

pensation, our case also involves danger in leaving the tree standing. In the case of the blighted tree, the disease could spread to other trees. This involves passive *bal tashchis*. In addition, the fruit it produces is generally withered before it can be harvested. Some fruit can be salvaged, but not enough to make the tree viable. In the case of the weak tree, the issue is more serious. There is physical danger in keeping the tree even if it is still producing fruit. If children walk by under it, and certainly if they climb on it, they could get badly hurt. While there is spiritual danger in cutting it down, the physical danger involves Scriptural *mitzvos*. For a *mitzvah*, one may remove a fruit bearing tree.

There is a positive *mitzvah* to erect a *maakeh*, safety fence, around a rooftop that is used. One must also do this for a water-storage hole. The poskim debate whether this is included in the positive *mitzvah*, or in a related negative *mitzvah*. Along with the *mitzvah* of *maakeh*, there is a negative statement, *lo sasim damim bevaisecha*, do not allow blood [to be shed] in your house. Some say that the juxtaposition means that both *mitzvos* apply in all situations. The Torah requires guarding one's well-being as well as the safety of others. This is derived from the verses: *hishamer lecha ushemor nafshecha meod*, guard yourself and your life extremely well; *venishmartem meod lenafshosaichem*, a reiteration; [These are considered positive *mitzvos* by some, and negative by others.] *lo saamod al dam raiecha*, do not stand idly by while your brother's blood is at risk. These *mitzvos* require removal of hazards, such as rickety ladders and steps.

While everything is in the hands of Hashem, the Talmud says that one is held personally accountable for preventable health threats. In many *halachic* situations leniency may be practiced. For example, one may rely on a probable or likely permissible factor. In cases of danger or risk to health and life, these leniencies do not apply.

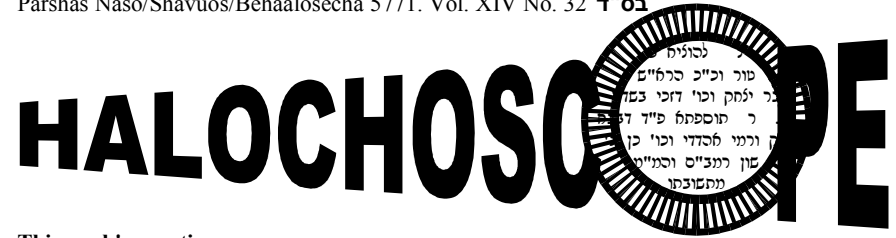
Therefore, removal of the weakened tree is actually a *mitzvah* in its own right. The fact that it might entail spiritual danger should not permit laxity in fulfilling the basic *mitzvah*. Imminent danger is more serious than spiritual danger. [See Kedoshim 19:16 Va'eschanan 4:9 15 Ki Saitzai 22:8, commentaries. Brochos 32a Kesubos 41b, Poskim. Tur Sh Ar CM 398 410 427, commentaries.]

In conclusion, it is slightly preferable to ask a gentile to remove the blighted tree. The weakened tree should be removed by a Jew, since it is a *mitzvah*.

On the Chag ... The first fruits of your land, you shall bring to the house of Hashem, do not cook the kid in its mother's milk ... [Mishpatim 23:19 Ki Sisa 34:26] What is the connection between these two *mitzvos*? Twice in the Torah, the two are juxtaposed in the same *pasuk*. Cooking a kid in its mother's milk is symbolic of destroying the item and that which sustains it. [See *Chasam Sofer*] Perhaps the connection to *bikurim* is that fruit-bearing trees also have this quality. The fruit and the wood are both useful. However, one should not destroy the wood with the fruit. Offering *bikurim* symbolizes appreciation of the fruit and its tree. Maybe this is another connection between *Shavuos* and the *minhag* to eat dairy and meat, but to separate them.

Sponsored in memory of my mother, Henriette Silver, Yitele bas R. Shimon a"h, whose *yahrzeit* is on the 6th of Sivan, the first day of *Shavuos*. א

© Rabbi Shimon Silver, June 2011.
Subscriptions and Sponsorships available. (412) 421-0508. halochoscope@hotmail.com



This week's question:

A few fruit trees are growing in one garden. One of the trees is suffering from a blight, 'burning' the fruits. Thus far, the disease has not spread to other trees. Another of the trees has been weakened by woodpeckers to the point that it could fall over at any time. May the Jewish owner cut down these fruit-trees?

The issues:

- A) *Bal tashchis*, the prohibition against cutting down fruit bearing trees
- B) *Derech hashchasa*, what constitutes 'destructive'?
- C) *Sakanah*, the danger involved in cutting down fruit-bearing trees
- D) *Lo sasim damim*, the *mitzvos* involved in removal of hazards

A) *Bal tashchis*

Wanton destruction of anything is forbidden. The Torah specifically forbids destroying a fruit-bearing tree. The Torah also states a 'reason' for this prohibition: "For from it you will eat ... The Torah goes on to add another reason, that is interpreted in various ways: "For man is the tree of the field, to come before you in siege." The context of the passage is instructions on conduct while besieging an enemy. The trees might be used to build 'towers' to use in the siege. One explanation is to read this phrase rhetorically: "For is a tree a man, threatening you in the siege" or "... who should go before you to besiege?" Another explanation is to make an exception to the rule: "Unless the tree is used by men [presumably, to hide them], before you in the siege." Later we shall discuss exceptions to the *mitzvah*. [See Section B.]

The Torah adds the words: "for from [the tree] you shall eat". Some consider this an additional positive *mitzvah*. One cannot be obliged to eat fruit if he is not hungry. The Torah must mean to add another violation when one destroys the tree. He makes it impossible to fulfill the commandment to eat from it.

The Talmud includes destruction of anything useful in the same prohibition. Many poskim maintain that they are all forbidden Scripturally. This includes hunting as a sport, destroying clothing to spite or in anger, wasteful use of resources, such as making a lamp burn more quickly than necessary, and the like. [There is a suggestion in the Talmud that anger provides a dispensation. The ripping allows the angry person to vent his fury without doing something worse.] Wasting or destroying edible food raises an additional issue of *bizuy ochlin*, demeaning edibles. Trees are singled out such that even if the destruction is not wanton, it is forbidden. Thus, while one might have a purposeful reason to cut the tree down, such as the use of its wood, it is forbidden. Sometimes, the value of the wood might be more than the fruit. However, the wood is used up in one 'harvest' while the fruit is reproduced each season. Nonetheless, there are situations where the tree may be

cut down for the use of its other products.

All methods of destruction, direct and indirect, are forbidden. One may not cut off the water supply from a fruit-bearing tree, so that the tree will wither and dry up. The poskim discuss partial destruction. Reducing the value or usage of an item, such as tearing a garment in one spot, does not make it useless. However, it reduces it from being a nice valuable item to a utility item. Some forbid cutting down branches of a tree that have some fruit on them. Some forbid cutting off branches at all. Others maintain that as long as one does not cut the tree down totally, it is not considered destruction.

This *mitzvah* is based on an ideal that is fully understandable. Man draws his sustenance from the tree. Therefore, destroying it is foolish. It also displays a lack of appreciation and gratitude. It demonstrates a rejection of the kindness of Hashem, and counters the will of the Creator. It also reveals a lack of character refinement. When done in anger, it is likened to idolatry. Losing control to this point in a frustrating situation is a symptom of the lack of discipline, giving in to one's inclinations, that can lead to idolatry. [See Shoftim 20:19, Sifri, etc. Shabbos 37b 105b 129a 140b Yevamos 44a Kidushin 32a Bava Kama 91b 115b Makos 22a Chulin 7b etc., Poskim. Chinuch 529. Rambam, Melachim 6:8-10 etc. Tur Sh Ar YD 348:1 349:4, commentaries. Halochoscope XIV:21.]

B) Derech hashchasa

The Torah forbids *hashchasa*, destruction. The clear implication is that when the tree is cut down with a positive purpose the *mitzvah* does not apply. Thus, the Torah specifies, according to one view, that unless the trees are being used by the enemy to hide, they may not be cut down. If they are used this way, the *mitzvah* does not apply. They will be cut down for a constructive purpose. The most obvious practical case would be to remove a vine that is too close to other vines. It saps the nutrition of the others, and none of them can grow well. The Talmud also mentions a date palm growing in a vineyard. The dates taste much better, but the productivity of the grapevines is reduced. The main purpose of the vineyard is production of grapes. Therefore, one may cut down the date palm. The Torah specifically refers to the permissibility of pruning a tree to improve its productivity during the first six years of the *shemita* cycle. It could be argued that failure to prune is a passive way to allow destruction of the fruit bearing capacity of the tree. If a tree protrudes into a public thoroughfare and poses a hazard, it may be cut back or cut down. In fact, this removal is a *mitzvah*, such that one may not usurp the right of the owner to cut it himself.

The Talmud allows cutting down a fruit tree if its wood is more valuable as building material than its fruit is for eating. Based on this, the question arises whether one may destroy the tree for indirect constructive purposes. The best known case is destroying it for the space, rather than the wood. Some permit removing the tree to build on its space. Others imply that any more profitable use of the space allows removal. However, the actual case refers to using the space for other trees. The poskim discuss whether hunting is permitted for the use of the hides. The animal will be destroyed, along with whatever uses it provides in the ecosystem. The hide must be considered more valuable for humans. The Talmud also discusses balancing one manifestation of *bal tashchis* against an-

other. One may burn expensive furniture to keep warm, because *bal tashchis* of the body is more serious than wasting an inanimate object. Eating expensive food when cheaper food will do just as well is also allowed. Since the purpose of the destruction is constructive, the prohibition does not apply – it is not called destruction.

If one does not plan to build there, but wants the open space, it is questionable whether the aforementioned dispensation can be applied. In such instances, some poskim recommend removing the entire tree with its roots and transplanting it elsewhere. If the tree causes damage to nearby property, it should be cut back. If this does not help, it may be cut down. The poskim apply this to cases where the tree causes damage indirectly, such as attracting bees. Even to allow more light, the poskim permit pruning branches. For a *mitzvah*, such as to use the wood for a spit for *korban Pesach*, or to remove branches over a *sukah*, one may cut a tree back.

The Torah permits cutting a tree that does not bear fruit. This applies to a tree well past its prime. Even if it still bears some fruit, the *mitzvah* does not apply to it. This varies, depending on the type of fruit. The fruit need not be valued in money, nor specifically to its owner. If the fruit is bitter and not harvested, but eaten by passersby, some poskim forbid destroying it. If the fruit is infested so that Jews could not eat it, it still has value. It could be eaten by gentiles, or the bugs could be strained and the juice used in a beverage. Nonetheless, if the wood has monetary value as firewood or building material, this could permit cutting it, based on the earlier discussion. [See Shoftim 20:20. Psachim 74a Baba Kama 91b-92a Baba Basra 25b-26a 27b, Poskim. Tur Sh Ar OC 223:6 YD 116: TZ 6 Darkei Teshuva 51, CM 155:25-29 382 417:4, commentaries.]

C) Sakanah

Even when cutting the tree is permissible, one should be wary of it. A number of things were forbidden due to danger. These are not *halachically* wrong, but there is some danger involved in doing them. When the danger is obvious, it is anyhow forbidden, see section D. Thus, the Rabbis forbid drinking water that was exposed unattended in the vicinity of poisonous snakes. While the danger seems remote, we do not rely on the usual rules for resolving *halachic* doubts in such cases. *Sakanah* is more stringent than regular prohibitions. They also forbade doing things that are known to be harmful based on spiritual reasons. The Talmud says that if a tree has not reached its 'time', cutting it down endangers the person cutting it. This might be connected to the linkage in the Torah between man and tree. In one context, the implication is that this applies to situations where it is permissible to cut the tree down. Nonetheless, many poskim maintain that this only applies when it is forbidden under *bal tashchis*. Perhaps the cases referred to by the Talmud are somewhere in between. The case refers to removing a tree that damages the neighbor's property, but is really planted the required distance away from the edge. Distancing potentially damaging trees from the neighbor's property is a Rabbinical requirement. Some poskim recommend asking a gentile to do the actual work. [See Baba Kama 91b Sefer Chasidim, Tzavaah 44-45. Sh Ar YD 116: Taz 6, Darkei Teshuva 51.]

D) Lo sasim damim bevaisecha

While there is a danger in wantonly cutting down a tree, or even when there is a dis-