

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT ©

Hilchos Daled Minim Shiur 13

First Edition

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The First Day versus Other Days



Simon 649:5-6

5 All those that we said that are passulim because of a blemish as we explained or because they were robbed or stolen (applies) on the first day only, however on the other days they are all kosher.

There are those that possess stolen all seven days and this is the minbag, however one is yotzei with borrowed. It is mutar to take the lulav of one's friend without his knowledge on the rest of the days, because a person is happy to do a mitzvah with his money and it is like borrowed. (An esrog that is missing is kosher on the rest of the days. If the pittum or ukatz was removed it has the din of missing and it is kosher from (after) the first day and on. However, if mice made holes in it, it should not be taken even of the rest of the days because it is disgusting unless one removes the holes of the mice. However, if it is dry or spotted which is passul all seven days even if one cuts off the dry part or spots it is passul all seven days since it comes from the strength of a passul.

It is permitted l'chatchila to make a condition on the esrog that it should be used totally on the first day and be not removed from it the whole bein bashmashos (twilight) of the second day and on. (If this is done) it is mutar l'chatchila to eat from it from the second day and on and be yotzei the mitzvah with what remains. However, we are not experts in conditions as (we learned) above at the end of Simon 638 in the haga.

Something that is passul because of avoda zara or because this esrog is forbidden to eat or because it is not the (correct) species or they are missing the shiur (correct amount), both on the first day of Yom Tov and the rest of the days are passul.

A Chazazis is passul all seven days.

Those who keep two days of Yom Tov, those that are passul on the first day can be taken on the second day, however one does not make a bracha on them.

If one's friend has a kosher lulav and esrog one should make a bracha on his friends with his knowledge.

The Difference between the Days

There are two *Gemora's* we must learn to understand this *sief*.

Sukkah 29b **The Mishna does not differentiate between the first day and the second day** (the rest of the days). **I understand regarding dry it must be hadar and it is not but stolen I understand on the first day it says in the passuk lachem that it must be yours but on the second day why not** (why can't it be used)?

Sukkah 36b **It was taught, an esrog that mice made holes in, Rav said it is not hadar.** (The *Gemora* asks) **this is not so R' Chanina would dip with it** (he would dip his *esrog* and eat part of it) **and be yotzei** (with the remainder even though it was partially eaten)? (The *Gemora* then questions R' Chanina himself) **On R' Chanina we have a question from the Mishna** (the *Mishna* says that if it is missing it is *passul* so how could he have used it after eating part)? **The Gemora answers, the Mishna is not a question on R' Chanina, here** (the *Mishna* is referring to) **the first day of Yom Tov, here** (R' Chanina is referring to) **the second day of Yom Tov. However, it remains a question on Rav** (Rav says that it is *passul* because it is not *hadar* and the *din* of *hadar* is all seven days so how could R' Chanina eat it). (The *Gemora* answers) **Rav will tell you mice are different because it is disgusting** (it is only not *hadar* if mice eat it not if a human eats it).

The *Gemora* then brings a different version of what Rav taught.

(An *esrog* that mice made holes in) **Rav said it is hadar.** (He brings a proof) **R' Chanina would dip with it** (he would dip his *esrog* and eat part of it) **and be yotzei** (with the remainder even though it was partially eaten)? (The *Gemora* then questions R' Chanina) **On R' Chanina we have a question from the Mishna** (the *Mishna* says that if it is missing it is *passul* so how could he have used it after eating part)? (The *Gemora* answers, the *Mishna* is not a question on R' Chanina) **here** (the *Mishna* is referring to) **the first day of Yom Tov, here** (R' Chanina is referring to) **the second day of Yom Tov.**

From the first *Gemora* we see that the *passulim* of *hadar* apply all seven days. From the second *Gemora* we see that *chaser* is only a *passul* on the first day. We also, see from the first *Gemora* that the four *minim* only have to belong to you the first day. There are various approaches *l'chalacha* as to why some *passulim* apply only the first day and some all days.

The Rosh

The **Rosh** (*Simon* 3) first brings an explanation that those *passulim* that are mentioned in the *passuk* before the words *ביום הראשון* only apply the first day and those that follow the words *ביום הראשון* apply on all days. Therefore, since it says *ולקחתם לכם ביום הראשון* the *passul* of *chaser* which is learned from *ולקחתם* that it must be a *לקיחה תמה* a complete taking, in other words that it must be whole only applies on the first day. Similarly, the *din* that one must own the *lulav* which is learned from *לכם* only applies on the first day. However, the *passulim* of *badar* which includes dry which is learned from the words *פרי עץ הדר* which comes after the words *ביום הראשון* apply all seven days.

The *Rosh* however disagrees with this approach. He asks on this from two other laws.

1. The *din* is that one must have all four *minim*. If one only has some of the four *minim* he is not *yotzei*. This is learned similar to *chaser* from the word *ולקחתם* that it has to be a *לקיחה תמה* a complete *mitzvah*.
2. Each person has to take the four *minim* by himself, one person cannot be *yotzei* other people. This is also learned from the word *ולקחתם* that is said in the plural form.

The *Rosh* asks that according to this approach these two *dinim* should only apply on the first day and we do not find anywhere that this is mentioned.

Therefore, the *Rosh* takes a different approach. He says that this is based on the fact that only the first day is *mid'oraissa* and the rest of the days are *mid'rabbanan*. The *Rabbanan* enacted the main laws that apply to the actual taking of the four *minim* apply to all days. Furthermore, they said that the laws of *badar* apply to all days since by all *mitzyos* there is the idea of *מצוה הידור* that one should beautify the *mitzvah*. However, other *dinim* do not apply. Therefore, on the rest of the days the laws of *chaser* and *lachem* do not apply. This is also the opinion of **Tosefos**.

The Rambam

The **Rambam** rules that on the rest of the days none of the laws apply except those that apply to *avoda zara* or if the *passul* makes it *assur* to eat or if it is less than the *shiur*. All other *passulim* including *badar* do not apply on the rest of the days. The basis of the *Rambam* is the second *Gemora* we brought above. As we learned in the last *shiur* the *Rambam* does not hold of R' Yochanan rather like Shmuel as Rava explains that the *Mishna* is also only speaking about the first day, therefore there is no question from the first *Gemora*.

The **Bais Yosef** says that this is also the opinion of the **Ri'tz Gaus**, **Itur** and **Rabbainu Yonah** brought by the **Tur**.

The Ramban and Ritva

There is one more approach brought by in the **Ran** in the name of the **Ramban** and is also brought by the **Ritva**. The *Bais Yosef* does not bring this approach but it is important *l'halacha* as we will see.

As we have seen the *mitzvah* of four *minim* is only *mid'oraissa* the first day. However, we will learn in *Simon* 658 that in the *Bais Hamikdash* all seven days are *mid'oraissa*.

The *Ramban* and *Ritva* hold that the *Mishna* is speaking about the *Bais Hamikdash*. Therefore, the *passulim* apply all seven days. The exception is **לכנס**. The *Ritva* explains that **לכנס** is a stringency on the first day.

Rav Chanina who ate the *esrog* was speaking outside the *Bais Hamikdash* on the rest of the days. Since it is *mid'Rabbanan* the *passulim* do not apply. From Rav Chanina we see that *chaser* does not apply. The *Yerushalmi* says that *chazazis* only applies to the first day and from there we learn to all laws of *badar*. However, those laws that apply to *avoda zara* and missing the *shiur* apply to all days.

We see from here that according to the *Rambam* and *Ritva* the *din* of **לכנס** does not apply on the rest of the days even in the *Bais Hamikdash*. The **Aruch L'ner** says that according to *Tosefos* and the *Rosh* that differentiate between *d'oraissa* and *d'rabbanan* we can infer that in the *Bais Hamikdash* all laws apply all seven days including **לכנס**. We will see that this will have ramifications according to those that hold that Yerushalaim (the old city) has the *din* of **בית המקדש**. We will learn more about this when we get to *Simon* 658.

L'halcha

The **Mechaber** is *posek* like the *Rambam*, the **Rama** is *posek* like the *Rosh*.

The Second Day of Yom Tov

The *Risbonim* discuss what *din* the second day of *Yom Tov* has in *chutz l'aretz*. Do we say that just as we have two days *Yom Tov* so too all the stringencies of the first day apply to the second day or not.

The **Rosh** holds that the second day has the same *dinim* as the first day since it is a *safek*. This is also the opinion of the **Rashba**.

The **Rambam** holds that the second day has the *din* of the rest of the days. This is because we now have a fixed calendar and know when the first day of *Yom Tov* is.

The **Ran** brings both opinions and says that something that is *passul* on the first day can be taken on the second day without a *bracha*.

L'halacha

The **Mechaber** is *posseke* like the *Ran*.

Making a Tenai

Tosefos and the **Rosh** ask, how could R' Chanina eat the *esrog*, once something is set aside for a *mitzvah* it is *assur* until the end of *Yom Tov*. They answer that only the amount needed for the *mitzvah* is *assur*, Rav Chanina ate the part that was more than the *shiur*. However, **Tosefos** ask that since on the first day *chaser* is *passul* the whole *esrog* is needed and therefore completely *assur*. He answers that R' Chanina made a condition that he is setting aside the entire *esrog* for the first day but on the other days he is only setting aside the amount that is needed for the *mitzvah*.

The **Ran** answers that R' Chanina had two *esrogim*, one for the first day and one for the second and ate the one for the second day.

SIMON 649:5

Now that we have seen the background for this *seif*, let us go through the *Shulchan Aruch*.

Stolen

THE MECHABER SAYS

All those that we said that are *passulim* because of a blemish as we explained or because they were robbed or stolen (applies) on the first day only.

The **Magen Avraham** (15) asks that the *Mechaber* writes in *seif alef* that people other than the thief can use it on the rest of the days and here he says that even the thief himself can use it. He answers that the *Mechaber* holds that even though if the thief uses it he is *yotzei*, *l'chatchila* he should not use it.

The **Mishna Brura** in *Biur Halacha* (ד"ה מפני גזל וגנבה) brings the **Mateh Yehudah** that since the *Mechaber* uses the word *passul* in *seif alef* we see that it is *passul* even *b'dianvad*. Therefore, he says that when the *Mechaber* mentions robbed or stolen he only mentions

it because he is quoting the text of the *Rambam*. Since stolen is not the main point of this *seif* he relies on what he wrote in *seif alef* that for the thief it is *passul*.

Taking Someone Else's Lulav without Permission

THE RAMA SAYS

It is mutar to take the lulav of one's friend without his knowledge on the rest of the days, because a person is happy to do a mitzvah with his money and it is like borrowed.

The **Mishna Brura** (34) says that a person who took it without asking permission may not give it to some else as in such a case the owner will certainly be *makpid*. He adds that if the owner is around one must ask the owner and cannot rely that the owner lets him take it. Certainly if he knows that the owner is *makpid* one may not take it without asking.

The Pittum Fell Off

THE RAMA SAYS

If the pittum or ukatz was removed it has the din of missing and it is kosher from (after) the first day and on.

The source of this *din* is in the **Darchai Moshe**. He brings Rav Avraham of Prague that holds that if the *pitum* fell off it is *passul* all seven days. However, the *Darchai Moshe* brings **Rabbainu Yerucham** that holds that missing the *pittum* is *passul* because it is *chaser* and therefore is only *passul* on the first day.

However, the **Magen Avraham** (17) brings the **Magid Mishna** that missing the *pitum* is *passul* because it is not *badar* and therefore is *passul* all seven days. He concludes that one should not be *maikel*. The **Mishna Brura** (36) brings that the **Eliyahu Raba** holds that if there is no other *esrog* one can use since most *poskim* hold that even the *passul* of *badar* does not apply on the rest of the days. The *Mishna Brura* is in doubt if one should make a *bracha* but says that if it is a *safek* if it is *passul* (for example only the part above the *esrog* fell off) one can certainly make a *bracha*.

Mice Holes

THE RAMA SAYS

However, if mice made holes in it, it should not be taken even of the rest of the day because it is disgusting unless one removes the holes of the mice.

The source of this *din* is the *Gemora* in the beginning of the *shiur*. We brought the *Gemora* above that in the first *lashon* (reading) of the *Gemora* Rav holds that mice holes are *passul* and the second *lashon* brings that Rav holds it is kosher.

The **Rif**, **Rosh** and **Rambam** hold like the second *lashon*. Nonetheless, the *Rif* and *Rosh* bring the first *lashon* and the *Bais Yosef* explains that they hold that even according to the first *lashon* we would *paskin* that mice holes are *mutar* since R' Chanina holds that if it is missing it is kosher, and the answer that Rav gives that it is disgusting is a *dochak* (forced answer).

The **Bahag** holds like the first *lashon* that mice holes are *passul*. The **Darchai Moshe** says that this is also the opinion of the **Mordechai** and **Mahril**. The *Darchai Moshe* then brings the **Kol Bo** who says that if the area around the holes is removed it is kosher.

The **Magen Avraham** (18) says that the *Rama* holds like most of the *Rishonim* that mice holes are kosher, he is only saying that *l'chatchila* one should remove the mouse holes.

The **Taz** (8) says that everyone agrees that the holes have to be cut out. The first *lashon* holds that even after the holes are cut out it is *passul* similar to a part that is dry that it does not help to cut it out. The second *lashon* holds that cutting out the holes helps. Therefore, the *Taz* argues on the *Rama*. He holds that since we are *machmir* like the *Bahag* to *paskin* like the first *lashon*, therefore even if the holes are cut out the *esrog* is *passul*.

The **Mishna Brura** (37) holds like that *Magen Avraham* and therefore cutting out the holes helps. He says further (38) that there are those that hold that even a dry part can be cut out and we can rely on this in a *sha'as ha'adchak*.

Assur B'achila

THE MECHABER SAYS

Something that is passul ... because this esrog is forbidden to eat ... are passul.

The **Magen Avraham** (20) says that this only applies to an *esrog* which is edible but not to a *lulav* and the other *minim*.

Orlah

The *Magen Avraham* brings the *Gemora* that an *esrog* of *orlah* (fruit of the first three years of a tree) is *passul*. However, *orlah* in *chutz l'aretz* although it is *assur* it can be used for an *esrog*. The reason we are lenient in *chutz l'aretz* is because it is *mutar* in *chutz l'aretz* to feed someone *orlah* if he does not know that it is *orlah*. The *Magen Avraham* says that although there are those that argue that it is *assur* to feed someone nonetheless we can rely on this to say that an *esrog* of *orlah* in *chutz l'aretz* is *mutar*.

Blios of Issur

The *Magen Avraham* brings the *Shiltei Giborim* that holds that an *esrog* that has absorbed taste of *issur* (for example it touched hot pork) is *assur*. The *Magen Avraham* argues that only an *esrog* which is *assur machmas atzmo* (inherently *assur*) is *passul*. He says that we can rely on this on the rest of the days.

Demai and Tevel

The *Magen Avraham* says that an *esrog* of *demai* (fruit of unlearned people where we are unsure if *trumos* and *ma'asros* were taken) can be used. However, regarding *tevel* (where *trumos* and *ma'asros* were certainly not taken) he sends us to the *Ran* who says it is a *machlokes*.

Chazazis

THE RAMA SAYS

A Chazazis is passul all seven days.

The **Taz** (9) brings the **Ran** that *chazazis* is *passul* because of *hadar* and therefore according to the *Rama* applies all seven days. The *Taz* says that by *chazazis* we can rely on the opinions that *hadar* only applies on the first day since there are those that say

that *chazazis* is because of *chaser*. The **Mishna Brura** (49) says to only rely on this *b'sba'as hadchak*.

THE RAMA SAYS

If ones friend has a kosher lulav and esrog one should make a bracha on his friends with his knowledge.

Although the *Rama* said previously that one can take someone else's *lulav* and *esrog* without permission, here he says that it must be with the knowledge of his friend. The **Taz** (11) explains that in order to make a *bracha* one must ask his friend. Without asking it cannot be more than borrowed and will not help the first day or the second day *b'safek* (as we learned before that the *Ran* has a doubt what is the *din* of the second day of *Yom Tov*).

Review Questions

1. What are the four ways in the *Rishonim* to reconcile the different *Gemoras* of which *passulim* apply to the first day and which to all days?
2. What is the *balacha*?
3. Does the second day of *Yom Tov* in *chutz l'aretz* have the *din* of the first day or the other days?
4. How was R' Chanina allowed to eat the *esrog* if it was used for a *mitzva*?
5. May one use his friend's *lulav* and *esrog* without permission?
6. If the *pittum* fell off what is the *din* the rest of the days?
7. Do mice holes *posel* an *esrog*?
8. Can an *esrog* of *orlah* be used, why?
9. If an *esrog* absorbed taste of *issur* can it be used?
10. What is the *din* of *chazazis* the rest of the days?