



לוקוטי ופסקי הלכות "חוקי חיים"



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Esrog in a Shemita Year

Parshas Ki Seitzei 5782

273

Kedushas Shevi'is of an Esrog

Chanatah or Harvest?

- Fruit tree.** Previously (see Issue 236), we discussed when shemita produce has kedushah. We mentioned that the status of tree fruit follows chanatah [when the flower falls off or when the fruit is one-third grown]. If **the chanatah was in the sixth year** – before Rosh Hashanah (חזו"א סי' ז' סק"ג) – there is no kedushas shevi'is even if the fruits were picked in shemita; if **the chanatah was during shemita**, i.e., after Rosh Hashanah at the beginning of the seventh year, kedushas shevi'is is in effect even if the fruits were picked in the eighth year, after shemita.
- Vegetables.** Unlike fruit, the status of vegetables depends on their time of harvest. Thus, any vegetable picked between Rosh Hashanah of the seventh and eighth years is considered shemita produce. Any vegetable picked after Rosh Hashanah of the eighth year does not have kedushas shevi'is. Still, even after Rosh Hashanah of the eighth year, one must ensure that the vegetables were in fact picked after Rosh Hashanah. Soft vegetables with kedushas shevi'is are in stores for a short time after Rosh Hashanah, while hard vegetables, e.g., potatoes and onions, with kedushas shevi'is are in stores for much longer.
- Esrog.** There is a machlokes in the Gemara and the Rishonim whether esrogim are determined by their time of harvest like vegetables, in which case esrogim picked after Rosh Hashanah of the eighth year [e.g., after this coming Rosh Hashanah] have no kedushas shevi'is; or whether they are determined by chanatah like tree fruit, in which case even esrogim picked after this coming Rosh Hashanah have kedushas shevi'is since they underwent chanatah during shemita.
- The consensus of most poskim and the accepted psak is that for shemita purposes, esrogim are determined by chanatah like other tree fruit (ראב"ד פ"א מע"ש ה"ה, הגר"א י"ד סי' של"א ס"ק קצ"א). Thus, even esrogim picked after Rosh Hashanah of the eighth year [5783] have kedushas shevi'is. Accordingly, an orchard owner may not close off his orchard even after Rosh Hashanah and anyone can take esrogim (חזו"א שם סק"י).

Esrogim Have Kedushah

- Esrogim have kedushas shevi'is since they are edible (ש"ת שבט הלוי) and some people do in fact eat them pickled or as a jam.

Esrogim This Year

- Thus, esrogim which grew in Eretz Yisroel have kedushas shevi'is and must be treated accordingly. All the halachos of shemita produce we previously covered (Issue 236, par. 14-20) apply, e.g., the issurim of wasting (ibid., 16), doing business (17), and "guarded/worked" (20) etc.
- Excellent hechsher.** One must make sure that everything was done in a mutar way. Thus, this year, one must be extra careful to only get an esrog with a top-level hechsher. This must certify that no issurim were violated in growing the esrog in the orchard and that the harvest and distribution were done properly, even if they were done through otzar beis din (see Issue 242). This way, the fulfillment of the mitzvah will not be tainted with aspects of issur. One should certainly not buy esrogim at booths on the street sold by people off the street.
- There are a few ways to get an esrog for the mitzvah of daled minim this year, as will be explained.

Picking an Esrog from a Hefker Orchard

- One way to get an esrog this year is by picking one in an orchard. Since they are hefker, anyone may come and pick esrogim. However, this is subject to certain halachos, as we will explain.

Hefker Orchard

- Field owners have a mitzvas aseil to declare their shemita produce hefker, as the posuk says (י"א, משפטים כ"ג), (משפטים כ"ג, י"א) (רמב"ם ספח"מ מ"ע קל"ד) "ונטשתה עי מנח מצוה פ"ד, פאת השלחן סי' כ"ג" ("אפקעתא דמלכא" (סק"ט). Some say that if the owner did not make his produce hefker, it is not hefker (ב"י, אבקת רוכל סי' כ"ד).
- However, most poskim hold that produce is hefker even if the owner did not make it hefker. The way to fulfill the mitzvah is by not closing off one's field to others (מ"הר"ט ח"א סי' י"א, מהר"ט ח"א סי' י"א, מ"הר"ט ח"א סי' י"א, מ"הר"ט ח"א סי' י"א).
- Ground is also hefker.** Therefore, an orchard owner must make his orchard hefker for the shemita year and leave it open to enable anyone to come and pick the hefker esrogim. The ground is also made hefker so that others can enter and acquire the hefker produce (גמ' נדרים מ"ב ע"ב). Owners who do this are the "גיבורי כח" who keep shemita. They invest yearly many resources and much energy in growing esrogim and forfeit a major amount of income they receive by those who cherish and beautify the mitzvah of esrog.
- Trees are not hefker.** Although the fruits and ground are hefker, the trees themselves are not hefker to whatever extent not necessary for picking the fruit. Thus, when taking fruit from a shemita orchard, one must make sure not to damage the trees. Esrog trees are known to be very delicate by nature. They are easily damaged, and the Torah did not permit that. If one damages the trees, he must pay for the damage he caused.
- Guard.** Thus, if there is a concern the trees will be damaged, one may appoint a guard to guide people how to pick the esrogim effectively without damaging the trees, but the guard may not prevent people from coming to pick (הגר"ש וואזנר, תורת הלוי י"א, ז').
- Indicating where the key is.** One may also lock his field if he is concerned about damage and post a sign that the fruit is hefker and whoever wants to take can get the key at such-and-such location (שמיטה כהלכתה, תורת הלוי שם). The key must be located near the orchard (השמיטה והלכותיה פ"ג אות ד').

Deceptive Methods

- Sometimes, orchard owners are concerned about damage to their esrog trees or about losing profits on the crop. They look for deceptive methods to make it difficult for people to pick esrogim. The common denominator between them is that Chazal are not pleased with them [and they are "חלושי כח" not "גיבורי כח" ...]. The Torah instructs "ונטשתה" [abandon it], yet with these strategies, a person does not abandon his field; his mind and eyes are on it.
- Doesn't disclose which trees are orlah.** Some people post a sign in their orchard that there are orlah trees inside without disclosing where they are. The effect is that one cannot pick esrogim, as they might be assur because of orlah.
- Some say that this is not even considered hefker since it is not hefker in a way that enables people to come pick (הגר"י קרליץ).
- Doesn't make oketz hefker.** There was an improper minhag wherein orchard owners would announce that they make all esrogim hefker, but they do not make the oketz, which are part of the tree, hefker (see 13 above). There is no obligation to make the esrogim hefker in a way that people can use them for daled minim;

it is enough to enable people to eat them. This way, people have no permission to take the oketz, and an esrog without an oketz is posul. Through this, these orchard owners found a way to prevent people from picking the hefker esrogim.

20. However, the poskim came out against this deceptive practice. Since it is not common for people to keep the oketz for themselves, this is a type of deception ["הערמה"] that Chazal forbade in many places (חוט שני פ"ד סקל"ז, שו"ת שבט הלוי ח"ז סי' ע"ט אות ב').
21. Another point they raise is that one must make fruit hefker along with its parts that are held [יד] or that protect it [שומר]. These are necessary for the fruit, as when the oketz is removed, the fruit dries up, and these fruits always come with an oketz (דרך אמונה פ"ד (צו"ל ס"ק רצ"ה)).
22. **Not disclosing an orchard's location.** An orchard owner is not obligated to inform everyone where his orchard is or how to get there so that people can come and pick esrogim, as he does not need to help people pick fruits in his field. As long as he makes it hefker properly, he is yotzei his chiyuv, and people who know where it is can come take esrogim (שו"ת שבט הלוי ח"י סי' ר"א).

Picking Esrogim from a Hefker Orchard

When to Pick

23. **Before Rosh Hashanah of the eighth year.** Everyone agrees that an esrog picked before Rosh Hashanah [5783] has kedushah and is hefker. An orchard owner must leave his orchard open to all.
24. **After Rosh Hashanah of the eighth year.** Some poskim hold that due to safeik, the time of harvest is also used in determining an esrog's status. Accordingly, after Rosh Hashanah, although an owner must leave his field open to all, the public may not come and pick out of safeik (פ"ד (וה"ו, מע"ש ה"ה וה"ו, פ"ד) פוסקים בדעת הרמב"ם פ"א מע"ש ה"ה וה"ו, פ"ד) (שמ"ט הי"ב). Therefore, it is better to pick esrogim from a hefker orchard before Rosh Hashanah.
25. However, most poskim hold that an esrog's status depends on the time of chanatah (above 4), not the time of harvest. Thus, even after Rosh Hashanah of the eighth year, one may pick esrogim which underwent chanatah during shemitah as they are completely hefker (25 דוד שביעית ח"ב פ"ב הע"ב).

How to Pick

26. One should not pick tree fruit with tools normally used in other years for harvesting (משנה פ"ח מ"ו). If it is impossible to pick the fruit with other tools and the field was made hefker properly, one who is meikel to pick with regular tools does not lose out (ס"ק"ח ד"ה שביעית).

How Much to Pick

27. **Orchard owner.** It is assur d'oraisa for a field owner to pick all the produce in his field, as the posuk says, "ענבי נזירך לא תבצר" (ויקרא כ"ה, ה'). Otherwise it looks like he is harvesting for business. Chazal forbade one from picking even part of his field's produce. However, one may pick an amount that is common for people to bring home at one time (רמב"ם פ"ד ה"א והכ"ד). It is common for people to bring home at one time (רמב"ם פ"ד ה"א והכ"ד).
28. **Other people.** Other people also should not pick more than a normal amount a person brings home at a time (י"ב סק"ט) (ד"ה שם מ"ז, סי' י"ג סק"ז ד"ה ומהא). If one is picking for himself and his friend, he can pick enough for both of them to bring home. The same is true if one is picking for several people.
29. Regarding esrogim, some say that two esrogim is a normal amount for a person to bring home at a time (הובא בבית דוד סוכות פ"ב) (הע"ב 29). It could be that three is also mutar since it is also normal to bring three esrogim home to choose the most beautiful of them.
30. Thus, one may pick many esrogim to take them home and pick the most beautiful one for himself if other people will use the other esrogim for the mitzvah or for food and they will not just go to waste. However, one should not pick many esrogim and leave the ones he does not want in the field.

Otzar Beis Din

31. Another accepted way of distributing esrogim is through otzar beis din. In this method, the orchard owner gives his orchard to agents of beis din, who do work that may be done on trees in shemitah. They then pick, package, and store the esrogim and ultimately distribute them to the general public.
32. In the past (Issue 242), we elaborated on all the halachic particulars and accepted practices regarding produce distributed by otzar beis din. Some batei din distribute all sorts of fruits via otzar beis din throughout the shemitah year. Some are careful not to rely on this

for all fruits, but they will rely on it to distribute esrogim for the mitzvah of daled minim, as there is no other way to ensure that everyone will get esrogim (בית דין של העדה"ה).

Guarding the Orchard

33. Beis din's agents should not guard the field from private individuals who want to pick, as they do not own the field. The field was made hefker by its owner; beis din just has the permission and the right to harvest everything so that it is easier for the public to get the hefker produce (חזו"א סי' י' סק"ה ד"ה והם, חוט שני קונ"ט אוצר ב"ד ד"ה כתוב) (וה"ו והדבר, דרך אמונה פ"ו סוף סק"ט).
34. Some say that if beis din's agents guard the field, preventing others from picking produce, the issur of guarded produce ["שמור"] applies according to some opinions (משנת הגרי"ש פ"ה ס"ו), (הגרש"א מנחת שלמה ח"ג סי' קל"ב אות ח"י).

Payment

35. The payment collected by beis din's agents is not for the esrogim themselves; the esrogim are hefker and one may not do business with them. The payment is to cover the costs of field workers, packaging, transportation, and distribution stations.
36. One may not display shemitah esrogim on a table and charge for each individual esrog based on its level of kashrus as in any other year as that is business. Such payment cannot be attributed to covering costs, as the cost for each esrog is identical. A beautiful esrog does not involve more expenses than a basic esrog. One should not buy from stores or booths which charge based on each esrog's beauty, as those sellers violate the issur of doing business.
37. **Price by category.** However, one may sort esrogim into categories, e.g., Levels 1, 2, and 3; place them in closed boxes; and set a price for each category. This is not the regular way business is done each year. It is a way to cover costs, just that instead of each person covering an equal portion of the cost, people who buy a Level 1 esrog contribute a bit more since they get more beautiful esrogim.
38. Sellers may not take more money than the price fixed by beis din for each box. Anything a seller adds is for profit, not to cover costs, and that gets into the issur of doing business.

Bringing an Esrog to Chutz La'Aretz

Bringing Shemitah Produce to Chutz La'Aretz

39. One may not bring shemitah produce to Chutz La'Aretz even if he plans on returning it to Eretz Yisroel (מ"ה). Some say this is to prevent one from mixing it up with produce from Chutz La'Aretz and treating it accordingly (ר"ש משאנץ ת"כ בהר פ"א ה"ט); others say it is just to give shemitah produce the special advantage of being eaten in Eretz Yisroel (חזו"א סי' י"ג סק"ג); yet others say the reason for the issur is because of bi'ur (רידב"ז פ"ה הי"ח).

Esrogim for the Mitzvah

40. Although one may not bring shemitah produce to Chutz La'Aretz, the poskim allow it in a pressing situation and for the mitzvah of daled minim. Some only allow it if one cannot get a non-grafted esrog and he will potentially lose the mitzvah completely (חזו"א (מכתב ב' ד' מנינים עמ' שכ"ג)).
41. Others give a full heter. They hold the reason is because of bi'ur (above, 39), yet it is mutar to bring a small amount – certainly one esrog for a family member etc. – or if one is returning it to Eretz Yisroel before the time of bi'ur (מתורתו) (הגר"פ עפשטיין ראב"ד ירושלים, מתורתו) (של רבי פנחס ח"ב סי' פ"ב אות ד', הגר"ש וואונר, תורת הלוי שביעית פ"ג אות נ"ו). Others are very machmir not to bring even esrogim to Chutz La'Aretz (שו"ת דברי יואל סי' צ"ד).
42. Even in Chutz La'aretz, one must check whether the esrog he is using for the mitzvah is from Eretz Yisroel. If it is, it must be treated with kedushah.

Kedushah of Esrogim from Eretz Yisroel

Hanging an Esrog in the Sukkah

43. One may hang an esrog or other shemitah produce as a sukkah decoration, as doing so does not ruin it. Although during Sukkos it is designated for the mitzvah and may not be eaten, it will become mutar again afterward (הגר"ש, משנת הגרי"ש) (פ"ז ס"ד). Even though there is a chance it will fall and get ruined, there is no chiyuv to guard shemitah produce (בית (דוד שביעית ח"ב פ"ז הע"ב 8)).

Handling an Esrog

44. One may take the esrog as he does in any year. He does not need to make sure it does not get rubbed when he uses it; that is normal for an esrog. In fact, the Chasam Sofer considered this hiddur mitzvah. Thus, it is not a problem of ruining shemitah produce.