam* is responsible for half of the other half of the damage, which equals a quarter of the total amount. The *Gemara* cites Rabi Nossan's ruling that the owner of the pit must fill in the missing quarter and pay a total of 75% of the damage, because there is a rule that *heicha d'leika lishtalumei m'hei, mishtalem m'hei* – where payment cannot come from one source, it comes from the other (C.M. 410:34-36). One explanation offered in the *Gemara* – which is cited as the basis for the ultimate halachic ruling in *Shulchan Aruch* (ibid. 35-36), although the Gra (45) cites a differing opinion – is that when two people cause damage, we consider it as though each party is fully responsible for the damage. Therefore, if one party is not obligated to pay for some reason, the second person must compensate the victim for the amount he has not received from his partner.

This is only true, however, if the partner is halachically exempt from payment. The *Rishonim* debate what the *halachah* would be if both parties were required to pay, but one ran away or doesn't have any money. Some hold that the above ruling applies, and the partner must fill in the missing amount (*Ramah*, cited in *Tur* and *Shulchan Aruch*, ibid. 37). Others maintain that if one partner is liable but doesn't have funds, that does not obligate his partner to fill in the missing amount (*Tur*, ibid.; *Shach*, ibid. 4; and 388:42; see *Pischei Teshuvah* 348:7 and *Shu"t Tzemach Tzedek*, C.M. 46-47).

Returning to your case: Your son and his friend are both responsible for damages and the obligation to pay rests equally on both of them. If you want to pay your son's portion and leave the other half for your son's friend to pay, even though you know he has no money, you are allowed to do so, because you can rely on the *poskim* who maintain that you have no obligation to fill in the missing amount (see further *Ketzos*, ibid. 3).

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com

To subscribe send an email to subscribe@businesshalacha.com or visit us on the web at www.businesshalacha.com

The digital distribution is sponsored by **DMT Plumbing and Heating Corp.**

WOULD YOU LIKE THE ZCHUS OF SENDING THIS NEWSLETTER TO YIDDEN WORLDWIDE?

CALL 718-233-3845 X 201. OR EMAIL : OFFICE@BUSINESSHALACHA.COM

DISTRIBUTION IN LAKEWOOD IS

לעילוי נשמת ר' מאיר ב"ר ישראל ז"ל