

**MIVTZA HALACHA 5780**

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חידוש Chiddush

אין בית המדרש בלא



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A Geulahdike Teshuvah

The holy works connect the month of Elul to Torah Pesukim whose *Roshei Teivos* spell out the word Elul. These Pesukim express the Avodah which we should focus on during this special month. The Rebbe identifies five such Pesukim for which Elul is an acronym;

- אני לדודי ודודי לי - "I am to my beloved and my beloved is to me". (Shir Hashirim 6:3)
- ואשר לא צדה, והאלהים אנה לידו ושמתי לך - "and G-d has caused it to come to his hand, I shall provide you a place to which he shall flee". (Shemos 21:13)
- איש לריעהו, ומתנות לאביונים - "sending gifts each man to his fellow, and gifts to the poor". (Esther 9:22)
- ומל ה' אלוהיך את-לבבך, ואת-לבב זרעך - "and Hashem will circumcise your heart and the hearts of your descendants". (Devarim 30:6)
- ואשירה לה' ויאמרו לאמר - rearranging the words "and they said, saying I will sing to Hashem". (Shemos 15:1)

The first 3 of these Pesukim represent the three pillars on which the world stands; Torah, Avodah (prayer) and Gemilus Chassadim (acts of kindness and charity).

The verse "*I am to my beloved and my beloved is to me*" represents the pillar of prayer. Through Tefillah, we draw ourselves closer to Hashem.

"*And G-d has caused it to come to his hand, I shall provide you a place to which he shall flee*" refers to the inadvertent killer who must flee to a city of refuge. This refers to Torah study which absorbs a person and provides refuge and protection from the Yetzer Hora.

"*Sending gifts each man to his fellow, and gifts to the poor*" refers to acts of kindness and charity. In a broader sense, Tzedakah refers to the keeping of the Mitzvos of the Torah.

These pillars encapsulate the totality of Torah observance, how we as Jews should live their lives.

When a person fails or is lacking in the observance of Torah and Mitzvos, they require Teshuvah. Teshuvah accesses a deeper level than the observance of Torah and Mitzvos reaches and is therefore able to make-up

for any lacking in our observance.

The fourth verse, circumcision of the heart, represents Teshuvah, through which we remove the concealments to reveal the inner love and desire that each soul possesses to serve Hashem.

The final verse, which comes from the Song of the Sea, is connected to Geulah (redemption).

Chassidus teaches that the soul also has five levels. These five levels are connected to the 5 verses and the Avodah that they reflect.

The lower three levels of the Neshama; Nefesh, Ruach and Neshama are the conscious levels of the Neshama - action, emotion and intellect. These dimensions manifest themselves daily in our keeping of Mitzvos (Nefesh), prayer (Ruach) and Torah study (Neshama) which are the first three Pesukim.

When we struggle to overcome our Yetzer Hora on these three levels, through Teshuvah, we access a deeper level of the Neshama, the fourth level which is called Chaya. Chaya is the soul's strong desire for connection to Hashem which transcends rationale. But even this deep desire is not always sufficient to quell the desires of our Yetzer Hora.

The fifth level, the Yechida is the essential core and identity of the Neshama. The Yechida is the dimension of the Neshama which is absolutely one with and surrendered to Hashem. This oneness transcends logic and reason and cannot be blemished or corrupted.

The Yechida is connected to the Geulah. When the Yechida is revealed, all of the obstacles to serving Hashem fall away. When the Yechida is revealed we become completely spiritually liberated.

The Rebbe has taught us that we are the generation who will merit the Geulah and that we must start to live Geulah in our own lives and Avodas Hashem.

Teshuvah of Geulah starts immediately with the fifth verse. We are able to reveal our Yechida, our absolute oneness with Hashem which gives us strength and resolve to overcome all obstacles as though they do not exist. We must then bring it down so that our Teshuvah and observance of Torah and Mitzvos with the conscious levels of the Neshama are permeated by this oneness and resolve.

The weekly Halacha analysis

Cutting and trimming fruit trees

Rabbi Yonason Johnson

It is Biblically forbidden to cut down a fruit tree. This is the prohibition of Baal Tashchis and it is one of the 613 Mitzvos¹.

The source of this Mitzvah is in Parshas Shoftim² which teaches that when the Jewish people lay siege to a city that they are warring with, they may not cut down its trees. The reason given is because we eat from these trees. In contrast, a tree that does not bear fruit, one may cut down.

Sefer Hachinuch writes that the Mitzvah is to teach us to be kind and compassionate; to love goodness and positivity and to stay away from anything destructive.

The Rambam qualifies, that the prohibition does not only apply to a siege. It applies in all circumstances. If one cuts any fruit tree in a manner of destruction, one violates this prohibition. One may also not withhold or block water from the trees so that they wither and die.

Exceptions

The Rishonim and Acharonim record a number of circumstances where it is permissible to cut down a fruit tree. These include;

If the tree is causing damage to other trees of better quality³ or to an adjacent field.

If the wood of the tree is more valuable than its fruit and one requires the wood⁴.

The Ta"z⁵ writes that the same applies if one wants to build a house and needs the site of the tree. There are those who argue with this opinion of the Ta"z⁶. The Alter Rebbe⁷ brings the ruling of the Ta"z as Halacha.

Some Acharonim⁸ qualify that this leniency only applies when there is a significant need such as where the house is too small to be liveable. Merely extending a house for comfort or aesthetics would not warrant any leniency.

Aruch Hashulchan⁹ adds that one may cut down a fruit tree that is darkening their windows¹⁰.

The basis for leniency in these cases, is because where the benefit or need is worth more than the tree, it is not considered as act of mere destruction.

Sakana

The Gemara records Rabbi Chanina as saying that his son Shivchas died prematurely be-

cause he cut down a fig tree prematurely. This was Middah Kneged Middah; he cut down the tree prematurely so he too was cut down before his time.

The Poskim discuss whether this Sakana only applies when one cuts down a tree in a forbidden manner. Some Poskim argue that the Sakana applies even when cutting down the tree for one of the reasons discussed above. They argue that it is difficult to say that Rabbi Chanina's son would have cut down a tree in a forbidden manner¹¹.

Others write that there is no Sakana when done in a permitted manner, but one must be certain that the benefit is greater than the value of the tree¹².

The Alter Rebbe¹³ clearly writes that the Sakana does not apply when the tree is cut down in permissible circumstances.

The Chasam Sofer¹⁴ writes that even in circumstances where it is halachically permissible to cut down the tree, we should adopt the practise recorded in Sheilas Yaavetz – do uproot the tree with the soil intact at its base and replant it in another location.

Since we are dealing with a matter of Sakana, we apply the principle *Chamira Sakanta Meisura*¹⁵, that we are even stricter in matters of Sakana than other Torah prohibitions. Therefore, most Poskim are cautious and adopt the stricter approach¹⁶ unless there are other additional factors.

There is a letter from the Rebbe¹⁷ addressed to someone who had ruled leniently and something untoward had happened. The Rebbe writes that despite the Alter Rebbe's lenient ruling, they should be cautious, since the Tzavaah of Rabbi Yehuda Hachassid¹⁸ writes that there is always Sakanah and they have experienced something untoward in the past¹⁹.

Cutting by a non-Jew

Sheilas Yaavetz writes that in a questionable case, one should have a non-Jew cut down the tree. In this case, the danger does not apply. Kaf Hachaim²⁰ writes that it is always better to have a non-Jew cut down the tree, even when permitted.

Other Poskim²¹ go further and write that the tree should be sold to the non-Jew with a proper Kinyan and the non-Jew should uproot the tree.

What about trimming the trees?

Some Poskim²² understand that the prohibition only applies to completely destroying or uprooting the tree. Trimming or breaking off branches is not a problem. Other Poskim²³ disagree and maintain the prohibition applies to cutting branches as well.

Accepted practise is to be stringent, especially as this is a matter of Sakana as well.

It is permissible to trim a fruit tree to promote growth or for the tree's benefit.

For the purpose of a Mitzvah

Many Poskim²⁴ are lenient where the tree is being trimmed for the purpose of a Mitzvah. This includes where the branches are overhanging a Sukkah, or to use as Schach where no other branches are available. This is especially so when one is only trimming small, soft branches. Even then, it is preferable for a non-Jew to cut the branches²⁵.

This may be limited to absolute Mitzvos and one cannot extrapolate to other situations. This may include decorating the Sukkah or decorating the Shule on Shavuos.

Due to the fact that this Halacha involves Sakanah, one should always contact a competent Halachic authority for practical direction.

May we be Zoche to the coming of Moshiach when even non-fruit bearing trees will give fruit once again.

1. Mitzvas Lo Saaseh 57
2. Devarim 20:19-20
3. Rambam Melachim 6:8, Sefer Hachinuch Mitzvah 529
4. Bava Kamma 91b, Rambam Hilchos Melachim 6:8
5. Ta"z YD 116:6, based on Rosh
6. See Be'er Heitev
7. Shemiras guf vnefesh ubaal tashchis 15
8. See Chavos Yair 195, Shvus Yaakov 1:159, Yabia Omer 5 YD 12
9. YD 116:13
10. If the situation can be remedied by trimming the tree, one may not cut down the tree and should merely trim the branches (Kaf Hachaim 116:85).
11. Sheilas Yaavetz volume 1 Siman 76
12. Chasam Sofer YD 102
13. Shemiras guf vnefesh ubaal tashchis 16
14. YD 102
15. Chullin 10a
16. See Shevet Halevi 5:95
17. Igros Kodesh 7 page 264
18. Siman 53
19. This response may be limited to this particular case where something untoward had previously occurred.
20. YD 116:84
21. Beis Shlomo 1:191
22. Mishneh Lemelech Isurei Mizbeich 7:3, Sheilas Yaavetz 1:76
23. Be'er Sheva quoted in Mishneh Lemelech ibid. Beis Yitzchak 1:144 writes that this may be a Biblical violation.
24. See Pischei Teshuvos Sukkah 629:12 who references Divrei Chaim 2 YD 59 and others.
25. Teshuvos Vehanhagos 1:376