

Overview

Siman 637 Seif 3:

A stolen sukkah is valid. How so? If one forcibly removes his friend from his sukkah and "steals" it and sits in it the mitzvah was fulfilled since land cannot be stolen. However, l'chatchila one should not sit in a friend's sukkah without permission and certainly when one's intent is to steal it. One should also not build his sukkah on his friend's land without permission nor should one use public property without permission although b'dieved the mitzvah is fulfilled. A Jew should also not cut down schach and instead should purchase it from a gentile since l'chatchila one should not use stolen property for his sukkah. **If one stole wood and built a sukkah with them he fulfills the mitzvah even if he did not attach them or change them at all since there is a Rabbinic enactment that it is sufficient to repay the owner the value of the wood. If one stole a sukkah that was constructed on a boat or wagon and sat in it he does not satisfy his obligation.** Similarly, if Reuven constructed a sukkah on Shimon's property and Shimon then went and forcibly removed Reuven from the sukkah and stole the sukkah that was built on his property he does not fulfill the mitzvah nor is there an enactment to encourage repentance since he did not exert himself or spend any money.

- ❖ The language of Shulchan Aruch is not so precise and the meaning is that a stolen sukkah such as the one described is valid. (M.B. 7)
- ❖ Anything attached the ground is the same as the ground and remains in the possession of the owner so it is considered borrowed. (M.B. 8)
- ❖ Since the owner may object, it is not appropriate to recite the beracha. When the owner is not present one may sit in his sukkah since it is assumed that he is happy to perform a mitzvah with his possessions but if it is possible that the owner may return one should not sit there without permission. Bikurei Yaakov writes that receiving permission from the owner's wife is sufficient. (M.B. 9)
- ❖ There is a dispute whether one who constructs his sukkah on public property may recite the beracha when he sits in the sukkah. (M.B. 10)
- ❖ One may not cut schach even from the forest of a gentile with his permission. When people have government permission to purchase wood from a forest owner there is no prohibition to purchase that wood for schach. (M.B. 11)
- ❖ In other words the gentile should cut it from the tree. (M.B. 12)
- ❖ If this is not possible, it is permitted for one to cut it for himself as long as he has permission from the owner. (M.B. 13)
- ❖ One should not recite **בסכה** לישב. When there is no choice but to cut it for one's self it is permitted when the govern-

Halacha Highlight

Building a sukkah on "stolen" land

Rema Siman 637 Seif 3
בקרקע של חברו שלא מדינתו

On a friend's property without permission

Shulchan Aruch writes that if Reuven forcibly removes Shimon from his (Shimon's) sukkah and sits in it himself, Reuven fulfills his obligation of sitting in a sukkah. The reason is that according to halacha, land cannot be stolen. Since the land cannot be taken to another location, it remains in the possession of the original owner and it is comparable to borrowing a friend's sukkah. Although the mitzvah is fulfilled in such a case, l'chatchila one should not sit in his friend's sukkah without permission. Rema then adds that one should also not construct his own sukkah on his friend's land without his approval. However, in the event that one did construct his sukkah on his friend's land the mitzvah is fulfilled. Shulchan Aruch HaRav adds that although one b'dieved fulfills the mitzvah one may not recite the beracha on the sukkah since the mitzvah is being fulfilled through a transgression (שו"ע הרב סעי' י"א). According to some Poskim one may not construct his sukkah on his friend's property without permission even if the owner will not be present to see someone using his property. Although there is a principle that states that people are happy to allow others to use their possessions to fulfill a mitzvah (ניתח ליה לאינש למיעבד מצוה בממוניה) that principle is limited to temporary use and not a permanent use of someone's property (פסקי תשובות אות ג' והע' 7).

In the opinion of some Poskim there could even be an issue for one to construct their sukkah on their own property. Sefer Sukkas Shalem (פמ"ו סעי' ה') writes that if one causes damage to his neighbor as a result of his construction of his sukkah he should not recite a beracha on his sukkah. For example, if one's sukkah covers his neighbor's windows blocking out the light in a circumstance in which the neighbor has a halachic claim, one is violation of halacha and although b'dieved the sukkah is valid, one should not recite a beracha on that sukkah (מובא בספר הסוכה השלם מילואים לפ"ד אות ז).

- ❖ ment controls ownership of land. (M.B. 14)
- ❖ If one pays the owner for the wood it becomes his and it is permitted to sit in the sukkah and even recite the beracha. (M.B. 15)
- ❖ If one doesn't want to pay for the wood he does not fulfill his obligation. (M.B. 16)
- ❖ In such a case the sukkah itself was stolen since it was not attached to the ground and he must return the sukkah as is to the owner. (M.B. 17)
- ❖ It is not clear whether other people who sit in a stolen sukkah fulfill the mitzvah. (M.B. 18)