

HALOCHOSCOPE

Postscript to last week's question: May one wear ice-skates on Shabbos? We might deal with this issue separately during the winter!

This week's question:

Someone cares for alley cats behind her house. She wishes to both reduce their numbers and prevent fights by having them sterilized by an animal control service. She will catch the animals and call the service organization to come and pick them up. The spaying or neutering will be done surgically. Is this permissible?

The issues:

A) *Siruss*, the prohibition against sterilizing animals surgically

B) *Tzaar baalei chaim*, causing pain to living creatures; *achzariyus*, cruelty to animals

A) *Lifnai ivair livnai Noach*, aiding a non-Jew in violating his mitzvos

A) *Siruss*

It is Scripturally forbidden to spay or neuter an animal. This is derived from the *mitzvah* that forbids maiming an animal designated as an offering for the *Bais Hamikdash*. The Torah adds the words *uve'artzechem lo saasu*, in your lands you shall not do [this]. This is written right after the various blemishes that relate to the reproductive organs, whether they were mutilated by human hands or by natural events and causes. The Torah is adding that one may not mutilate the animal in this way, even if it is not designated for a *korban*. From this, the prohibitions against *siruss* are derived, for both humans and animals, though not necessarily from the same words.

The Talmud debates whether gentiles are also forbidden to do *siruss*. This is not included explicitly in the seven *mitzvos* commanded to the gentiles after the flood, the *Noachide* laws. Nonetheless, the issue is whether it is forbidden with no penalty. Some poskim rule that it is indeed Scripturally forbidden to gentiles. One may not ask a gentile to do *siruss* on one's own animal. This is a violation for the Jew as well. It is either *amira le'akum*, telling a gentile to do something for a Jew which is forbidden to the Jew, or *lifnai ivair*, setting up a stumbling block before the blind. This will be discussed later.

The conventional way to neuter or spa involves directly mutilating the reproductive organs, removing all or some of them or destroying them in their place. There are other methods of sterilization. Chemicals are injected that also have the same effect, withering or destroying the functionality of those organs. A medicine can be administered orally, that can have a long term, but not permanent effect. Certain medicines can inhibit the fertilization process, but do not mutilate the organs.

The Talmud discusses removing other parts of the animal, that has a side-effect of *siruss*. This is also forbidden. The only case directly permitted is where the animal brings the *siruss* upon himself. For example, by removing the crest of a rooster, the animal feels

chaim. While it could be seen as an immediate waste of resources, it is for the ultimate good. In our case, the person wishes to prevent harm to the animals, and to prevent an overpopulation of the alley cats. Ultimately, something must be done to protect the animals. The question is whether the ethical ideal has a *halachic* basis. [See Emor 22:28 (Targ Yon, Midr) Shoftim 20:19 Ki Saitzai 22:6-7 (Ibn Ezra Ramban) 22:10 (IE Daas Zekainim, Baal Haturim). Shabbos 53a 128b 154b 155b Beitza 23a Baba Kama 91b Baba Metzia 31a-33a 85a Avoda Zara 13a, Poskim. Chinuch 294 451 545. Tur Sh Ar OC 305:19 324:9-10, YD 24:8 116:7 117:Taz 4 (Darkei Teshuva 35 44 etc.), EH 5:14, commentaries. Sh Ar Harav, hil. Tzaar Baalei Chaim. Kitz. Sh Ar 191.]

C) *Lifnai ivair*

We have expounded on the concept of *lifnai ivair* in a recent edition (XVII:44). This means that one may not help another in performing a forbidden act. This applies even if the violator is not Jewish. If he is being helped to violate one of his *mitzvos*, the person helping him is in violation of *lifnai ivair*. To aid one Jew in aiding a third Jew to sin, the first aid is also liable. This is known as *lifnai delifnai*. He has helped the second person violate *lifnai ivair*. However, helping a gentile help another gentile sin is not included in the violation. The first gentile is not commanded *lifnei ivair*. Thus, the poskim permit selling animals to gentiles who will engage the services of other gentiles to sterilize them.

In our case, the Jew does not own these animals. She is not engaging the vet to sterilize them for her. She is also not acting as an agent to help the owner. They have no owners. The people who take them after they are trapped will not spay them themselves, but will deliver them to animal shelters or vets who spay them. If it were up to the Jew, she would ask them to sterilize them through medicinal methods. However, the cheapest and most 'reliable' method is surgery, mutilating the reproductive organs directly.

If the Jew takes possession of the strays when she traps them, she would now be engaging gentiles to spay her animals. However, she has no intention of owning them. As far as she is concerned, the animal control can have them. She is acting purely in the interests of the animals themselves. This is both an ethical advantage and a halachic disadvantage. From the *tzaar baalei chaim* perspective, it is easier to relax the prohibition if a human gains from it. Nonetheless, the route which she is taking seems to be permitted, based on who does the surgery. [See extensive references in Halochoscope XVII:44.]

In conclusion, the Jew should have intent not to gain possession of the strays when they are trapped. She may call animal control to take them away and have them spayed.

On the parsha Do not slaughter [an offering of] an ox or sheep that will have a blemish in it, any bad thing .. [17:1] Why does it say "will have" a blemish in the future tense? [see *Or Hachaim*] Why is a blemish automatically a bad thing? Perhaps this is a hint to an animal that looks unblemished right now. However, it has been fed a potion that will cause a blemish. Doing this to a perfect unblemished animal is a bad thing.

Sponsored in the *zechus* of a speedy *refuah shelaimah* for Menacham Manale ben Rochel Devorah and for Yosef Yitzchok ben Yehudis Chaya *besoch shear cholei Yisroel*.

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that his masculinity has left him, or he feels deeply saddened by his loss of pride. As a result of his grief, he does not have the desire to reproduce. However, some poskim apparently maintain that if the *siruss* is not performed actively, but results by itself, it is not forbidden. There is still an issue of *tzaar baalei chaim*, as shall be discussed later, or of *achzariyus*, cruelty.

Neutering a male is punishable by lashes. Whether there is a liability for punishment for spaying a female is debated. Sterilizing a human male by his drinking a medication or potion (which will gradually cause sterility) is forbidden. Under certain stressful circumstances, a female is permitted to drink the potion. Giving a potion to an animal is also forbidden. Some consider this part of the Scriptural prohibition. Others consider it a Rabbinic decree to avoid confusion with humans, who are indeed forbidden Scripturally. Accordingly, the poskim say that one may sterilize a female animal with a potion. If a real need arises to sterilize a male, one should ask a gentile to do it. [See Parshas Emor 22:34, Toras kohanim. Shabbos 110b-111a Chagiga 14b-15a Baba Metzia 90a-b Sanhedrin 56b, Poskim. Chinuch 261, Minchas Chinuch. Tur Sh Ar EH 5:11-14, commentaries.]

B) Tzaar baalei chaim

The clear assumption is that *tzaar baalei chaim* is forbidden. Logically, this could easily be seen as a matter of ethics. In fact, there is an ethical concept of *achzariyus*, cruelty, in general. However, the Talmud considers *tzaar baalei chaim* a *halachic* issue. This means that it must be taken into account when dealing with general *halachic* issues. For example, an ethical concept could not be invoked to override a *halachic* concept. A *halachic* concept might override another *halachic* concept, depending on the context. The Talmud debates whether *tzaar baalei chaim* is considered a Scriptural *mitzvah* or whether it is Rabbinical. That is, though the ethical concept might apply logically, which is usually considered Scriptural, the *halachic* concept might have been institutionalized Rabbinically. The consensus of the poskim is that the conclusions drawn by the Talmud are to follow the opinion considering it Scriptural.

There are many views on the source for this *mitzvah* in the Torah. There is no specific *mitzvah* forbidding general cruelty to animals *per se*. There are a number of *mitzvos* forbidding or requiring certain behaviors with regard to animals. In many of these cases, the underlying theme, or one of the themes, is the prevention of cruelty to the animal. The commentaries view these as the basis for the *mitzvah*.

One example of such a *mitzvah* is the obligation to help one whose donkey is overloaded. Due to the wording of the *mitzvos* associated with this, there are a few different applications. They include: helping unload the donkey, helping to load it up, shoring up the load as it falls, and the like. The *mitzvah* seems to be an interpersonal obligation, to help one's fellow Jew. By parsing the *mitzvah*, it becomes clear that there are situations when there is no obligation to help the owner. Yet, there is always an obligation to help the innocent animal. The Torah also commands us against slaughtering an animal's offspring in its presence. We may not take the offspring from its mother within eight days of its birth, to use as an offering in the *Bais Hamikdash*. One must send away a bird before taking its eggs or chicks. When slaughtering, one must cut the animal in the least painful part, so that it will not die painfully. When an animal is threshing grain that it

usually consumes as its fodder, it may not be muzzled. There is even an explanation given for what is otherwise considered a *chok*, statute. One may not harness an ox and a donkey together. One reason offered for this is that they work at different paces or strengths. It is considered cruel to force them to work like this. Neutering or spaying are forbidden (see section A). Some say that this is partly due to the pain.

The Midrash mentions the concepts of mercy and kindness to animals in connection to these *mitzvos*. On the other hand, in at least one of these instances, we may not imply that the *mitzvah* is due to Hashem's compassion on His creatures. The *mitzvos* are decrees. One answer is that while Hashem's reasons for the *mitzvah* may not be revealed to us, we may understand how they affect us. *Mitzva* observance refines the character. These *mitzvos* refine the person's attitude to creatures in general. This becomes especially important when slaughtering. One involved in this is likely to become insensitive to animals' feelings. He needs to refine this part of his character and personality. In addition, we are always obliged to emulate the ways of Hashem, Who is the All-merciful.

Tzaar baalei chaim is included in the considerations for certain applications on *Shabbos*. For example, there are Rabbinic restrictions on feeding and handling animals. Some involve *muktze*, moving items that are not meant to be moved on *Shabbos*, or *tircha*, too much effort. If an animal has become very dependent on being force-fed, one may force feed it in certain ways. If an animal needs help getting out of a hole or a pool, one may do certain things that would otherwise be forbidden. If an animal is carrying a load that includes *muktze* items, one may place pillows under it and loosen the load so that it falls. An itchy animal may be scratched with certain types of tool.

Apart from hurting a living animal, killing or starving an animal involves *hashchasa*, wastefulness. *Bal tashchis* applies to anything that has a use for man. One may not destroy it for no purpose. Even items that do not have an apparent direct use, may sometimes not be destroyed wantonly. *Bal tashchis* is just extended to forbid even productive destruction, when preserving the item would be more productive. Thus, one may not cut down a fruit-bearing tree for its lumber (this week's *parsha*). This involves at least one negative *mitzvah*. Some say that it is a violation of two negative *mitzvos* and one positive. The poskim debate whether the Scriptural *mitzvah* applies to items other than fruit-bearing trees. It is definitely forbidden, somewhat Scripturally, even if it does not violate this specific *mitzvah*. Even destroying it indirectly, such as starving it of water, or weakening it without destroying it, is considered a violation of *bal tashchis*. There is a minority opinion that the Torah only permits killing an animal for food. Otherwise, even a dangerous animal may only be killed by a *Bais Din* of twenty-three *dayanim*.

Hunting a wild animal for sport, with no intent to trade the hide, is also a form of *bal tashchis*. One may, however, kill pests. They are considered not productive, and their disposal is considered justifiable and productive. The question is, what is a pest?

While directly mutilating an animal to sterilize it is forbidden, the Talmud discusses methods to keep animals from reproducing. This could harm them or cause other problems. The popular method was to tie the tails down or to attach items that blocked the possibility of mating. Ultimately, much of this was done for the good of the animals, or to benefit the humans. When it benefits the animals, it actually prevents *tzaar baalei*