

Daf 30b

and land is not stolen. When one seizes land, the land remains the property of its original owner, even if that owner has despaired. In this case, there is concern that these myrtle branches were stolen from Jews. **Therefore, let the gentiles cut the myrtle branches, so that the despair of the owners will be when the myrtle branches are still in the hands of the gentiles and the change of possession will be accomplished through their purchase and transfer into your hands.** The combination of owner's despair and change of possession will render the myrtle branches the property of the merchants, and it will not be a mitzva fulfilled by means of a transgression.

וקרקע אינה נגזלת
הלכך לגזוזה אינהו
כי היכי דליהו יאוש
בעלים בידייהו
דידהו ושינוי
הרשות בידייכו

Comment/Chiddush

According to Rashi, despair is meaningless without theft, and since land cannot be stolen, there is no dipair effective. According to other rishonim there can be despair on land, but one does not despair of land, for one can always get it back. However one does despair of getting the myrtle branches back, for they are untraceable.

The Gemara asks: **Ultimately, even when the merchants cut the myrtle branches, let it be a case of despair in their hands, and the change of possession is accomplished through the purchase and transfer of the myrtle branches into the hands of the buyers.** Why did Rav Huna advise them to have the gentiles cut the myrtle branches? The same result is achieved through their sale. The Gemara answers: **No, it is necessary for Rav Huna to advise the merchants to allow the gentiles to cut the myrtle branches only with regard to the myrtle branches of the merchants themselves, which will not undergo another change of possession.** The only way to ensure that the merchants are fulfilling the mitzva with myrtle branches that belong to them is to have the gentiles cut them and have the change of possession accomplished through the purchase from the gentiles.

סוף סוף כי גזזו
אוונכרי ליהוי
יאוש בעלים
בידייהו ושינוי
הרשות בידן לא
צריכא
בהושענא
דאוונכרי
גופייהו

Comment/Chiddush

Which is missing it being theirs, and in addition is a mitzva performed through a sin, which is not effective. Rashi.

The Gemara asks: **And let them acquire the myrtle branches with a physical change accomplished by the action of binding them with the lulav and the willow branch.** Just as despair followed by a change in possession effects acquisition, despair followed by a physical change effects acquisition for the one who implements that change. In that case, too, the myrtle branches no longer belong to the original owner. The Gemara answers that **Rav Huna holds: A lulav does not require binding.** There is no mitzva to bind the four species together. One need only hold them unbound in his hand; therefore, the myrtle branches undergo no action that effects physical change.

וליקנייהו
בשינוי
מעשה
קא סבר
לולב אין
צריך
אגד

Comment/Chiddush

The principle of physical change working to effect ownership is derived from the pasuk that requires a thief to return the theft "as it was stolen" – i.e. not having changed at all. For then he owes money, the stolen object becoming his.

And even if you want to say that a lulav requires binding, and therefore the myrtle branches undergo a physical change, it is a change after which the object reverts to its original state. Binding the species effects no change in the myrtle branches themselves. Once the binding is removed, the myrtle branches are restored to their original state. **And the principle is: A change after which the object reverts to its original state is not considered a change.** It is of no significance with regard to effecting acquisition.

ואם תמצי לומר
לולב צריך אגד
שינוי החוזר
לברייתו הוא ושינוי
החוזר לברייתו לא
שמיה שינוי

The Gemara asks: **And let the merchants acquire a myrtle branch with a change of name that it underwent, as initially it was called a myrtle branch, and now that it is designated for use in fulfilling the mitzva,**

וליקנייהו בשינוי השם
דמעיקרא הוה ליה אסא
והשתא

--