

Shemitta and the Four Minim

For those of us not blessed to reside in the Land of Israel, shemitta is a halachic curiosity rather than a way of life. We may occasionally encounter shemitta produce while shopping in Costco and ask our rabbis for guidance in this eventuality, but for the most part, shemitta is observed in the sense of being noticed and registered as something significant; it is not observed in the sense of being fulfilled and complied with on a daily basis. There is however one exception, one time when shemitta produce floods the Diaspora market. Curiously however, this one time when shemitta fruit penetrate our daily lives takes place after the calendar year of shemitta has ended. I speak, of course, of the four species we shake on Sukkos which often originate from Israel and may be subject to the regulations of shemitta.

Since the four species that come to market for Sukkos 5776 are shemitta products, it is worthwhile investigating their halachic status. Of course our entire conversation presupposes that the four species in question originate in Jewish fields in the Land of Israel. Non-Israeli produce is not subject to the rules of shemitta, neither is Israeli produce from non-Jewish owned lands according to many opinions.

Kedushas Sheviis

The first question we must analyze is whether the four species possess the sanctity of shemitta (*kedushas sheviis*). This is relevant for many issues including the purchase of the



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four species. Halacha forbids one from doing *sechora*, business with shemitta produce. The money itself given in exchange for shemitta fruits becomes sanctified with *kedushas sheviis* and consequently, it is forbidden to deliver such money to one who will not treat it with the appropriate shemitta regulations. The Mishna already raised the issue of *kedushas sheviis* with the four minim.

הלוקח לולב מחבירו בשביעית - נותן לו אתרוג במתנה, לפי שאין רשאי ללוקחו בשביעית.
סוכה לט.

If one purchases a lulav [set] during the shemitta year, [the seller] should give the esrog as a gift because it may not be purchased during shemitta.

Sukka 39a

The Mishna teaches that one who purchases a set of four minim during shemitta should not pay for the esrog. Rather the price of the esrog should be given as a gift, or as the Gemara explains, *mavlia lei d'mei esrog b'lulav*, subsumed into the price of the lulav. Apparently for the Gemara, an esrog possesses the sanctity of shemitta but a lulav does not. At first glance we would assume that this is due to the fact that an esrog is a fruit and, as such, subject to shemitta sanctity; but a lulav, which is an ordinary branch, is not. However, the Gemara concludes

that the Mishna refers to a lulav that grew in year six of shemitta. As such, a shemitta year lulav is infused with *kedushas sheviis*. Rashi explains that the reason for this is the following:

אבל לולב עיקר הנאתו לכבד את הבית, והוא שעת ביעורו וקלקולו, ודמי להנאת אכילה.
רש"י סוכה מ.

The primary benefit of a lulav is its use to sweep the house and that is when it gets destroyed. Its benefit is similar to the benefit one derives from eating.

Rashi, Sukka 40a

Kedushas sheviis is modeled after food that is destroyed at the time of its consumption — *hana'aso ubiuro shaveh*. A lulav, like food, is also destroyed at the time when it is consumed; the branches of the lulav become ruined while sweeping the house. Consequently the *kedusha* of shemitta is affixed to a seventh year lulav, according to the Gemara.

It would seem that the conclusion of the Gemara is that both esrog and lulav from a shemitta year possess *kedushas sheviis*. As such, the advice given in the Gemara to subsume the cost of an esrog into the cost of a lulav, will not work if the lulav is also from shemitta. For this reason the late Rov of Yerushalayim and Brisk, Rav Yehoshua Leib Diskin instructed that the cost of the esrog should be included as part of the cost of the

hadassim, rather than the lulav. (See *Tzitz HaKodesh* of R. Yehoshua Zvi Mechel Shapiro, #15).

There is room to question both of R. Yehoshua Leib's premises in his modification of the Gemara: that a lulav has *kedushas sheviis* and hadassim do not.

It is not abundantly clear that a lulav possesses *kedushas sheviis* today. Rav Shlomo Zalman Auerbach (*Minchas Shlomo* 1:51:23) argues that lulavim today, which are not used to sweep the floor, do not possess *kedushas sheviis*. The Gemara was dealing with a reality where people used their lulav for home cleaning. Today this is not done. Moreover, the Rambam and Bartenura (*Sukka* 3:11) hold that a lulav never possesses *kedushas sheviis*.

The second assumption of Rav Yehoshua Leib Diskin, that haddassim do not possess *kedushas sheviis* is also subject to question. The Yerushalmi (*Sheviis* 7:1) raises this as a question: *besamim mahu sheyehei aleihen kedushas sheviis* — do spices attain shemitta sanctity? — and remains undecided. Many poskim feel that

one should be strict on this matter and grant *kedushas sheviis* to fragrant produce (See *Derech Emuna, Sheviis* 7:127 and *Mishpitei Eretz* 14 note 5). As such it would seem that one should treat haddassim with all the strictures of *kedushas shviis*. In fact, it is reported that the Chazon Ish treated hadassim with *kedushas sheviis* (See *Derech Emuna* chapter 7 *tziyunim* 222). R. Yechiel Mechel Tukachinsky however argues that even if fragrant plants possess *kedushas sheviis*, hadassim do not. Hadassim are planted specifically to be used for a mitzvah. If one decides to use the hadas afterwards for its sweet smell, that is his or her prerogative. Fundamentally, however, we follow the purpose for which the hadas was planted and therefore we don't ascribe *kedushas sheviis* to the hadas (See *Sefer haShemitta* chapter 7 note 11).

However, the line of reasoning that an item planted for a mitzvah by definition is not subject to *kedushas sheviis*, would call into question the very assumption that esrogim possess *kedushas sheviis*. There is a fair amount of literature attempting to explain

why a hadas that is intended for mitzvah use rather than serving as a fragrance loses its shemitta sanctity, but an esrog that is intended for mitzvah purposes does not lose its shemitta status (See *Minchas Asher, Shemitta* #14:3). It seems, however, that a careful reading of Rav Yechiel Mechel Tukachinsky's note alerts us to the answer. Rav Yechiel Mechel notes that the Torah's description of hadassim — *anaf eitz avos*, twigs with braided leaves — indicates that the hadas used for a mitzva is simply a branch. However, when one intends on using an esrog for a mitzvah, that person has in mind to use the esrog as a fruit — *pri etz hadar*, a beautiful fruit. As we know, fruits are subject to the laws of shemitta but branches are not. Moreover as a matter of halacha, an esrog needs to retain its status as a fruit and remain edible to be kosher for a mitzvah. (*Orach Chaim* 649:5)

It is abundantly clear that aravos, which are ordinary branches and do not even possess fragrance, are therefore not subject to the strictures of *kedushas sheviis*.

What to do with your Shemitta Esrog after Sukkos

Based on article by R. Michael Zylberman available at: <http://www.yutorah.org/lectures/lecture.cfm/728376>



Contemporary poskim present three different options:

- 1) **Eat it:** This position was espoused by the Steipler Gaon as cited in *Derech Emunah Shemitta V'yoveil* 5:96 and *Tziyun Halacha* *ibid.*:178. This could potentially avoid issues of *bi'ur* and may also help justify exporting the esrog to the Diaspora.
- 2) **Send them back to Eretz Yisrael:** This position was espoused by Rav Moshe Mordechai Epstein as cited in *Shemitta K'Hilchasa* 3:17. Sending the esrog back may also provide justification to export the esrog to the Diaspora.
- 3) **Do nothing:** Many poskim (see *Az Nidberu* 14:52) suggest that it is best to just let the esrog rot. Once it is rotten, it may be disposed of in a respectful manner. If one follows this approach, there remains a question as to whether *bi'ur* is required if the esrog is still edible at the time of *bi'ur* (which itself is a subject of dispute).

Hakafa

There is another way to avoid the prohibition of purchasing shemitta fruits from a non observant Jew — buying the esrog on credit (*hakafa*). However, it is not abundantly clear how this is accomplished and the matter remains a dispute among poskim.

A careful read of Tosafos (*Avoda Zara* 62b s.v. *Yaus*) will yield three opinions as to the proper way to avoid transference of *kedushas sheviis* to the money through *hakafa*. The first opinion of Tosafos only permits payment for the esrog after it has been consumed. This opinion is endorsed by the Ramban cited in the Ran (30b) and is the opinion that is followed l'halacha by Rav Kook (*Shabbos Haaretz* 8:20) and R. Yechiel Michel Tukachinsky (*Sefer Hashemitta* page 42). The second opinion in Tosafos allows payment *b'hakafa* once the esrog has been delivered to someone other than the original buyer. According to this opinion, which is endorsed l'halacha by Ridbaz (note in *Sefer Hashemitta* loc. cit), one who wants to purchase a shemitta esrog should go to the seller together with his or her friend. Once the esrog has been delivered to the third party, the original buyer pays for the esrog. Such an approach would be cumbersome. Chazon Ish however follows the third opinion in Tosafos. So long as payment for the esrog is rendered after the esrog has already entered the physical domain of the buyer, this is the form of *hakafa* that is permitted. Accordingly, Chazon Ish recommended purchasing the four minim with a check (or credit card). In this way, money is not drawn from the buyer's account until after the esrog has already entered the buyer's possession. [It is questionable

if checks and credit cards actually operate this way, see Rav Yosef Tzvi Rimon, *Shemitta* page 249.] The shortcoming of many of these approaches is that *Shulchan Aruch* OC 649:2, teaches that to fulfill the mitzvah the first day of Sukkos one needs to have complete possession of his esrog. If payment has not been given until after the esrog was consumed at the end of Sukkos, one would likely not fulfill the mitzvah of *daled minim* (see *Arba Minim Hashalem* page 131).

Some Relevant Halachos

The Mishna (*Sheviis* 6:5) teaches that it is forbidden to take shemitta fruits out of Israel. Consequently we have to question whether exporting shemitta esrogim is permitted. It seems that this question may depend on a dispute among the Rishonim. According to the Rash and Tosafos, the prohibition to remove fruits from Israel is a product of the obligation to eat shemitta fruit in Eretz Yisrael and the consequent halachos of *biur* that ensue. [Most Rishonim assume that *biur* means one is obligated to remove the fruit from his or her home and declare the fruit ownerless once that particular fruit is no longer available in the wild for the consumption of animals.] The Rambam, however, places the prohibition to export shemitta fruits in chapter five of *Hilchos Sheviis* that deals with the laws of *hefseid*, illicit destruction of shemitta fruit, rather than in chapter seven where the laws of *biur* are discussed. [See my article in *Kol Zvi* volume 3 for elaboration of this point.]

If exporting shemitta fruits is forbidden based on *biur*, items that are not subject to *biur* are not prohibited from export. This is the reasoning

employed by Rav Yosef Lieberman (*Mishnas Yosef* 4:7) to permit export of hadasim of shemitta even according to those who treat hadasim with the strictures of *kedushas sheviis*. Hadassim are always available in the wild and are therefore not subject to the strictures of *biur*. If what the Rishonim mean by *biur* is really the obligation to eat shemitta fruit in Eretz Yisrael, and so as to ensure performance of this mitzvah, Chazal prohibited the export of shemitta fruit, then lulavim (even though they possess *kedushas sheviis* according to the Gemara) may be exported since they are not eaten (See *Tzitz HaKodesh* 15:4). It would seem however that the concern for *hefseid* that Rambam alludes to would still apply. Lulavim and hadassim are likely to be damaged in transport and would therefore be forbidden to export.

Exporting esrogim however, (which is a lucrative business for many), would seem to be forbidden according to all the reasons given by Rishonim. Esrogim have *kedushas sheviis* and according to the consensus opinion are subject to the rules of *biur*.

It is worth noting that Ridbaz felt that esrogim are not subject to *biur*, since they would remain on the tree from year to year if left untouched. It just so happens that we decide to pick esrogim early to use for a mitzvah. Fundamentally, however, according to Ridbaz we should base *biur* on what would happen to an esrog in the wild. However, the position of Ridbaz was not accepted. Poskim assume that an esrog is subject to *biur*.

The time of *biur* is, according to Maharil Diskin, immediately after Sukkos when esrogim are no longer found on trees. According to Rav Shmuel of Salant, however, the time of *biur* for esrogim is Tu B'Shvat.

Some even go so far as to maintain that it is preferred to use a non-Israeli esrog to avoid the question of forbidden export of shemitta fruit. Nonetheless, the practice has been to export Israeli esrogim. Various reasons are given to permit the export of shemitta esrogim. [These sources are collected in Rabbi Michoel Zylberman's fine article on this topic at www.yutorah.org/lectures/lecture.cfm/728376.]

Some permit exporting esrogim based on the concern that if they are not exported, Jews in the Diaspora may be unable to properly perform the mitzvah. The rabbinic prohibition to export shemitta fruits is lifted in the face of the performance of the mitzvah by many thousands of Jews, who would otherwise be unable to obtain an esrog of superior hashgacha that is unquestionably not *murkav* (see *Derech Emuna, Sheviis* 5:96, in the name of Chazon Ish).

Others permit the exporting of shemitta fruits only if they will be consumed in the Diaspora. Consequently, R Chaim Kanievsky quotes that Chazon Ish insisted that one should eat one's esrog at the conclusion of Sukkos (*Derech Emuna* loc cit. *tziyunim* 179). However there is room to question this psak. It seems that the halacha is concerned with the primary purpose for which one exports shemitta fruits. That purpose is clearly business related. The fact that one decides to consume the fruits after Sukkos should do nothing to mitigate this issur (see *Minchas Asher* 14:4).

Still others suggest that the shemitta esrogim should be returned to Eretz Yisrael. This suggestion was rejected for two reasons. Since it is forbidden to transport shemitta fruits from place to place within *Chutz Laaretz* (Rambam, *Sheviis* 7:12), it should certainly be forbidden to return the fruits to Eretz Yisrael. Moreover, if the fruits cannot be eaten in *Chutz Laaretz*, there is strong room to argue that one may not fulfill the mitzvah with an Israeli esrog. Halacha demands that an esrog be *rauy laachila*, edible (see *Sukka* 35 and *Shulchan Aruch Orach Chaim* 649:5. See *Tzitz HaKodesh* 15:5 and my article in *Kol Zvi* 3 page 236 for analysis). *Tzitz HaKodesh* does not allow for the export of shemitta esrogim by Jews. He feels non-Jews must transport the fruits. Jews should only take possession of the esrogim once they reach a port outside of Eretz Yisrael.

Hefsed

Another potential problem with shemitta esrogim relates to the prohibition of *hefseid*, ruining the produce. According to one opinion in the Gemara (*Sukka* 35b), it is forbidden to take an esrog of teruma since in the process of taking the esrog its peel will become rubbed and some of the teruma will be destroyed. This calls into question the permissibility to fulfill the mitzvah with a shemitta esrog as there is concern that the esrog will be ruined and it is forbidden to damage shemitta fruit. Nonetheless poskim are

not worried about *hefseid*, in this case. The form of *hefseid* we are discussing would be classified as *gram hefseid*, indirect damage. Many maintain that indirect *hefseid* is only forbidden with teruma. Alternatively, during shemitta all esrogim in Eretz Yisrael will be forbidden if one is concerned with *hefseid*. However, with respect to teruma there is always an option of using a non-teruma esrog (see a summary of these positions in *Otzar Yesodei Sheviis* page 432-437). Finally, *hefseid* with respect to shemitta fruit may have a minimum shiur of a *kezayis*, while with teruma there is no minimum shiur (see *Minchas Asher* 10:9).

Another example of *hefseid* involves the common practice of storing the lulav, haddasim and aravos until erev Pesach and burning them together with the chametz. Although the aravos do not possess *kedushas sheviis*, we noted that there is a dispute among poskim regarding the lulav and haddasim. According to those who are strict and treat lulavim and hadassim with *kedushas sheviis*, there seems to be a problem of using these items for burning chametz as doing so would be tantamount to destroying items imbued with *kedushas sheviis*.

As a practical matter however, there is little to no room for concern. Once Pesach arrives, the lulav is no longer usable as a broom, and the haddasim no longer have any fragrance. Therefore, there is no prohibition against using these mitzvah items to assist in the mitzvah of burning the chametz (see *Derech Emuna*



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Biur Halacha 8:11). Moreover, the consensus opinion among poskim is that both lulav and haddasim for the mitzvah do not possess *kedushas sheviis*.

Shamur

There are some who prefer the use of a non-Israeli esrog over the use of an Israeli shemitta esrog. This is due to the concern that the Israeli esrog tree may have been worked and guarded during shemitta in violation of the halacha. Tosafos (*Yevamos* 122) quote Rabbenu Tam that *shamur*, produce that was guarded during shemitta is forbidden. If so, the esrog would be forbidden to eat and consequently not usable for the mitzvah (see Rabbi Moshe Sternbuch, *Shemitta Kehilchasa* page 69, based on *Shulchan Aruch* 649:5, that one may not make a bracha on an esrog that is halachically forbidden to eat).

Even so, the majority of poskim permit one to use a shemitta esrog even if it was *shamur*. This is due to the vast majority of Rishonim who believe that *shamur* is not forbidden (see *Igros Moshe, Orach Chaim* 1:186). In fact there is contradictory evidence regarding the position of Chazon Ish regarding *shamur*

(Contrast *Chazon Ish* 10:6 s.v. *vesrogim* and *Chazon Ish* 9:17). Moreover there is room to argue that even according to Rabbenu Tam, who forbids eating a fruit that is *shamur*, the esrog will not be forbidden to use for a mitzvah. Rabbenu Tam forbids *shamur* based on a pasuk that deals with the prohibition of pruning a shemitta plant. Effectively, Rabbenu Tam believes that when one protects a shemitta fruit, the act of harvesting is now forbidden. However the fruit itself does not become a *cheftza of issur*. Therefore, there would be no prohibition to use an esrog that is *shamur*, even according to Rabbenu Tam (see *Otzar Yesodei Sheviis* page 111-113). A lulav that is *shamur* is certainly permitted to use for the mitzvah, since the majority of poskim feel that a lulav does not have the *kedushas sheviis*, the prohibition of *shamur* according to Rabbenu Tam can't set in (see *Minchas Asher* page 187-189).

Conclusion

The overwhelming majority of poskim feel that it is preferable to purchase an Israeli esrog with *kedushas sheviis*, rather than a non-Israeli fruit. This is especially true if the esrog comes from a field where all halachos of shemitta

were properly kept, such as an esrog from an appropriate *otzar beis din*. One who purchases an Israeli esrog during shemitta fulfills the dictum of the Gemara that an item that was used for one mitzvah should be used for additional mitzvos as well (see *Arba Minim Hashalem* page 308).

Regarding the question as to what one should do with his or her esrog after Sukkos, there are three basic opinions. Some say the esrog should be sent back to Israel. Others maintain that one should do nothing with the shemitta esrog and passively allow it to become inedible. This is predicated on the assumption that indirect damage to shemitta fruits is permitted. However, it seems that the best option would be to consume the esrog. According to Ramban (*Hashmotos Mitzvas Aseh* 3) one performs a mitzvah when consuming shemitta fruit. Eating the shemitta esrog before the time of *biur* is a rare opportunity for the Diaspora Jew to perform the mitzvah of *achilas peiros sheviis*. By purchasing an Israeli esrog and properly eating it after Sukkos, one supports Jewish farmers, fulfills his mitzvah of *daled minim* with an object that has already been used for a mitzvah and has the opportunity to fulfill the mitzvah of *achilas peiros sheviis*.

