



## FROM THE VIRTUAL DESK OF THE OU VEBBE REBBE RAV DANIEL MANN



# Finding a Fruit with Kedushat Shvi'it

**Question:** My wife shopped at a special *kedushat shvi'it* fruit distribution. A few hours later, I spotted on the walkway to our building (of seven apartments) a single fruit. I took it home and asked my wife, who said it made sense that it fell from her, but asked how we can know it is not from a neighbor who might have also bought. Do I have to put up a sign or ask neighbors (whom I trust) if it could be theirs? Is it more lenient because there is no ownership of *kedushat shvi'it* fruit?

**Answer:** Let us take off the table the confusing matter of *kedushat shvi'it*. The field owner is required to treat his fruit as *hefker* (ownerless). There is a *machloket* whether it is automatically *hefker* based on divine decree (Shut Hamabit I:11; see Bava Metzia 39a) or whether it occurs only after the owner is, properly, *mafkir* (Avkat Rochel 24). When one permissibly receives fruit for consumption, he does become owner of the fruit, with *kedushat shvi'it* dictating *halachot* of its consumption and treatment. For that reason, a man is able to use fruit with

*kedushat shvi'it* to marry a woman (Kiddushin 52a; see Rashi ad loc.) even though this requires the *chatar's* ownership. Only at the time of *bi'ur* (when the fruit are no longer available in the field) must one temporarily return them to *hefker* (see Derech Emuna, Shemitta 7:17). Therefore, the *kedushat shvi'it* status will not make a difference.

Do you have to worry that it is someone else's fruit? Your wife is not sure it is yours because this fruit, like most, has no *siman* (identifiable sign). By all indications, had it fallen from anyone else, they also would not have a *siman*. In such a case, Halacha assumes that the owner gave up hope of reclaiming it (*yei'ush*), as an honest finder will not be able to find and confirm the owner. We rule that *yei'ush shelo mida'at* (a person will have *yei'ush* when he finds out of the loss but this has yet to occur) is ineffective, as the *yei'ush* must precede the finder picking it up (ibid. 22b). Therefore, for it to be permitted to take it, one would have to assume that the owner realized that the fruit fell. We *pasken* one may make this assumption (Shulchan Aruch, Choshen Mishpat 262:7) even though it is not a simple assumption (see S'ma ad loc. 15). Therefore, you are permitted to keep it.

Does the concern of your wife, who is not even sure if she lost such a fruit, that perhaps it does belong to a neighbor beckon for taking steps beyond the letter of the law? The Shulchan Aruch Harav (Metzia 18)

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does say this is proper even after *yei'ush* and with no *siman*. However, this is only when the finder finds out who lost it; he does not have to announce his find. In some ways your need might be more compelling, as you have the list of candidates effectively down to six trustworthy people, so might it be still be worthwhile?

In another way, your rights are much greater than the average one, because there is strong reason to think it is yours. In fact, even if a neighbor would have seen you picking up the fruit and demanded it back due to the possibility he dropped it, he would not be able to extract it from you without proof. You can then take comfort in the answer to the Mahari Basan's famous question (cited in Kuntras Hasefeikot I:6) about the *halacha* that Reuven who is in possession of something does not have to give it to Shimon who makes a claim with insufficient proof, even if Reuven is unsure what the truth is. Why don't we require Reuven to give it up due to the doubt that he might be stealing from Shimon? The most accepted answer is that once we determine who has rights to it based on the rules of monetary Halacha, the prohibition of stealing does not apply. Here too, if no neighbor is expected to be able to prove himself more deserving than you, you have no reason for concern.

If you want to try to return, not out of concern but out of love of going beyond the

Halacha in monetary matters, that is a different story. However, it would seem that such steps are more appropriate in cases that make a difference to people, not a single fruit. ■

## Having a dispute?



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