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# PARSHA ENCOUNTERS

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Parshas Vayeitzei ✍️ Rabbi Ezra Adler

## *Torahdik Yid*

The *Medrash* mentions that Yaakov Avinu is referred to as the “*bechir ha’avos*,” “the chosen one of the forefathers.” In fact, the image of Yaakov is engraved on the “throne” of Hashem. It is difficult to understand why Yaakov Avinu merited this distinction. One would think it more fitting to bestow this title on Avraham Avinu, who was tested ten times and passed every one. Though Yaakov endured many difficulties, he was not tested in the same manner as Avraham.

Rav Moshe Feinstein zt”l reveals the fallacy of this premise. While it is true that Avraham was tested, undergoing tests is actually not a positive thing. It is preferable to never be put into that position, as is evidenced by our *tefillah* to Hashem: “*Lo Lidai Nisayoni*”; we beseech Hashem to refrain from testing us.

Rav Moshe illustrates this idea with an incident from this week’s *parshah*. After Hashem instructs Yaakov to leave Lavan, Yaakov justifies their sudden, imminent departure to Rochel and Leah by describing how Lavan cheated him. Rochel and Leah agree with his decision and stress that they should leave since they are considered strangers to their father and have no part in the inheritance. Why was it necessary for them to rationalize their actions when their leaving was a direct order from Hashem? Reb Moshe explains that Yaakov, Rochel, and Leah were trying to make this move a little less difficult for themselves and thus minimize the test they were undergoing.

Reb Moshe relates this concept to the experiences of many early 20<sup>th</sup> century immigrants to America. Although they sacrificed much in order to keep Shabbos (finding new jobs each week), their dedication was not sufficient to ensure the religious observance of their descendants. Instead of stressing to their children that their earnings for the year were already

decreed on Rosh Hashanah and that the loss of their jobs was part of Hashem’s plan, they emphasized the difficulties of the test (they would complain that it was “so hard to be a *yid*”). By doing so, they ultimately lost their children in addition to their jobs. Clearly, it is preferable to avoid tests or at least minimize them as much as possible.

To answer our question regarding the choice of Yaakov Avinu as “*bechir ha’avos*,” we must study Yaakov Avinu’s life. We find that Yaakov lived in many different environments. His childhood began in the house of Yitzchok, learning Torah. When Esav forced him to leave, he fled to the yeshiva of Ever, where he learned for fourteen years. Next, he spent twenty years with Lavan, was confronted by Lavan, dealt with the issue of Dina and its repercussions, suffered the “death” of Yosef, and finally settled in Mitzrayim. Though the circumstances of Yaakov’s life constantly changed, he remained Yaakov Avinu, Yaakov the *Tzadik*. Through this consistency of character, Yaakov earned the title “*bechir ha’avos*.”

We learn two very important lessons from Yaakov Avinu’s actions. First, even though we cannot control the nature or number of tests we endure, we can try to minimize these tests. The second lesson is that no matter what situations we encounter, we should strive to retain the same level of *kedushah* we attained in *shul* or in the *beis medrash*. This is especially hard for those people who must work in secular society, as they are exposed to many negative influences. We should challenge ourselves to emulate Yaakov Avinu and always remain a *torahdik yid*.

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# HALACHA ENCOUNTERS

## BA'AL TASHCHIS – CUTTING DOWN TREES

Rabbi Boruch Weinberg

The prohibition against cutting down trees encompasses various issues which require clarification. The following topics will be discussed:

Types of trees included in the prohibition

Situations when cutting down trees is permitted

The concept of danger, which may be irrelevant to the prohibition

What is considered "cutting down"

Solutions which permit cutting down

### Which type of tree is included in the Torah's prohibition?

The Torah states in *parshas Shoftim* (20:19-20) "when you besiege...do not destroy a tree to cut it down." Rashi explains the reason for this prohibition: "Is a tree a human being that you have to apply the standard war techniques?" (i.e. there is no valid reason to cut it down). However, the *posuk* then states: "only a tree that you know is not a food tree, such a tree may be cut down."

The qualifications for type of tree seem straightforward: fruit trees prohibited, barren trees permitted. Actually, these categories are more complicated than one would assume. The category of barren trees may also include fruit trees which are no longer producing food or fruit trees bearing inedible fruit.

The Rambam in *Hilchos Malachim* (6:7-8) writes that if the fruit tree is old and only producing a minimal amount of fruit it is also permitted to cut it down. The Siforno on the above *posuk* extrapolates this last concept by translating the words of the *posuk* - "a tree that you know is not a fruit-bearing tree" to mean: a fruit-bearing tree that is old and not producing a significant amount of fruit you may cut down.

The *Darkei Teshuvah* (116) discusses the case of a tree which produces wormy fruit that is forbidden to eat. Is such a tree considered to be a fruit tree or a barren tree? If the fruit can be used for some other purpose, such as making juice (if the worms can be removed), or if anyone can derive benefit from the fruit (even gentiles), then the fruit of the tree is more valuable than the tree itself. In such a situation, one should be stringent and not cut it down. The *Piskei Tosafos* in *Maseches Pesachim* (*Perek Makom Shenahagu* 132) adds that even one who cuts down a barren tree will not see any blessing from this action.

### Situations where permitted

As is the case with many prohibitions, there are exceptions to the general rule (i.e. various situations where it would be permitted to cut down trees). However, as is often the case with *halachic* issues, there is no simple solution which would suffice according to all opinions.

The *Gemara* in *Maseches Bava Kama* (*daf* 91b) says: Ravina says if the wood of the tree is worth more than the fruit, one is permitted to chop it down.

The *Gemara* in *Maseches Bava Basra* (*daf* 26b) relates a story: Rava Bar Rav Chanan's palm tree grew next to Rav Yosef's vineyard. The birds which rested on the palm tree would occasionally land on the vineyard and cause damage. Rav Yosef told Rava to cut down the palm tree. Rava conceded that Rav Yosef's demand was justified, but declared: "I don't want to cut it down myself because it's forbidden to cut down trees, and there is an element of danger involved for the one who cuts. If you want it to be cut down, you may do so yourself!"

Tosafos notes what seems to be a contradiction to the above. In *Maseches Bava Kama* (*daf* 92b), the *Gemara* implies that if a tree is causing a loss it is indeed permitted to cut it down! In answer, Tosafos says that it would depend on the amount of damage caused. If there was a tremendous loss caused by the tree, then it would be permitted to cut it down (which was not the case with Rava's tree).

The Chochmas Adam (68:7) *paskens lehalacha* that if a fruit tree is damaging other trees of a higher value or one needs the space, one may cut it down.

The Rambam in *Hilchos Malachim* (6: 7-8) writes: if the tree was damaging other trees or fields or the wood is of a higher value than the fruit, the Torah permits it to be cut down. In the next *halacha*, he writes that if the fruit tree is old and only producing a minimal amount of fruit, it is also permitted to cut it down.

The *Darkei Teshuvah* (116) quotes the *Ya'avetz* who rules that for a *mitzvah*, you can cut down some branches.

The Rosh in *B.K. Perek Hachovel* (16) writes that one would be permitted to cut down the tree if it is occupying space that one needs.

The Taz in *Yorah De'ah* (116:6) rules based on the Rosh above that one who needs to build a house may cut down the fruit trees blocking the construction site.

[The *Kaf Hachaim* (116: 85) clarifies that cutting down a tree in such a case is only permitted if the building or extending of the house is necessary to provide living quarters. Cutting down a tree to make way for an extension which is merely an added luxury, is not permitted.]

The *Kaf Hachaim* (116: 85) adds that a tree which blocks the light of a window or attracts bugs may also be cut down if removing branches won't suffice.

### The concept of danger

There is another dimension to the prohibition of cutting down trees which is generally not applicable to other prohibitions. This concept of *sakanah* (danger) must be discussed.

The *Gemara* in *Maseches Bava Kama* (*daf* 91b) says: "Rav said a tree that contains a *kav* (of fruit) is forbidden to chop down. Rav Chanina said, 'The reason why my son Shikchas died was because he chopped down a fig tree before its time.'"

The *Gemara* in *Maseches Sukkah* (*daf* 29a) states "on account of four things the luminaries are smitten, on account of...those who cut down fruit-bearing trees." Rashi offers an explanation for this: it appears to show dissatisfaction with the great blessings and gifts of Hashem.

We mentioned above that the *Darkei Teshuvah* discusses a case where one has a fruit tree with its branches overhanging his *Sukkah*, thus invalidating the *Sukkah*. He refers to the *Ya'avetz*, who says that for a *mitzvah* one may cut down some branches. He then writes that regarding the danger involved in cutting down a tree, one need not worry, because when an action is performed for a *mitzvah*, the principle of "*shomer mitzvah lo ya'ida davar ra*" applies. However, the *Darkei Teshuvah* gathers from the *Teshuvos Tzeror Hakesef* that even when an action is done for a *mitzvah*, one must be concerned with the element of danger.

### What is considered cutting down

Although the term "cutting down" in our everyday terminology refers to cutting the tree down to the ground, it is not clear if that is indeed the criterion when it comes to this provision.

The *Mishna Lemelech* in *hilchos issurai mizbaiach* (7) writes that cutting down branches (and not the entire tree) is not prohibited.

Likewise, the *Aruch HaShulchan* (116: 13) writes that there is no prohibition against cutting down branches.

However, the *Teshuvos Dovev Maisharim* (40) writes that the prohibition applies even to cutting branches.

In *Teshuvos Chasam Sofer* (*Yorah De'ah* II,102), a statement from the *Ya'avetz* indicates that it would be permitted to uproot an entire tree with its roots and replant it elsewhere.

### Solutions

There are solutions which allow for the cutting down of trees. It should be noted that just about all of these solutions are considered *bidieved* (i.e. not the ideal), and should be avoided whenever possible.

Some *poskim* say that one may sell the tree to a gentile and then have the gentile cut it down. (See *Ya'avetz* 1:76 and *Darkei Teshuva* 116:51).

The *Teshuvos Shevet Halevi* suggests letting the tree wither and die on its own before cutting it down.

Another possible solution is to follow the Chasam Sofer's advice; he says that one may uproot the tree and plant it elsewhere.

In summary, the prohibition against chopping down trees is very serious, albeit that its severity is not known by the vast majority of people. To illustrate its significance, I'll share an incident which I heard. A friend of mine approached a *posek* of a certain community who was known for tackling the toughest issues in all four *chelkai Shulchan Aruch*. However, when my friend approached him with a question regarding cutting down a fruit tree, he responded, "Such *sha'alos* are too great for me; you must take the *sha'ala* to much greater *poskim*."

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