

HALOCHOSCOPE

Congregation Shaaray Tefillah, Pittsburgh, PA

This week's question:

There is a mulberry tree in somebody's yard that is causing some damage to the roof. It also takes up a lot of space and provides very little, if any, benefit. May he have the tree removed?

The issues to be discussed:

- (A) *Bal Tashchis*, the prohibition against cutting down a fruit-bearing tree.
- (B) *Sakana*, the "danger" involved.
- (C) *Shelo Bederech Hashchasa*, when there is a constructive purpose to cutting it down.
- (D) What is considered fruit-bearing?

(A) Bal Tashchis-

All wanton destruction of something useful is forbidden. The Torah specifically prohibits destroying a fruit-bearing tree, but the Talmud includes the destruction of anything useful in this prohibition, and according to the Poskim they are all forbidden Scripturally. For example, hunting as a sport is considered Bal Tashchis (besides the unnecessary exposure to danger involved, which comes under the separate Mitzvah of guarding one's well-being). All methods of destruction are prohibited including cutting off the tree's water supply. Even cutting off a branch that could bear fruit is forbidden. According to some Poskim there are two commandments, positive and negative. The reason for this Mitzvah is given by the Torah itself: "...for from it you shall eat, do not cut it down for man is a tree of the field..." This is interpreted to mean that since man draws his sustenance from it, he should not waste it. In fact, the purpose of its existence is only to serve the needs of mankind and therefore destroying it is violating the will of the Creator. In addition, there is an element of character refinement. The Talmud likens one who destroys something in anger to idolatry, meaning that losing control in a frustrating situation is a symptom of the lack of discipline that can eventually lead to idol-worship. [See Parshas Shoftim 20:19. Makos 22a, Baba Kama 91b, Kiddushin 32a, etc., Chinuch Mitzvah 529, Rambam Hil. Melachim 6:8-10.etc. Teshuvos Noda Biyehuda.]

(B) Sakana-

There are a number of things that are forbidden, not because they are Halachically wrong, but because they are considered a danger. Often the danger is obvious but sometimes the Talmud tells us that something is dangerous when there is no apparent rational reason. Cutting down a fruit-bearing tree is one such case where the Talmud warns that one who does so before the tree is ready to be

cut down will die. This is not superstition but has deep meaning; it may have something to do with the Possuk's connection between man and the tree. There are some opinions that say this is a concern even when there is no violation of the commandment because of the exceptions discussed in section C, but the majority of Poskim rule that it is only a Sakana in a case where it is anyway forbidden. [See Baba Kama 91b, Shulchan Aruch Yoreh Deah 116, Taz 6, Darkei Teshuva 51.]

(C) Shelo Bederech Hashchasa-

In forbidding the removal of a tree, the Torah says that destroying it is forbidden. Therefore, it is implied that removing it with a purpose is not included in the prohibition. The most obvious case of this is when this tree is harming other trees such as in a vineyard where there is a grapevine too close to the other vines. Another case mentioned in the Talmud is a date palm growing in a vineyard, where the dates do end up tasting better but the productivity of the grapevines is weakened. Since the main purpose is the production of grapes, the palm may be cut down. Clearly, pruning a tree to improve its productivity is also allowed. If the tree is protruding into a public thoroughfare and is a hazard, it must be removed, in fact it is a Mitzvah to remove it.

The Talmud also allows cutting the tree down if the monetary value of its wood for use in building is more than the value of its fruit. Based on this, the question arises when other constructive purposes will be served by destroying the tree. The most well-known of these is where the space on which the tree is standing is needed to build on. Although the actual tree will not be used, Rosh allows its removal since this is not considered Derech Hashchasa. From Rashi's commentary on another case in the Talmud it appears that any time that one could earn more money by removing a tree than by leaving it, one is allowed to cut it down. However the actual case referred to is also a case where the tree is taking up space which could otherwise be used for more profitable trees. Similarly, Noda Biyehuda permits the hunting of animals as a means of livelihood and we do use leather and other animal-skin products, although, when buying a new item made from these, we do not recite the customary *Shehecheyanu* Brocha, because an animal had to be killed for it. [See Baba Kama 91b, 92a Rashi, Rosh, Yam Shel Shlomo 62. Rambam Hil. Melachim 6:8. Darkei Teshuva 116:51. Sh. Ar. O.C. 223:6 Rema. commentaries.]

Other constructive purposes permitted by the Talmud include burning an expensive piece of furniture to keep warm, because "wasting" one's body is a more serious issue than wasting an inanimate object. Eating expensive food when cheaper food will do just as well is also allowed. [See Shabbos 139a, 140b.]

Assuming that one may destroy the tree to build on its space, may one destroy it because he prefers the open space, but not to build there? In this case it is questionable if the reasoning of the Rosh is applicable. It is therefore preferable to follow the ruling of one major Posek that only if it is possible to remove the tree with its roots and to transplant it elsewhere may one cut it down. If the tree is causing damage to property with its roots or branches, such as in our case where they are damaging the roof, one may cut them back. If it is not possible to prevent the damage unless the whole tree is removed one may do so. The same is true if a tree attracts bees which cause tremendous hardship. There is an opinion that one may cut back the branches, but not the whole tree, even if it is only to allow more light in through a window. For a Mitzvah one may destroy a fruit-bearing tree,

for example, the best material for a spit to roast the *Korban Pesach* was pomegranate wood and this was the material recommended by the Mishna despite the obvious necessity to cut it off a fruit-bearing tree. Similarly, if branches cover a *Succah* making it un-kosher, they may be cut back. [See Darkei Teshuva 116:51, Mishna Pesachim 74a.]

(D) What is Considered Fruit-bearing?

When a tree reaches the age that it no longer produces fruit it may be destroyed. The Talmud says that even if it is still yielding some fruit, if it is less than a certain amount, which varies depending on the importance of the fruit, it is no longer called *Eitz Ma'achal*, fruit-bearing. [See Baba Kama 91b, Sifri Shoftim, Malbim. etc.]

Based on this, various other cases could be excluded from the prohibition. One example of this is a tree producing bug-infested fruit that is impossible to check and may not be eaten by Jews. However, it is used to make an alcoholic beverage because, if the fruit is anyway crushed and strained it may be used. In addition, the fruit may be eaten by gentiles. There is no requirement that the fruit be fit for the owner's consumption. Furthermore, one Posek points out that only the insects are forbidden so the fruit still makes the tree into an *Eitz Ma'achal*. Another case is that of a very bitter fruit that is not harvested by the owner but is taken by passersby. In addition, its Brocha is *Shehakol*, rather than *Ha'eitz*, because it is not eaten like a normal fruit. Nonetheless, there are Poskim forbidding the destruction of this tree. However, if the wood is worth more even as firewood than the value of the fruit to those who do eat it, both of these cases are permissible. [See Darkei Teshuva 116:51.]

In our case: the mulberries are indeed edible but the yield of a tree growing wild is usually not enough to make it worth cultivating. In addition, the fruit does not have any "street-value", and the wood is sold as good slow-burning firewood. Furthermore, the tree is causing some damage, although this can be prevented by cutting some branches. The roots of mulberry trees also cause damage to buildings, especially to the sewers. In this case it was ruled that the tree may be cut down, but that it is preferable that a gentile is hired to do it. [See Darkei Teshuva 116:51.]

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ANNOUNCEMENTS

SCHEDULE:

SHABBOS SHACHARIS	9:00 AM
SHABBOS MINCHA	6:05 PM
SHACHARIS SUNDAY	8:00 AM
SHACHARIS MONDAY - FRIDAY	7:00 AM
MINCHA SUNDAY - THURSDAY	6:15 PM
CANDLE-LIGHTING VAYERA	6:03 PM
MINCHA EREV SHABBOS VAYERA	6:10 PM

SHIURIM:

GEMORO MAKOS
HALACHA B'IYUN
HILCHOS SHABBOS
DAF YOMI

SUNDAY 7:15 AM
MONDAY 8:30 PM
SHABBOS 8:15 AM
SHABBOS 4:30 PM
SUNDAY 8:50 AM
MON-THURS 7:30 PM

Kiddush is given by Rabbi Silver and Fischy Milch in honor of their being honored as Chosson Torah and Chosson Beraishis, respectively.

Shalosh Seudos is given by Rev. Israel Weiss in celebration of his liberation from the camps.

This issue of HALOCHOSCOPE has been sponsored by Mr. Merv Berkman in honor of the Yortzite of his father Zalman Eliezer ben R. Avrohom Yitzchok on the 5th of Cheshvan.

Comments and suggestions are welcome and can be addressed to :
Rabbi Shimon Silver
Congregation Shaaray Teffillah
5741 Bartlett Street
Pittsburgh, PA 15217 (412) 521-5419/9911

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