

# BUSINESS WEEKLY



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

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## CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

## SHEMITTAH ESROGIM

Yisrael accompanied his father to buy *arbaah minim* – the four species of Sukkos. He had joined his father for the last six years, ever since turning bar mitzvah.

Yisrael was already quite familiar with the various kinds of *esrogim*: with and without a pitam; golden yellow and still greenish; Yemenite and Chazon Ish; and various gradations of quality.

"Can I choose my own *esrog* this year?" Yisrael asked his father.

"If you feel comfortable doing so – go ahead!" answered his father. "You already know what to look for. Still, I think that it's a good idea that I check the *esrog* after you choose."

When they got to the *esrog* center, though, Yisrael saw large, new signs that he was not familiar with.

The *esrog* center was divided into several areas. One was marked "Otzar Beis Din." Many *esrogim* in this section were being sold in closed boxes. Another area was marked "Heter Mechirah." A third area was marked, "Not from Israel."

"What's going on?" Yisrael asked his father. "I've never seen these signs before."

"That's because you weren't with me last *Shemittah*!" laughed his father. "You weren't bar mitzvah yet."

"But I thought *Shemittah* just finished," said Yisrael.

"It did," replied his father. "However, fruits that grew during *Shemittah* continue to have *kedushas shevi'is* and cannot be marketed in the regular manner."

"Then you'll have to explain these new signs to me," Yisrael said. "Why is all this necessary?"

"I see Rabbi Dayan over there," said his father. "Perhaps he can explain better."

They approached Rabbi Dayan, and Yisrael's father asked:

**"Can you explain to Yisrael about the different *Shemittah* sections?"**

"The *Gemara* (*Sukkah* 39a) teaches that a person who buys an *esrog* that grew during *Shemittah* should include its cost in the payment for the *lulav*," replied Rabbi Dayan. "This is because the *esrog*, unlike the *lulav* (which is inedible) has *kedushas shevi'is* and may not be sold commercially. Furthermore, money given as payment for *shemittah* produce thereby acquires *kedushas shevi'is* and should not be handed to one who will not treat it properly" (*Hil. Shemittah* 8:10-11).

"There are two primary ways to allow payment for *esrogim* of the *Shemittah* year on a wide

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

## COCA COLA SUKKAH

**Q.** Last year, I was walking past a neighbor's house, and I noticed that he had built a *sukkah* out of the crates used by Coca-Cola to ship their bottles, which can be stacked in a brick-like manner to build a stable structure.

The crates state specifically that they are property of Coca-Cola. I was wondering: Does that render the structure a *sukkah gezulah* (stolen *sukkah*)?

**A.** If a person steals wood and builds a *sukkah* with it — whether he used it as walls or as *s'chach* (*Pri Megadim*, *Mishbetzos Zahav* 637:4) — *mid'Oraisa*, he does not fulfill the *mitzvah* of *sukkah*. Furthermore, a thief may not merely offer to pay the owner for the wood he stole; he is required to take apart the structure he built (such as a *sukkah*) and return any wood that is in the state in which he stole it.

Fearing that this *halachah* would prevent a thief from doing *teshuvah* and returning what he stole, *Chazal* enacted a decree called *takanas marish*, which allows a thief to return the monetary value of the wood rather than destroy the structure that he built with it.

Therefore, if the thief who used stolen wood to build a *sukkah* decides that he will repay the victim for the theft, he may use his *sukkah* to fulfill the *mitzvah* and even make a *brachah* on it. If, however, he has no intention of compensating the victim, he cannot fulfill the *mitzvah* in the stolen *sukkah* (*Shulchan Aruch*, O.C. 637:3 with *Magen Avraham* 5).

Even if a person doesn't actually steal the wood, but borrows it without the owner's knowledge (*sho'el shelo midaas*), intending to return it after Sukkos, he cannot fulfill the *mitzvah* in that *sukkah*, because it is considered stolen (*Bei'ur Halachah* *ibid.* s.v. *ve'im*).

At first glance, then, it would seem that since the crates belong to Coca-Cola, the *sukkah* is considered stolen. [*Sho'el shelo midaas* is considered theft even if the item is borrowed from a non-Jew (*Magen Avraham* 472:2; see *ibid.* *Chok Yaakov* 4 and *Imrei Yaakov* p.130.)]

In a case of theft, if the owner was already *meya'eish*



## CASE FILE

scale. First, through *heter mechirah*, whereby the *esrog* never attains *kedushas shevi'is* according to many *poskim*.

"The second prevalent option is through *otzar beis din*. The *Tosefta* (*Shevi'is* 8:1) describes that *beis din* would oversee the picking and processing of *shemittah* fruit, and even hire workers, and store the produce under its supervision for distribution later to the city members (see *Money Matters*).

"In this manner, the *esrog* is not being sold, per se, but rather distributed under direction of *beis din*. The *esrog* vendor is *beis din's* agent to distribute it, and the money charged is collected to defray *beis din's* expenses in enabling its distribution. For this reason, the money does not acquire *kedushas shevi'is*, since it is not payment to buy the *esrog*, but rather the recipient's share in the expenses associated with distribution" (*Mishpetei Eretz, Shvi'is* 13:4).

"*Poskim* further discuss export of *esrogim*. The *Mishnah* (*Shevi'is* 6:5) states that *Shemittah* produce should not be taken out of Israel. This is because it is considered holy; to enable *bi'ur* in Israel; lest it be treated as regular fruit; or to ensure sufficient food in Israel. Nonetheless, many *poskim* allow exporting *esrogim* for the purpose of *arbaah minim*, especially if initially intended for such, at *beis din's* discretion" (*Mishpetei Eretz, Shvi'is* 20:2).

"You must be careful, though, to treat an *esrog* of *otzar beis din* properly after *Sukkos*," concluded Rabbi Dayan. "It is prohibited to destroy or ruin fruit with *kedushas shevi'is*, so that the *esrog* cannot be disposed of normally. It should be made into jelly, held until it dries out, or double wrapped respectfully when disposing of."

**Verdict: Payment for *esrogim* of *Shemittah* should be included in the payment for the *lulav*, or subject to *heter mechirah* or distribution through *otzar beis din*.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

### MONEY MATTERS Sukkos Otzar Beis Din

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' ח'י בת ר' שמואל חיים ע"ה

### Q: What is the role of *beis din* in *otzar beis din*?

A: *Beis Din's* role in this context is not to adjudicate, as usual, nor to take responsibility for collection of debt, as with *pruzbul*. Rather, it is to oversee communal management of *Shemittah* produce.

We find elsewhere, as well, *beis din's* responsibility to oversee communal monetary and religious functioning, e.g., overseeing accurate measures, prices for basic food necessities, and compliance with *kil'ayim* requirements (C.M. 231:2,20; 273:18).

In *otzar beis din*, *beis din* serves as representatives of the community to oversee the harvesting and distribution of *Shemittah* produce on behalf of the community. They contract the growers and various service providers necessary to distribute the *Shemittah* produce to the public, and fix the fees for their services.

Ideally, *Beis Din* should also determine the cost charged to the consumers to defray these expenses. In theory, the price for various *esrogim* should be similar, since the entailed cost is similar. Therefore, they are often sold in closed boxes. However, since much of the permissible labor and selection expenses are aimed to provide higher-quality *esrogim*, there is justification to assign a higher cost for them.



## BHI HOTLINE

(despaired) and the item is no longer in the thief's possession (*shinui reshus*), then another person may acquire it. Therefore, if the person who built the *sukkah* out of Coca-Cola crates did not have those crates delivered directly to him, but found them lying on the streets or in someone else's property, there are several contributing factors that could make it permissible to use them to build a *sukkah*.

First, the *mitzvah* of *hashavas aveidah* pertains only to items that belong to a Jew (see *Choshen Mishpat* 264:1; if there is a possibility of creating a *kiddush Hashem* by returning lost items, there is a *mitzvah* to do so, but that is unlikely in the case of these crates). Second, the actual value of these crates to each individual shareholder of Coca-Cola is less than the value of a *prutah*, in which case there is no *mitzvah* of *hashavas aveidah* (ibid. 262:2). Third, there is *shinui reshus* from the person who initially took them from a store into the property of the finder. Although the labeling on the crates indicate that they belong to Coca-Cola, since the company is aware that a very small percentage of those crates are returned, and the rest are either discarded or used by people who don't return them, it is likely that this is considered *yi'ush* as well (*Bei'ur Halachah* 637:3, s.v. *Ela Yiknu*, and *Kesef Hakodashim* 358).

Furthermore, it is possible that even if a person did have those crates delivered directly to him, using them still might not be *gezeilah*, as it is possible that the company does not mind people using their crates short-term. (Also see *Nesivos* 194:7 and 72:53, and *Chiddushei Chasam Sofer, sukkah* 30a, s.v. *v'eiyen Magen Avraham and Tumim* 72:57 regarding *hafka'as pikadon*).

Upon further investigation, it turns out that there is no problem with using these crates to build a *sukkah*.

Several years ago, someone suffered a house fire shortly before *Sukkos*, and he came up with the idea of using Coca-Cola crates to build a *sukkah*. He was concerned, however, that there might be an issue of it being a stolen *sukkah*, so he called Coca-Cola. Several employees concurred that the customers have no obligation to return the crates. In fact, the company does not actually demand that they be returned; they are perfectly satisfied if customers throw them in the garbage. [This is in stark contrast to milk companies, who do want their crates returned.] Coca-Cola wouldn't even bother to come back to retrieve the crates if someone did bring them back to the store. The reason the label states that that they must be returned is because Coca-Cola is concerned about liability if someone gets hurt by their crates and sues them. But they do not enforce their official policy, and a person may therefore use them to build a *sukkah* (*Kovetz Halachos, Sukkos* 11:3).

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