

HALOCHOSCOPE



This week's question:

Raspberries grow in the following manner. The plant produces a stalk or cane. Most varieties do not produce fruit for the first year, but produce fruit in the second year. The second year stalks then die. The plant sends sucker roots horizontally that produce new stalks the following year. They, in turn produce fruit their second year as well as sending suckers to produce new stalks. The cycle continues for ten or more years before dying. Newer canes that sprout at a distance as well as transplanted cuttings can often begin a new cycle, or seeds can germinate to begin new plants. To make the plant productive, the older stalks are trimmed back. Furthermore, some of the newer stalks are removed or thinned, either above ground or by the roots. If the plant proliferates uncontrolled, it will eventually take over large areas nearby. The question is, is the pruning of the newer stalks before they produce fruit considered *bal tashchis*, forbidden destruction of fruit trees? May one mow the nearby lawn, even though new stalks will be cut down?

The issues:

A) *Bal tashchis*, destroying or chopping down fruit-bearing trees; *Derech hashchasah*, destructive or constructive chopping; *Sakanah*, danger of spiritual harm

B) Defining a tree in *halacha*

A) *Bal tashchis*

The Torah forbids destroying a fruit-bearing tree. The Torah states a 'reason' for this prohibition: "For from it you will eat." The Torah adds 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."

The Torah adds the words: "for from [the tree] you shall eat". Some consider this an additional positive *mitzvah*. 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.

All methods of destruction, direct and indirect, are forbidden. One may not cut the water supply from a fruit-bearing tree, so that the tree will wither and dry up. The poskim discuss partial destruction. 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.

Derech hashchasa; The Torah forbids *hashchasah*, destruction. The implication is that when the tree is cut down with a positive purpose the *mitzvah* does not apply. The 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 better, but the productivity of the grapevines is reduced. The purpose of the vineyard is production of grapes. Thus, 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. A tree protruding into a public thoroughfare, posing a hazard, must be cut back. This removal is a *mitzvah*. 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. The actual case refers to using the space for other trees. The poskim discuss other crops. The Talmud also discusses balancing one manifestation of *bal tashchis* against another. One may burn expensive furniture to keep warm, because *bal tashchis* of the body is more serious than wasting an inanimate object. 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, as in our case, 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. 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 well past its prime that does not bear much fruit. 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. There is extensive discussion on the permissibility of whole raspberries.

Sakana; Even when cutting the tree is permissible, one should be wary of it. A number of things are forbidden that are not *halachically* wrong, but there is some danger involved in doing them. *Sakanah* is more stringent than regular prohibitions. This includes things known to be harmful for 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 Shoftim 20:19, Sifri, Panim Yafos. Shabbos 37b 105b 129a 140b Psachim 74a Yevamos 44a Kidushin 32a Bava Kama 91b 115b Baba Basra 25b-26a 27b Makos 22a Chulin 7b etc., Poskim. Chinuch 529. Rambam, Isurei Mizbaiach 7:3, (Mishneh Lem-

elech) Melachim 6:8-10 etc. Tur Sh Ar OC 223:6 YD 116:TZ:6 Darkei Teshuva 51, 348:1 349:4 CM 155:25-29 382 417:4, commentaries. Sefer Chasidim Tzavaah 44-45. Yavetz I:76. Binyan Tziyon I:61. Beer Moshe V:133-135. Shevet Halevi VI:112.]

D) Trees and plants

The Talmud defines trees in various contexts. Later poskim add definitions, based on various *halachic* applications. First and foremost is the definition regarding the *brocha*, *borei peri ha'eitz*. Many poskim maintain that this definition is used for all other applications, unless stated otherwise. The Talmud discusses a definition regarding *kilayim*, mixed crops. There is also discussion regarding tithing. The seven-year agricultural cycle has different cutoff points for trees and vegetables. Tree-fruits' cutoff is in *Shevat*. The stage of their growth is when the fruit blooms after the blossom's petals fall. Ground fruits' cutoff is *Rosh Hashanah*, and the fruit must be picked by then.

The Talmud considers tree fruit to be nourished by both the tree and the ground. Thus, while its *brocha* is *ha'eitz*, one who recites *haadamah* has fulfilled his obligation. Conversely, one who recites *ha'eitz* on a ground fruit does not fulfill his obligation! The question is: why would anyone think otherwise!! To answer this, the Talmud cites an opinion that the wheat plant is called a tree. Nonetheless, one may not recite *ha'eitz*. It is not enough to be called a tree. There must also be *halachic* characteristics of a tree.

The Talmud definition of a tree is that after the fruit is picked the *gavza* remains, and it can produce fruit again. This *gavza* is the subject of much debate. One commentary says it is the branch. According to this view, the tree must have branches. Some trees produce fruit directly from their trunks. Some trees have no real branches, such as the palm that has *kapos*, something of a cross between a leaf and a branch. Another view maintains that the point is that the plant does not die from year to year, or that some of the wood remains. The slight difference would be whether certain berries are *ha'eitz*. Strawberries leave no wood at the end of the season, but their roots remain to produce the following year. Raspberries leave the stalks or canes. A variation of this view adds that if one needs to sow it each year it is not considered a tree. Another definition is that any plant that produces leaves directly from its *ikar* is not a tree. *Ikar* can mean the trunk or the root, depending on the context. The poskim debate what is meant here. Some vegetables have no real stem, but leaves rising directly from the roots. Others have a stem from which the leaves sprout, but no branches. Others interpret the *gavza* definition to be that the branches remain from year to year. The fruit, and usually the leaves, die and are shed, but branches remain. It is unclear whether this view requires branches for the definition.

The Yerushalmi says *atadim*, low plants are trees with regard to *kilayim* in a vineyard, yet the *brocha* on their fruit is *ha'adamah*. This refers to some very low shrubs that produce certain berries. Some explain, since the ground contributes to the growth of the fruit as well, the *brocha* on all fruit could be the same as that of ground fruit. Since trees are more special, they carry a specialized *brocha*. Accordingly, they must be prominent. Others maintain that it is also due to the additional nourishment that they get from the tree. This is determined by how the tree continues to produce after the fruit is picked.

The definition of *atadim* is also debated. Some maintain that it applies to any low growing plant. This raises problems with vines, that cannot grow high unless they are

trained. However, since they are pruned and a substantial trunk is left behind, they are trees. *Atadim* might be pruned to within a hand-breadth of the ground, or they might be cut down to their roots and regrow from the root each year. In the case of raspberries, the first year canes remain to produce fruit in the second year.

In discussing tithing, the Talmud says trees grow based on the water contained in their sap. Once the rains water them, they are left alone. Vegetables are watered all the time, so that new growth after the rains is also counted. Thus, vegetables are tithed according to when they are picked. Trees are tithed according to the blooming of their fruit at the end of the main rainy season. The *esrog* is debated. It is a tree, yet it is watered all the time. Therefore, its tithing is determined differently. Ideally, raspberries are the same.

The later poskim suggest other signs of a tree. If we assume that non-trees need to be sown fresh each year, any plant that can be grown with a cutting is a tree. A variation of this is that the standard practice is to plant trees from cuttings. It is only considered practical to plant from seed if the plant will produce quickly. Accordingly, some say that if the plant produces in its first year, when planted from seed, it is not a tree, even if it produces again the next season. Another suggestion is that the fruit must be of the same or better quality the second season. Some suggest that if the trunk is not solid wood, but a hollow cane, it is not considered a tree. Finally, a suggestion is made that any tree that does not bear fruit for more than three years must be considered a ground plant. It is impossible that there be a fruit that would be forbidden forever due to *orlah*. This raises an issue with regard to raspberries. Are they considered trees, based on the life of the thick-
et? Are they ground plants? Are the fruits always *orlah*, based on the life of the canes?

In light of the above, there is a major debate on raspberries, mainly regarding the *brocha* or *orlah*. There are three views: it is a tree, it is not a tree, and it is a *safek*, unknown. This brings us to our question. If it is not a tree, one does not violate *bal tashchis* by cutting it back, as long as it is not wasteful. If it is a tree, the cutting must fall into the productive category. One could call it pruning or thinning, if cutting the entire stalk counts as the same. One might be able to make a case for better use of the space, or that the fruit is too infested to be useful. Some suggest that if one does not consider the fruit *orlah*, there can be no *bal tashchis*. We may suggest that if it is indeed a tree, because the suckers are all one plant, cutting constitutes pruning and is not *derech hashchasah*. If each cane is considered separate, it cannot be considered a tree. If it is a *safek*, either way it is permitted. [See Brochos 40a-b Tosefta Kilayim 3:13 Rosh Hashana 2a 10a 14a 15a, Poskim. Tur Sh Ar OC 202 203:1-3 **MB:3** Kaf Hachayim 2 4 5 13, YD 294:1 etc. Birkai Yosef 4, 296:1-2 15, commentaries. Shut Radvaz 966(531). Rav Pe'alim II:30. Chazon Ish, Orlah 12. Divrei yisachar YD:109. Shevet Halevi YD:V:95. Tzitz Eliezer II:15. Kerem Tziyon 3, refs there. Yeshurun III:p. 157.]

In conclusion, the lawn may be mowed. One may 'prune' the plant.

Sponsored by Barry and Amy Cohen in memory of Amy's father, Tzvi Avraham ben Yosef z"l,

Walter Alfred Stickney, whose 5th *yahrzeit* will be on the 14th of Shevat. ם

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