

Daf 31a

it is called <i>hoshana</i> , which is a term used to describe the four species. The Gemara answers: This is not a full-fledged change of name, as occasionally it also happens that they initially refer to a myrtle branch as a <i>hoshana</i> while it is attached to the tree.	הושענא מעיקרא נמי לאסא הושענא קרו ליה
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§ The Sages taught: With regard to a stolen <i>sukka</i> and with regard to one who roofs a <i>sukka</i> in the public domain , which is tantamount to robbing land from the public, Rabbi Eliezer deems these <i>sukkot</i> unfit for use in fulfillment of the mitzva, and the Rabbis deem them fit.	ת"ר סוכה גזולה והמסכך ברשות הרבים ר' אליעזר פוסל וחכמים מכשירין
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Rav Nahman said: This dispute is limited to a case where one assaults another and forcibly evicts him from his <i>sukka</i> , and takes his place in the <i>sukka</i> . In that case, Rabbi Eliezer deems the <i>sukka</i> unfit. And Rabbi Eliezer conforms to his own reasoning, as he said: A person does not fulfill his obligation with the <i>sukka</i> of another. Therefore, in any event, he does not fulfill his obligation with it. If land can be stolen and acquired by the robber, the <i>sukka</i> from which he evicted the owner is a stolen <i>sukka</i> . And if indeed land cannot be stolen , nevertheless, the robber does not fulfill his obligation according to Rabbi Eliezer, as it is a borrowed <i>sukka</i> .	אמר רב נחמן מחלוקת בשתוקף את חבירו והוציאו מסוכתו ורבי אליעזר לטעמיה דאמר אין אדם יוצא ידי חובתו בסוכתו של חבירו אי קרקע נגזלת סוכה גזולה היא ואי נמי קרקע אינה נגזלת סוכה שאולה היא
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And the Rabbis conform to their reasoning, as they said: A person does not fulfill his obligation with the <i>sukka</i> of another. And since land cannot be stolen and the <i>sukka</i> is merely a borrowed <i>sukka</i> and not a stolen one, the robber fulfills his obligation, despite the fact that he committed a reprehensible act.	ורבנן לטעמייהו דאמרי אדם יוצא ידי חובתו בסוכתו של חבירו וקרקע אינה נגזלת וסוכה שאולה היא
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Comment/Chiddush

The Ritv"א asks in the name of Tosafos how does he fulfill his obligation with a borrowed *sukka*, it is still a mitzvah habo'oh be'veirah? The Ritv"א answers in the name of Tosafos, that we only use this rule regarding mitzvos that come for *ritzui* like korbon, shofar or lulav, however regarding the mitzvah of *sukka* and the like, that are mitzvos not for *ritzui* the above rule does not apply.

The Ritv"א asks on this that by matzoh we do find this pessul [according to yerushalmi] for a stolen matzoh, even though it is not a mitzvah of *ritzui*.

The Ritv"א himself suggests a different answer. He says that since land cannot be stolen, therefore the land is viewed as if it is still in its owner's hands, and the mitzvah of *sukka* does not take it out of his possession, therefore this is not considered a mitzvah habo'oh be'veirah.

Further we find R' E.M. Horovitz explaining that since the main part of the mitzvah of *sukka* lies in the sechach and the sechach didn't have an aveirah it's not a mitzvah habo'oh be'veirah.

However, if one stole wood and roofed a <i>sukka</i> with it, everyone agrees, as Rabbi Eliezer concedes, that the original owner of the wood has rights only to the monetary value of the wood. The wood itself belongs to the robber, so it is not a stolen <i>sukka</i> .	אבל גזל עצים וסיכך בהן דברי הכל אין לו אלא דמי עצים
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The Gemara asks: From where does Rav Nahman draw the conclusion that the dispute is with regard to a stolen <i>sukka</i> and not with regard to a <i>sukka</i> established with stolen building materials?	ממאי
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Daf 31a

Comment/Chiddush

The Gemara answers: **From the fact that** the *halakha* of a stolen *sukka* is juxtaposed in the *baraita* to the *halakha* of a *sukka* established in the public domain, the *baraita* teaches that the legal status of the stolen *sukka* is **similar to** the legal status of a *sukka* established in the **public domain**. **Just as** one does not fulfill his obligation with a *sukka* in the **public domain** because **the land is not his**, with regard to the stolen *sukka* too, one does not fulfill his obligation because **the land is not his**, not because the building materials were stolen.

מדקתני דומיא
דרשות הרבים מה
רשות הרבים קרקע
לאו דידיה הוא סוכה
נמי לאו קרקע דידיה
הוא

The Gemara relates: There was a **certain old woman who came before Rav Naḥman**. **She said to him: The Exilarch and all the Sages in his house have been sitting in a stolen *sukka***. She claimed that the Exilarch's servants stole her wood and used it to build the *sukka*. **She screamed, but Rav Naḥman did not pay attention to her. She said to him: A woman whose father, Abraham, our forefather, had three hundred and eighteen slaves screams before you, and you do not pay attention to her?** She claimed that she should be treated with deference due to her lineage as a Jew. **Rav Naḥman said to the Sages: This woman is a screamer, and she has rights only to the monetary value of the wood.** However, the *sukka* itself was already acquired by the Exilarch.

ההיא סבתא דאתאי לקמיה דרב
נחמן אמרה ליה ריש גלותא
וכוליהו רבנן דבי ריש גלותא בסוכה
גזולה הוו יתבי צווחה ולא אשגח
בה רב נחמן אמרה ליה איתתא
דהוה ליה לאבוהא תלת מאה
ותמני סרי עבדי צווחא קמייכו ולא
אשגחיתו בה אמר להו רב נחמן
פעיתא היא דא ואין לה אלא דמי
עצים בלבד

Comment/Chiddush

Rav Nahman did not pay attention to her because he knew that the Exilarch was not sitting in a stolen *sukka*, but didn't want to rule that she only has the right to the monetary value of the wood, because we are not allowed to decide money matters on the festival. However after he saw that she kept screaming and it could lead to an embarrassment of the Exilarch, he told his students "she is a screamer," which forces me to take care of the honour of the Exilarch. And he told them [so she would also hear, but it would not be considered deciding on the festival because he was not talking to her] that she has rights only to the monetary value of the wood.

Ravina said: With regard to **the stolen large beam of a *sukka***, the Sages instituted an **ordinance** that the robber need not return it intact, **due to the general ordinance of a beam**. By the letter of the law, one who stole a beam and incorporated it in the construction of a new house is required to dismantle the house and return the beam. The Sages instituted an ordinance requiring the robber to repay the monetary value of the beam instead. They instituted this ordinance to facilitate the repentance of the robber, who would be less likely to repent if doing so entailed destruction of the house.

אמר רבינא האי
כשורא
דמטללתא
דגזולה עבדי ליה
רבנן תקנתא
משום תקנת
מריש

Comment/Chiddush

Kehilos Yaakov sukka siman 24 asks from the rule taase velo min ho'osui [translate and explain] how is such a *sukka* kosher, the wood only belongs to the robber after he built it into the *sukka*?
He answers that since it is not after the building, rather at the same time of the building it's not considered taase velo min ho'osui.

The Gemara asks: This is **obvious**. In **what way is** the beam **different from** other **wood** used in establishing the *sukka*? The Gemara answers: **Lest you say: Wood is common**, and therefore the owners are more likely to despair of recovering the wood and will suffice with receiving monetary restitution and replacing the wood, **but**, with regard to **this large beam, which is not common**, **say** that there is **no** despair, and the robber is required to return the actual beam, therefore,

פשיטא מאי
שנא מעצים
מהו דתימא
עצים שביחי
אבל האי לא

Daf 31a

Ravina teaches us that the ordinance applies even to this beam, and the robber is required to return only its monetary value.	שכיחא אימא לא קמ"ל
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The Gemara notes: This halakha that the robber need not dismantle the <i>sukka</i> and return the beam applies only within the seven days of the Festival. However, after the seven days, the beam returns to the owner intact . And if the robber attached it with mortar and it is affixed permanently to the <i>sukka</i> , then even after the seven days of the Festival, the ordinance remains in effect, and the robber gives the original owner the monetary value of the beam.	הני מילי בגו שבעה אבל לבתר שבעה הדר בעיניה ואי חברו בטינא ואפילו לאחר שבעה נמי יהיב ליה דמי
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Comment/Chiddush

Avnei milu'im 28:53 proves from here that a kinyan haguf [temporarily ownership] is enough to consider it "lochem".

§ It was taught in the <i>Tosefta</i> : A dry lulav is unfit. Rabbi Yehuda deems it fit. Rava said: The dispute is specifically with regard to a lulav, as the Rabbis hold: We liken the lulav to the etrog, based on their juxtaposition in the verse. Just as the etrog requires beauty, so too, the lulav requires beauty. And Rabbi Yehuda holds: We do not liken the lulav to the etrog. However, with regard to an etrog, everyone agrees that we require beauty [hadar] as the verse states: "Fruit of a beautiful tree" (Leviticus 23:40) and a dry etrog does not meet that criterion.	תנא יבש פסול רבי יהודה מכשיר אמר רבא מחלוקת בלולב דרבנן סברי מקשינן לולב לאתרוג מה אתרוג בעי הדר אף לולב בעי הדר ור' יהודה סבר לא מקשינן לולב לאתרוג אבל באתרוג דברי הכל הדר בעינן
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The Gemara asks: And with regard to a lulav, does Rabbi Yehuda really not require beauty? But didn't we learn in the mishna that Rabbi Yehuda says: With regard to a lulav whose leaves have spread out, one should bind the lulav from the top. What is the reason to do so? Is it not because he requires beauty in the case of lulav?	ובלולב לא בעי ר' יהודה הדר והתנן רבי יהודה אומר יאגדנו מלמעלה מ"ט לאו משום דבעי הדר
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Comment/Chiddush

The kapos temorim points out that at this stage we have to explain that rabonon also require beauty [otherwise a dry lulav would be kosher] but they consider a spread lulav also beautiful.

The Gemara rejects this: No, as the reason is taught: Rabbi Yehuda says in the name of Rabbi Tarfon that the same verse states: "Branches [kappot] of a date palm." The Sages interpret the term to mean bound [kafut], indicating that if the leaves of the lulav were spread, one should bind it.	לא כדקתני טעמא רבי יהודה אומר משום ר' טרפון כפות תמרים כפות ואם היה פרוז יכפתנו
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The Gemara asks: And does Rabbi Yehuda not require beauty with regard to the lulav? But didn't we learn in a mishna: One binds the lulav only with its own species, this is the statement of Rabbi Yehuda? What is the reason that Rabbi Yehuda requires the binding to be from its own species? Is it not due to the fact that he requires beauty with regard to the lulav?	ולא בעי הדר והתנן אין אוגדין את הלולב אלא במינו דברי רבי יהודה מאי טעמא לאו משום דבעי הדר
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Comment/Chiddush

Tosafos asks that this can obviously not be the reason because later on [36b] we forbid to tie with gold strings?

The Gemara answers: No , that is not the reason, as Rava said: According to Rabbi Yehuda, one may bind the <i>lulav</i> even with fiber that grows around the trunk of the date palm and	לא דהא אמר רבא אפילו בסיב ואפילו בעיקרא
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Daf 31a

even with the root of the date palm, even though these do not meet the criterion of beauty. The Gemara asks: **Rather, what is the rationale** for the opinion of **Rabbi Yehuda there**, that a *lulav* must be bound with its own species? The Gemara answers: It is **because he holds** that a *lulav* **requires binding, and if one brought another species** to bind it, **they are five species** instead of four, violating the prohibition against adding to the mitzvot of the Torah.

דיקלא [ואלא] מאי
טעמא דרבי יהודה התם
דקא סבר לולב צריך אגד
ואי מייתי מינא אחרינא
הוה להו חמשה מינין

The Gemara asks: **And with regard to an etrog, does Rabbi Yehuda require beauty? But isn't it taught** in a *baraita*: With regard to **the four species of the lulav, just as one may not diminish from their number, so too, one may not add to their number. If one did not find an etrog, he should not bring a quince, a pomegranate, or any other item** instead. If the species are slightly **dried, they are fit**. If they are completely **dry, they are unfit. Rabbi Yehuda says: Even dry etrogim are fit.**

ובאתרוג מי בעי רבי יהודה הדר
והתניא ארבעת מינין שבלולב כשם
שאינ פוחתין מהן כך אין מוסיפין
עליהן לא מצא אתרוג לא יביא לא
פריש ולא רמון ולא דבר אחר כמושין
כשרין יבשין פסולין ר' יהודה אומר אף
יבשין

And Rabbi Yehuda said: There was **an incident**

וא"ר יהודה מעשה

involving city dwellers who lived in an area distant from the region where the four species grow, **who would bequeath their lulavim to their grandchildren**, even though they were completely dry. The Sages **said to him:** Is there **proof from there** that species that are dry remain fit for use? Actions taken in **exigent circumstances are not proof**. In typical circumstances, it would be prohibited to use those species.

בבני כרכין שהיו
מורישין את לולביהן
לבני בניהן אמרו
(להם) משם ראייה אין
שעת הדחק ראייה