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## INTERNET PARSHA SHEET ON SHOFTIM - 5773

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Shoftim

### **Rabbi Yissocher Frand Parshas Shoftim**

Appointing An Unworthy Judge = Planting An Ashera: Why?

Parshas Shoftim begins with the laws of the Jewish Court. "Judges and policemen you shall place in all your gates and they shall judge the people with righteous judgment." [Devorim 16:18] The judges are prohibited from corrupting justice and from showing favoritism. Immediately after these laws directed at the judges, the Torah introduces the prohibition of planting an Ashera tree next to the altar of G-d in the courtyard of the Temple.

The incongruousness of this juxtaposition jumps right out at us. What does planting a tree worshipped as idolatry have to do with judges? The Talmud makes an inference from this juxtaposition: Anyone who appoints an unworthy judge is as if he planted an Ashera tree. [Sanhedrin 7b] The Sefer Ner Uziel (from Rav Uziel Malevsky, z"l) explains this message: The Ashera tree represents nature and the god that people make out of nature.

Today we are all familiar with the environmental movement. I am not here to debunk them and to say that everything they say is crazy. We do have to worry about the planet and we are charged "to work it and to guard it". [Bereshis 2:15] However, as with all of these movements it is possible to go too far. There are indeed people who have gone too far and have turned Nature into an Avodah Zarah (foreign worship).

We look at ancient times and we hear about people who worshipped inanimate objects of nature and we comment how silly they were. But today we also have people who worship nature and who put a premium on nature even above human life. There are people in Oregon who pound metal stakes into trees so that when loggers attempt to cut them down,

they will be killed. How do we refer to these environmentalists who have gone beyond the pale? They are called "tree huggers". This is because trees are a beautiful example of the perfection of nature.

My wife and I took a little vacation one summer to Yosemite National Park. We saw the Sequoia trees there. Some of these trees are 300 feet tall. They are amazing and they are breathtaking. Some of these trees are 3000 years old! This is mind boggling. The trees are awe-inspiring. But they are after all just trees. They are not G-d.

This is what Ashera represents -- the laws of nature. One of the most basic laws of nature is survival of the fittest. The animals that survive are the most fit, the mightiest.

The laws of Tzedek [justice] on the other hand, are the polar opposite of that. When two people come before a judge and one is a powerful man in the city and the other person is a poor beggar, we do not apply the principle of the survival of the fittest. We say "Do not show favoritism in judgment." Even though it might cost the judge in personal terms to rule against the wealthy person, in the eyes of Tzedek, survival of the fittest does not count, but rather the survival of the person who is right counts.

Appointing an inappropriate judge who will show favoritism to the powerful and mighty and wealthy is in effect putting the laws of nature -- the laws of the survival of the fittest -- into the Court room. That is why he is equivalent to one who plants an Ashera tree. He is corrupting the principle of justice which is that might is not right, right is right!

The Quality Of Being A Fighter Does Not Pass Through Genes

The Torah tells us of the special Kohen (Mashuach Milchama), anointed specifically for service in time of war, who served in the role as the chief chaplain of the Jewish army. Before they would go into battle, he would give the people a "shmooze". He would encourage them and try to build up their spirits. This Kohen has special laws and has an interesting halachic anomaly. Normally when a Kohen is the High Priest (Kohen Gadol), his son will automatically inherit that position, assuming he is worthy of it. This is not the case with the Kohen anointed for war. When he dies or retires, his son has no claim whatsoever to the job.

This is an exception to the normal rule that positions of authority pass down to the next generation following the laws of inheritance. Rav Moshe Shternbach suggests a reason for this exception in the case of Kohen Mashuach Milchama.

Rav Shternbach states that the Kohen anointed for war has to be a warrior. He must be a fighter. People on the verge of battle are scared. He must get up there and show bravery and fearlessness. He must instill within them the spirit to fight. This is a special talent that does not pass in genes to the next generation. It may be that wisdom passes in genes, perhaps even fear of G-d passes in genes, but the characteristic of being a warrior does not pass through one's genes.

Rav Shternbach supports this idea by telling over the following incident that happened with the Chofetz Chaim. I cannot vouch for the details of this story. I read it in a book. One should not extrapolate from it to other situations on a practical basis. But the story is as follows.

There was a community whose Rabbi died. The Kehilla wanted to take another Talmud Chochom as their next Rabbi, passing over the former Rabbi's son. The son was not as great a scholar as the other candidate, but he was certainly fit for the position.

A bitter fight broke out between the family of the previous rabbi and the Kehilla. The dispute was brought before the Chofetz Chaim. The Chofetz Chaim ruled that the Kehilla was right. Even though in Halacha it is brought down that under such circumstances the son inherits the father's position of rabbinic leadership, this Halacha was said -- the Chofetz Chaim argued -- when the job of the Rav was to pasken shaylos, to give a Teshuva Drasha and a Shabbos HaGadol Drasha twice a year, and to sit and learn and maybe give Torah classes. Today (already in his time), he said, the job of a Rabbi has changed. Today the Rav has to be a fighter, a warrior. There are so many anti-Torah forces out there, that the community needs someone who has the ability and capacity to stand up

and fight. In this particular situation the other candidate had those qualities and not the Rabbi's son.

Therefore, the Chofetz Chaim said, just as the law is that the son of the Kohen anointed for war did not inherit his father's position because one needs a special person to go out to the battle field and rally the troops for waging war, so too in this case. Every Rav is a Mashuach Milchama as well!

This week's write-up is adapted from the hashkafa portion of Rabbi Yissocher Frand's Commuter Chavrusah Torah Tapes on the weekly Torah portion. A listing of the halachic portions for Parshas Shoftim from the Commuter Chavrusah Series is provided below: Tapes or a complete catalogue can be ordered from the Yad Yechiel Institute, PO Box 511, Owings Mills MD 21117-0511. Call (410) 358-0416 or e-mail tapes@yadyechiel.org or visit <http://www.yadyechiel.org/> for further information. To Support Project Genesis- Torah.org Transcribed by David Twersky Seattle, WA; Technical Assistance by Dovid Hoffman, Baltimore, MD RavFrand, Copyright © 2007 by Rabbi Yissocher Frand and Torah.org. Torah.org: The Judaism Site Project Genesis, Inc. 122 Slade Avenue, Suite 250 Baltimore, MD 21208 <http://www.torah.org/> learn@torah.org (410) 602-1350

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from: Shabbat Shalom <ShabbatShalom@ounetwork.org> date: Aug 8, 2013 at 6:35 PM subject: Shabbat Shalom from the OU

### Testing Prophecy

#### Britain's Chief Rabbi Lord Jonathan Sacks

In his enumeration of the various leadership roles within the nation that would take shape after his death, Moses mentions not only the priest/judge and king but also the prophet:

“The Lord your God will raise up for you a prophet like me from among your own brothers. You must listen to him.”

Moses would not be the last of the prophets. He would have successors. Historically this was so. From the days of Samuel to the Second Temple period, each generation gave rise to men – and sometimes women – who spoke God's word with immense courage, unafraid to censure kings, criticize priests, or rebuke an entire generation for its lack of faith and moral integrity.

There was, however, an obvious question: How does one tell a true prophet from a false one? Unlike kings or priests, prophets did not derive authority from formal office. Their authority lay in their personality, their ability to give voice to the word of God, their self-evident inspiration. But precisely because a prophet has privileged access to the word others cannot hear, the visions others cannot see, the real possibility existed of false prophets – like those of Baal in the days of King Ahab. Charismatic authority is inherently destabilizing. What was there to prevent a fraudulent, or even a sincere but mistaken, figure, able to perform signs and wonders and move the people by the power of his words, from taking the nation in a wrong direction, misleading others and perhaps even himself?

There are several dimensions to this question. One in particular is touched on in our sedra, namely the prophet's ability to foretell the future. This is how Moses puts it:

You may say to yourselves, “How can we know when a message has not been spoken by the Lord?” If what a prophet proclaims in the name of the Lord does not take place or come true, that is a message the Lord has not spoken. That prophet has spoken presumptuously. Do not be afraid of him.

On the face of it, the test is simple: if what the prophet predicts comes to pass, he is a true prophet; if not, not. Clearly, though, it was not that simple.

The classic case is the Book of Jonah. Jonah is commanded by God to warn the people of Nineveh that their wickedness is about to bring disaster on them. Jonah attempts to flee, but fails – the famous story of the sea, the storm, and the “great fish”. Eventually he goes to Nineveh and utters the words God has commanded him to say – “Forty more days

and Nineveh will be destroyed” – the people repent and the city is spared. Jonah, however, is deeply dissatisfied:

But Jonah was greatly displeased and became angry. He prayed to the Lord, “O Lord, is this not what I said when I was still at home? That is why I was so quick to flee to Tarshish. I knew that you are a gracious and compassionate God, slow to anger and abounding in love, a God who relents from sending calamity. Now, O Lord, take away my life, for it is better for me to die than to live.” (Jonah 4: 1-3)

Jonah's complaint can be understood in two ways. First, he was distressed that God had forgiven the people. They were, after all, wicked. They deserved to be punished. Why then did a mere change of heart release them from the punishment that was their due?

Second, he had been made to look a fool. He had told them that in forty days the city would be destroyed. It was not. God's mercy made nonsense of his prediction.

Jonah is wrong to be displeased: that much is clear. God says, in the rhetorical question with which the book concludes: “Should I not be concerned about that great city?” Should I not be merciful? Should I not forgive? What then becomes of the criterion Moses lays down for distinguishing between a true and false prophet: “If what a prophet proclaims in the name of the Lord does not take place or come true, that is a message the Lord has not spoken”? Jonah had proclaimed that the city would be destroyed in forty days. It wasn't; yet the proclamation was true. He really did speak the word of God. How can this be so?

The answer is given in the book of Jeremiah. Jeremiah had been prophesying national disaster. The people had drifted from their religious vocation, and the result would be defeat and exile. It was a difficult and demoralizing message for people to hear. A false prophet arose, Hananiah son of Azzur, preaching the opposite. Babylon, Israel's enemy, would soon be defeated. Within two years the crisis would be over. Jeremiah knew that it was not so, and that Hananiah was telling the people what they wanted to hear, not what they needed to hear. He addressed the assembled people:

He said, “Amen! May the Lord do so! May the Lord fulfil the words you have prophesied by bringing the articles of the Lord's house and all the exiles back to this place from Babylon. Nevertheless, listen to what I have to say in your hearing and in the hearing of all the people: From early times the prophets who preceded you and me have prophesied war, disaster and plague against many countries and great kingdoms. But the prophet who prophesies peace will be recognized as one truly sent by the Lord only if his prediction comes true.”

Jeremiah makes a fundamental distinction between good news and bad. It is easy to prophesy disaster. If the prophecy comes true, then you have spoken the truth. If it does not, then you can say: God relented and forgave. A negative prophecy cannot be refuted – but a positive one can. If the good foreseen comes to pass, then the prophecy is true. If it does not, then you cannot say, ‘God changed His mind’ because God does not retract from a promise He has made of good, or peace, or return.

It is therefore only when the prophet offers a positive vision that he can be tested. That is why Jonah was wrong to believe he had failed when his negative prophecy – the destruction of Nineveh – failed to come true. This is how Maimonides puts it:

As to calamities predicted by a prophet, if, for example, he foretells the death of a certain individual or declares that in particular year there will be famine or war and so forth, the non-fulfilment of his forecast does not disprove his prophetic character. We are not to say, “See, he spoke and his prediction has not come to pass.” For God is long-suffering and abounding in kindness and repents of evil. It may also be that those who were threatened repented and were therefore forgiven, as happened to the men of Nineveh. Possibly too, the execution of the sentence is only deferred, as in the case of Hezekiah. But if the prophet, in the name of God, assures good fortune, declaring that a particular event would come to pass, and the benefit promised has not been realized, he is

unquestionably a false prophet, for no blessing decreed by the Almighty, even if promised conditionally, is ever revoked . . . Hence we learn that only when he predicts good fortune can the prophet be tested. (Yesodei ha-Torah 10: 4)

Fundamental conclusions follow from this. A prophet is not an oracle: a prophecy is not a prediction. Precisely because Judaism believes in free will, the human future can never be unfailingly predicted. People are capable of change. God forgives. As we say in our prayers on the High Holy Days: "Prayer, penitence and charity avert the evil decree." There is no decree that cannot be revoked. A prophet does not foretell. He warns. A prophet does not speak to predict future catastrophe but rather to avert it. If a prediction comes true it has succeeded. If a prophecy comes true it has failed.

The second consequence is no less far-reaching. The real test of prophecy is not bad news but good. Calamity, catastrophe, disaster prove nothing. Anyone can foretell these things without risking his reputation or authority. It is only by the realization of a positive vision that prophecy is put to the test. So it was with Israel's prophets. They were realists, not optimists. They warned of the dangers that lay ahead. But they were also, without exception, agents of hope. They could see beyond the catastrophe to the consolation. That is the test of a true prophet.

To read more writings and teachings from the Chief Rabbi Lord Jonathan Sacks, please visit [www.chief Rabbi.org](http://www.chief Rabbi.org).

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from: genesis@torah.org to: rabbiwein@torah.org date: Thu, Aug 8, 2013 at 11:05 AM subject: Rabbi Wein - Parshas Shoftim

**Rabbi Berel Wein**  
**Parshas Shoftim**  
**Justice**

The Torah is in favor of a lawful, peaceful, ordered and fair society. In order to begin to achieve this lofty goal, the Torah commands us to have a competent legal system of judges and courts and also having police able to monitor and enforce the courts' decisions and policies. The Torah demands this not only of Jewish society but of all of human society as well.

A just and efficient legal system is one of the seven principles of the Noachide commandments that are meant to govern all of human society and behavior. But legal systems by themselves are often double-edged swords that thwart true justice and pervert the concept of the rule of law.

All dictatorships and totalitarian regimes have operated police forces and courts. These became and still are the instruments for the perpetuation of their tyrannies and misdeeds. In Psalms we read of the crooked concept of "creating evil and injustice through legal laws and systems." So the Torah warns us that the pursuit of justice and righteousness – and Jewish halacha and Torah values which are the criteria of what constitutes righteousness and justice – is the ultimate aim of the legal system of judges and police.

Judges and police are not the end in themselves; they are only the means by which society strives for justice and righteousness. The Talmud itself gives us examples of exemplary courts and judges that operated in the Land of Israel in post-Second Temple times. It does so in order to show us life examples, the necessary piety and incorruptibility of those who deem to judge others in matters of human dispute and personal conflicts.

The problem with all systems of law, just as with all mechanical and technological systems as well, is that it is ultimately subject to human control, possible failings and accomplished skills. The airplane may be a wonder of technology and safety redundancies but in the final matter we are all in the hands of the pilot, a human being, who tragically, God forbid, may be tired, inexperienced or even inebriated.

The same concept is certainly applicable to legal systems. It is the personal character of the judge, his or her wisdom, probity, honesty and perception that determines whether justice and righteousness is served in the legal system of which they are a part.

And the human heart is hard to read and assess and the prophet has warned us: "The human heart is perverse; who therefore can truly know it?" But we should not despair. The Talmud teaches us that the judge can only decide upon what he sees before his eyes. Omniscience is not demanded of him or her. No legal system created and staffed by human beings is perfect. And we must learn to somehow live with its imperfections and failings.

But the goal of pursuing justice and righteousness through the legal systems created by imperfect human beings should never be forgotten or abandoned. Apathy and disillusion are never positive attributes in human affairs. They are certainly not to be present in our attitudes and actions regarding our courts and police.

**Shabat shalom**

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In honor of the Bar Mitzvah of Naftali Meir Kriger

**Parsha Potpourri Parshas Shoftim** – Vol. 8, Issue 44 Compiled by Ozer Alport

**וכל העם ישמעו ויראו ולא יידון עוד (17:13)**

When a person is convicted of a capital crime, the execution is carried out in a public manner. Rashi writes that the Sanhedrin waited to carry out the execution until the next Yom Tov, when people would travel to Yerushalayim to fulfill the mitzvah of aliyah l'regel (ascending to the Temple), so that everybody would hear and talk about it. This was to inspire maximum fear in the populace in the hopes that future executions would become unnecessary.

However, the Mishnah in Makkos (7a) quotes the opinion of Rav Elozar ben Azaria, who maintains that a Sanhedrin which carries out one execution in 70 years is considered violent and bloody. If executions were so infrequent, how were they able to accomplish the desired deterrent effect?

Rav Aharon Bakst answers that this question may be asked only by one who has become accustomed and desensitized to the loss of human life. In the times of the Beis HaMikdash, the Jewish nation understood and appreciated the value of every person and every life to the extent that one public execution in 70 years caused such a national trauma that another one became superfluous for at least that long. If we appreciated life with the proper perspective, we would be so shaken up by events like the Holocaust and recent tragedies in Israel that they would remain in our collective memory forever, inspiring us to proper repentance and rendering future reminders unnecessary.

**לא ימצא בך מעביר בנו ובתו באש קסם וקסמים מעון ומנחש ומכשף וחבר חבר ושאל אוב וידעני ודרש אל המתים כי תועבת ד' כל עשה אלה (12-18:10)**

At the end of King Shaul's life, the Philistines amassed a large and intimidating force to attack the Jewish people. Shaul was frightened by the sight of their army and sought guidance from Hashem via the



Chazal have mentioned these two groups together, there is a difference between them. If the two litigants consent to come before unqualified Jews for [monetary] judgment and accept them as judges, it is permissible to do so and these litigants must abide by the unqualified judges' decision. It is forbidden, however, to be judged by non-Jewish judges under all circumstances, even if the non-Jewish statutes are identical to our laws."

#### Nature of the Prohibition

Rambam (Hilchot Sanhedrin 26:7) and Shulchan Aruch (C.M. 26:1) add a surprisingly harsh condemnation of those who adjudicate their disputes in non-Jewish courts: "Whoever submits a suit for adjudication to non-Jewish judges...is a wicked man. It is as though he reviled, blasphemed, and rebelled against the Torah of Moshe."

Why do Rambam and Shulchan Aruch include such a sharp exhortation in their legal codes? Apparently, this strong language defines the character of the prohibition against being judged by non-Jewish courts – the litigants implicitly reject the Torah in favor of a foreign legal system. This analysis helps explain a curious law in the Shulchan Aruch (26:2): "If the non-Jews' hands are powerful (i.e., if Jews lack political sovereignty or, at the very least, communal autonomy) and [a Jewish plaintiff's] adversary is a difficult and violent person, such that [the plaintiff] is unable to recover the money in Beit Din, the defendant should first be summoned to Beit Din. If the defendant refuses to come to Beit Din, the plaintiff receives permission from the Beit Din to recover the money through the non-Jewish court system."

Permission of this type is commonly referred to as a Heteir Erka'ot (permission to submit the claim to civil court). For example, Rav Moshe Feinstein (Teshuvot Igrot Moshe, C.M. 1:8) discusses how to deal with a dishonest merchant who sold non-kosher meat with forged Kashrut certification. Rav Moshe writes that the community should initially sue this merchant in a Beit Din (as opposed to a civil court), but the Beit Din may permit the community to sue him in civil court should the Beit Din be unable to halt his activities.

The Kelei Chemdah (in his first essay on Parashat Mishpatim) asks, if the Halachah requires sacrificing one's entire wealth to avoid violating a negative prohibition (see Rama, O.C. 656), why may Beit Din issue a Heteir Erka'ot? He answers that submitting a dispute to a non-Jewish court does not transgress anything unless it demonstrates a rejection of the Torah system of justice. If one makes a genuine effort, therefore, to adjudicate the matter in Beit Din, but the other party resists, Beit Din may authorize one to press charges in non-Jewish court.

#### Israeli Courts

The Halachic status of the State of Israel's civil courts has generated extensive discussion since the establishment of the State. These courts seldom judge according to Halachah (with some notable exceptions); instead, they base their rulings primarily on a mixture of British, Turkish, and secular Israeli laws.

The Gemara (Sanhedrin 23a) permits litigation in Syrian Erka'ot (civil courts) because no competent judges resided there. The judges in this type of court ruled based on life experiences and common sense. Similarly, Rama (C.M. 8:1, citing Rashba) rules that if no viable alternative exists, a community may appoint three well-respected people with sound judgment to serve as judges. Accordingly, former Israeli Supreme Court Justice Menachem Elon (HaMishpat HaIvri 1:22 note 80 and 1:122 note 174) suggests that the Israeli civil courts enjoy the same status as these Syrian Erka'ot and their later parallels.

The Chazon Ish (Sanhedrin 15:4), however, emphatically forbids litigation in Israeli civil courts, asserting that they do not share the status of Syrian Erka'ot. He explains that Syrian Erka'ot judged entirely based on common sense, whereas Israeli courts implement an organized non-Torah legal system. Thus, Israeli civil courts attain the status of a non-Jewish court system, despite the fact that the judges and law enforcement officials are mostly Jewish. Moreover, the Chazon Ish adds that Israeli courts are worse than non-Jewish courts, for we expect non-Jews to judge by their own laws, whereas we disapprove of Jews "who have abandoned the laws of the Torah for laws of nonsense." Indeed, Rav Ovadia Yosef (Teshuvot Yechaveh Da'at 4:65) rules that one who presents a case to a secular Israeli court violates both the prohibition against using non-Jewish courts and the prohibition against causing another Jew to sin (Lifnei Iveir), because the case provides Jewish judges with an opportunity to apply secular laws[1].

Virtually all authorities accept the Chazon Ish's position. These Posekim include Rav Yitzchak Herzog (HaTorah VeHaMedinah 7:9-10), Rav Eliezer Waldenberg (Teshuvot Tzitz Eliezer 12:82), Rav Ovadia Yosef (Teshuvot Yechaveh Da'at 4:65), Rav Tzvi Pesach Frank (cited by Rav Waldenberg and Rav Ovadia), Rav Shmuel Wosner (Teshuvot Sheivet HaLevi 10:263), and Rav Moshe Shternbuch (Teshuvot VeHanagot 1:795). Thus, one may not present a civil case against another Jew to Israeli civil courts for adjudication.

#### Preliminary Injunctions, Collections, and Filing for Bankruptcy

Despite the severity of the prohibition against using the civil court system, several cases exist where a Jew may possibly use the civil court system. Rambam (Hilchot Sanhedrin 26:7) and Shulchan Aruch (C.M. 26:1) formulate the prohibition against using non-Jewish courts as a ban on being "judged" by a non-Jewish court. Accordingly, utilizing civil courts for non-judiciary purposes would appear to be permitted.

Thus, Rav Moshe Feinstein (Teshuvot Igrot Moshe, C.M. 2:11) permits requesting that a civil judge issue a preliminary injunction, an order to freeze the status quo of property until verifying its owner. Since a preliminary injunction does not entail judgment, seeking this order does not violate Halachah. Similarly, Rav Mordechai Eliyahu (Techumin 3:244) rules that one may utilize civil courts to collect an undisputed debt. Once again, no prohibition exists when no judgment is involved. Teshuvot Maharsham (2:252 and 3:195) cites Rav Avraham David Wahrman as permitting the use of civil courts to collect an undisputed debt in places where Batei Din have no legal authority. Rav Yona Reiss (personal communication) comments that Batei Din sometimes take this position into account, but he notes that it is rare for debts to be undisputed. Rav Hershel Schachter (in a lecture delivered at the Fifth Avenue Synagogue) ruled that one may file for bankruptcy in civil bankruptcy court, equating it conceptually with filing for a civil marriage license. Rav J. David Bleich (Tradition 34:3 p. 74) permits probate of an undisputed will in civil court, and Rav Ezra Basri (Dinei Mamot 1:348) rules that Halachah recognizes a monetary custodian appointed by a civil court.

#### Arbitration Panels

At least two prominent authorities permit individuals to submit disputes to an arbitration panel for resolution. They reason that the arbiters base their rulings on common sense, as opposed to non-Jewish codes of law, so these forums are not considered non-Jewish courts. Thus, the Rabbinic Court of Ashdod (Piskei Din Batei Din HaRabaniyim 13:330-335), then headed by Rav Shlomo Dichovsky, ruled that one may submit a dispute to the Israel Union of Engineers and Architects. Rav Eliezer Waldenberg (Teshuvot Tzitz Eliezer 11:93) also permits bringing disputes to professional arbitration panels, such as the arbiters of the Association of Israel Cooperative Apartments. Rav Yona Reiss pointed out to me that Rav Waldenberg's ruling has added significance because it includes panels that the Israeli government requires (thus making them closer to actual civil courts).

The above authorities address arbitration in Israel, where the arbiters are mostly Jewish. Outside of Israel, the issue may be somewhat more complex. The Shach (C.M. 22:15, as understood by the Aruch HaShulchan) permits submitting a dispute to an arbitration panel consisting of non-Jews provided that they are not bound by non-Jewish laws. However, the Netivot (C.M. 22:14) disagrees with the Shach and forbids submitting a dispute to an arbitration panel consisting of non-Jewish members. The Aruch HaShulchan (C.M. 22:8) rules in accordance with his interpretation of the Shach, but Rav J. David Bleich (BeNetivot HaHalachah 2:169) and Rav Hershel Schachter (personal communication) think that the strict opinion of the Netivot should be followed (see Halachah Pesukah Al Choshen Mishpat 22:2).

Moreover, some have questioned whether arbitration panels are merely less formal courts or truly panels that are not bound by secular law. Rav Dr. Dov Bressler (The Journal of Halacha and Contemporary Society 9:115-116) cites the following statement from the Committee on Arbitration of the Association of the Bar of the City of New York (emphasis added): "The arbitrator need not apply substantive principles of law. The arbitrator is not bound by evidentiary rules; he need not give reasons to support his ultimate determination and his award is not subject to judicial review for errors of law or fact. The arbitrator, free from rules of law, may decide solely on the equities of the case."

Accordingly, Rav Bressler concludes, "Individuals who may ordinarily tend to ignore rabbinical courts should therefore be counseled into selecting arbitration rather than a strict judicial hearing." However, Alan Blumenfeld, Esq., of Brooklyn, NY, has informed me that the relationship between law and arbitration depends on the place and context, such that arbitration will not necessarily be completely detached from law. Someone who faces this issue should consult both his rabbi and his attorney for competent guidance. Rules and practices are subject to change and variation from one locale to another, so a Rav must conduct a careful investigation of the facts before determining the Halachah in a particular situation.

#### Conclusion

Next week we conclude our discussion of when Halachah permits and forbids litigating in civil courts.

[1] . See, however, Teshuvot Beit Avi (2:144), who questions whether a Jewish civil judge violates any prohibition when he adjudicates a case involving Jewish litigants. Unlike Rav Ovadia, Rav Liebes did not live in Israel, so his Teshuvah is addressing the case of a Jewish judge in the American court system. Also see Rav

Mordechai Eliyahu (Techumin 3:244) who sees Orthodox judges serving in secular court system as potentially serving very positive purposes.

### **The Prohibition to Initiate Litigation in Civil Court – Part Two by Rabbi Chaim Jachter**

This week we conclude our discussion as to when Halachah permits and forbids litigation in civil law.

#### **Incorporating Civil Law in Contractual Agreements**

Most engaged couples in today's Orthodox community sign the Rabbinical Council of America's prenuptial agreement to prevent situations of Igum. These agreements include a binding arbitration agreement that designates a specific Beit Din to adjudicate a divorce settlement, should the need unfortunately arise. Rav Zalman Nechemia Goldberg (Yeshurun 11:698) suggests that a couple could sign a prenuptial agreement that would empower the Beit Din to divide the property between husband and wife based on civil equitable distribution or community property laws. Rav J. David Bleich (Tradition 34:3 and BiNivot HaHalachah 2:169-172; based on the Taz C.M. 26:3 and other sources) opposes this proposal, arguing that it violates the prohibition against using the civil legal system, because the Beit Din will thus replace Halachah with non-Torah laws. Even if the bride and groom wish to apply equitable distribution, Rav Bleich asserts that their desire is irrelevant, for they may not stipulate conditions that contravene Halachah (Matneh Al Mah SheKatuv BaTorah).

Rav Mordechai Willig (in an address to the Rabbinical Council of America) defended Rav Zalman Nechemia's proposal, noting that in order to be considered a non-Torah system, the Beit Din would need to rule based on civil law as it is codified on the day of the Beit Din hearing. By contrast, the agreement authorizes the Beit Din to employ the equitable distribution or community property laws as of the signing of the agreement. Thus, the parties are not submitting their case to a non-Torah legal system, but are merely structuring a settlement in case of divorce. Rav Willig and Rav Zalman Nechemia understand that the Taz, cited by Rav Bleich, objects only to accepting whatever the civil laws will be at the time of adjudication, for that truly replaces Halachah with a new source of law. Here, however, where both sides spell out at the time of the agreement how they wish to divide their property, they have the right to make arrangements as they see fit (Davar SheBeMamon Kayam), as long as they do not blindly submit to the authority of the civil court or civil laws.

The Rabbinical Council of America's Beth Din of America (Rules and Procedures 3(d) and 3(e)) follows Rav Willig and Rav Zalman Nechemia's view:

“(d) In situations where the parties to a dispute explicitly adopt a ‘choice of law’ clause, either in the initial contract or in the arbitration agreement, the Beth Din will accept such a choice of law clause as providing the rules of decision governing the decision of the panel to the fullest extent permitted by Jewish Law.

(e) In situations where the parties to a dispute explicitly or implicitly accept the common commercial practices of any particular trade, profession, or community – whether it be by explicit incorporation of such standards into the initial contract or arbitration agreement or through the implicit adoption of such common commercial practices in this transaction – the Beth Din will accept such common commercial practices as providing the rules of decision governing the decision of the panel to the fullest extent permitted by Jewish Law.”

Rav Yonah Reiss notes (Shaarei Tzedek 4:295) that following their view encourages couples who might otherwise use the civil courts to adjudicate in Batei Din instead.

#### **Suing a Non-Jew in Civil Court**

Rav Menashe Klein believes a Jew should not sue even a non-Jew in civil court. Some Posekim share his position, but Posekim continue to debate this matter. See, for example, Dinei Mamonot (1:347) and Rav J. David Bleich's essay in Tradition (pp. 80-83). One point that Rav Bleich addresses is suing a Jew with insurance coverage in civil court to collect payment from the insurance company. Rav Bleich concludes:

“Since it is readily perceived that the cause of action is really against a non-Jewish insurance company that will not appear before a Beit Din, it would appear that judicial proceedings in such circumstances do not constitute aggrandizement of a non-Halachic legal system and hence such suits are not forbidden.”

#### **Serving as a Lawyer or Juror**

Rav Ovadia Yosef (Teshuvot Yechaveh Da'at 4:65) distinguishes between representing the plaintiff in Israeli civil court, which he prohibits, and representing the defendant, which he sometimes permits. Rav Ovadia argues that the plaintiff's attorney actively endorses a non-Torah legal system by helping a Jew utilize it, in violation of Halachah, to collect money. The defendant, on the other hand, does not necessarily wish to appear in secular court; he might prefer to follow the Halachic requirement to submit the dispute to a Beit Din. Rav Ovadia thus permits

representing a defendant who sought to have a Beit Din adjudicate his case, equating such a situation with “saving a victim from his robber.”

Rav Klein (Teshuvot Mishneh Halachot 4:213) prohibits serving on a jury, especially when the case includes a Jewish litigant, because performing jury duty glorifies a non-Torah legal system.

Rav Hershel Schachter told Rav Ezra Frazer (oral communication) that he strongly disagrees with this ruling. He explained that the Halachah requires non-Jews to establish a legal system, so a Jew does nothing wrong by participating as a juror in civil courts, unless both litigants are Jewish (in which case facilitating their trial supports a sin). Regarding capital trials, Rav Schachter argues that every government has the right to punish criminals within reason. For example, if a Jew murdered, a non-Jewish government may legitimately execute him. Accordingly, Jewish jurors may vote to convict a Jewish defendant if solid evidence convinces them that he committed murder. Rav Yitzchak Isaac Liebes (Teshuvot Beit Avi 2:144) also permits Jews to perform jury duty in both civil and capital cases. It is also important that Jews not attempt to exempt themselves dishonestly from jury duty by fabricating excuses. This type of dishonest behavior can lead to public Chilul HaSheim (desecration of God's name; see Teshuvot Melameid LeHo'il 1:42).

#### **Criminal Law**

Chazal condemn Mesirah, turning a Jew over to non-Jewish authorities, as a terrible sin (see Rosh HaShanah 17a, Rashi s.v. VeHaMesurot and Gray Matter 4).

Accordingly, we might expect Halachic authorities to disapprove of assisting the government in apprehending Jewish criminals. Nevertheless, many authorities distinguish between just and unjust situations. Following the same line of reasoning as his ruling on capital jury duty, Rav Hershel Schachter (The Journal of Halacha and Contemporary Society 1:118) explains:

“A ‘moser’ is one who aides a pirate, a crooked government official, or a tyrant-king to obtain money illegally from his fellow Jew. Even if the Jew has actually done something wrong, but if the secular government or the ruler would exact a punishment far beyond that which the crime should require, then it is likewise forbidden to report him. If, however, the government is entitled to its taxes, or is permitted to punish criminals as offenders, there is no problem of mesirah in telling the government information needed for them to collect their taxes or to apprehend their man. One critical point should however be added: There is no problem of mesirah in informing the government of a Jewish criminal, even if they penalize the criminal with a punishment more severe than the Torah requires, because even a non-Jewish government is authorized to punish and penalize above and beyond the law, shelo min hadin, for the purpose of maintaining law and order. However, this only applies in the situation when the Jewish offender or criminal has at least violated some Torah law. But if he did absolutely nothing wrong in the eyes of the Torah, then giving him over to the government would constitute a violation of mesirah.”

Rav Schachter applied this approach in a case where I consulted him. An Orthodox woman, who was serving as an assistant district attorney (ADA) in an American city, was assigned the task of prosecuting an Orthodox man accused of severe child abuse. She asked me if Halachah permitted her to do so, and I consulted Rav Schachter. Rav Schachter responded that she may prosecute him (based on Rashi (Gittin 9b s.v. Kesheirin and s.v. Chutz) and Teshuvot Maharam Shik C.M. 50), as Batei Din today lack any jurisdiction in criminal matters, so otherwise the accused would go unpunished and repeat his heinous crime. Indeed, Rav Yonah Reiss has told me that the Beth Din of America does not adjudicate criminal cases.

Rav Yitzchak Herzog (Techukah LeYisrael Al Pi HaTorah 1:173) notes that Rabbis in Israel similarly acknowledged their current inability to punish criminals, and they consequently chose to abdicate responsibility for criminal matters.

#### **Conclusion**

It is fundamentally prohibited for two Jewish litigants to present their case to a civil court for adjudication. Nevertheless, one should consult a competent Rav and lawyer in questionable situations, as this prohibition has many exceptions. In Israel, the prohibition against civil courts is further complicated by the fact that the judges are mostly Jewish and are thus themselves bound by Halachah. Rav Yaakov Ariel (Techumin 1:319-320) summarizes the present state of Israeli courts:

“One of the most painful problems for those who believe that there is a place for Torah in the State of Israel is the law status accorded to Jewish civil law... Israel, the Jewish state, should have traditional Jewish civil law as the law of the land. Just as it is inconceivable to have a Jewish state whose official language is not Hebrew or that does not follow the Jewish calendar, so too the State of Israel should not adopt foreign civil codes. No Jew, despite his identification with the positive aspects of the State of Israel, should tolerate the current situation regarding civil law. The love of the State of Israel should cause every Jew to long for the day

when Halachic civil law will be returned to its original great status.... Just as the Religious Zionist community educates its community in state religious schools, so too we must settle our monetary disputes in the state rabbinical courts."

Recently, however, there has been increased use of Beit Din instead of civil courts for dispute resolution in both Israel and the United States. Batei Din are slowly regaining their proper place within the Jewish community. We hope that Jews resolve their differences by themselves or via mediation. In the unfortunate event that they not be able to do so, then the Halacha should be respected and the dispute should be presented to Beit Din for adjudication instead of burdening society by resolving the issue in civil court.

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**Peninim on the Torah by Rabbi A. Leib Scheinbaum** - Parshas Shoftim PARSHAS SHOFTIM And you shall not erect for yourselves a pillar. (16:22) The Torah addresses various forms of idolatrous worship which were common practice among the pagans. Horav Levi Yitzchak Berditchev, zl, interprets the pasuk homiletically, adding a practical twist. Chazal teach that This World, Olam Hazeh, is compared to a vestibule before Olam Habba, the World to Come. Everything which we do in this world is but a preparation for the World to Come. We eat and drink, so that we are nourished and healthy enough to perform the mitzvos which will be our access to Olam Habba. Our entire lives revolve around Olam Habba, with life on this world nothing more than an avenue for gaining entry to true life.

When Chazal refer to life on this world, they use the term lachem, "for you." The phrase, chatzi lachem, "part is for you," v'chatzi l'Hashem, "and part is for the Almighty," is employed by Chazal to describe the split between personal, physical enjoyment and mitzvah devotion, which is for Hashem. Thus, explains the Berditchever, the Torah admonishes, "Do not erect a pillar of worship lecha, for you! Do not lend credence to the physical needs as if they are an end to themselves. Physicality and all of its appurtenances are necessary for one purpose: Olam Habba. Do not transform them into anything more than that.

While this is a nice thought, how do we impress upon people that this world is not an end to itself? Whatever happened to the concept of happiness? Is one not supposed to enjoy himself on this world? Are temporary pleasures taboo? This question stems from society's misguided perspective of happiness. Many people equate happiness with fun. Veritably, fun and happiness have little connection with one another. Fun is the enjoyment we experience b'shaas maaseh, during the course of an activity. Happiness is what we experience following the activity. It is a deeper, more concrete and abiding emotion. Fun is temporary, while happiness is a more enduring emotion. We do many things which generate fun. We go places, do activities, attend events, which have a positive effect on us, but how long does the joy last? The positive effects end when the fun ends. We experience a wonderful vacation, a great trip - then we return home and find we quickly forget the joyous elements.

We see people having fun, but are they truly happy? Horav Yaakov Galinsky, Shlita, tells the story of a fellow who came to a psychiatrist with a problem: He was depressed. Nothing made him feel good. He saw negativity in every aspect of his life. The psychiatrist told him that he was presenting the symptoms of a serious illness, one that could be cured over time. It would take many sessions "on the couch" for him to emerge from his depressive state. What should the patient do in the meantime? The depression was eating away at him. He did not have a year or two to wait until he recovered. The psychiatrist suggested that he go across the street to a show. Apparently, a famous comedian was playing. People claimed that he was hilarious. "Laughter is a wonderful antidote for depression," the psychiatrist said. "The comedian will take your mind off your problems." The patient listened and became even more depressed: "Doctor, you do not seem to understand. I am the comedian from across the street."

Many of us put on a facade of happiness, but it is only our reaction to fun. As long as we do not address the issues in our lives which seem to cloud over the fun,

we will never achieve true happiness. When we live our lives in such a manner that it reflects our pursuit of olam hazeh, the joy is temporary; it is frivolous fun. It will not last. If our lives, however, reflect a deeper understanding of the meaning of life; if we live for Olam Habba and understand that this world is nothing more than a means, a vestibule, for gaining entrance into the World of Truth, then we can achieve inner peace and true joy.

Knowing "where" we are going and establishing priorities in life define our ultimate happiness, and is reflected in our projected attitude in serving Hashem. I recently read a story, related by Rabbi Shlomo Price, which has unfortunately repeated itself more often than we would care to acknowledge, but, if it will help even one person, it is well worth repeating. A prominent rav and mechanech, educator, was visiting a student of his in one of the up and coming communities in New York. The rav davened in the local shul. After davening, he was approached by a man who was roughly his age. This person had sustained a terrible tragedy: his only son had met a devout Christian girl while he was volunteering at a local hospital and was smitten by her. She convinced him to reject the Torah way of life and embrace Christianity - which he, sadly, did. An intelligent young man with a warm personality, he became a sort of para-priest, working as a missionary in outreach for this Christian organization. Not only had he destroyed his own life, he was facilitating and encouraging the spiritual demise of others as well.

The man asked the rav, "I davened in the same minyan as you. We attended the same shiur. Our sons went to the same school; in fact, they were in the same class. Yet, your son became a rabbi, while my son became a priest." With these words, the father broke down, weeping incessantly.

The rav looked at the man and, with a soft, comforting voice, said, "I do not know the perfect answer, because there never is a perfect answer concerning a tragedy, but I do want to share with you a perspective on mitzvah observance. It may not ameliorate your situation, but who knows? It might help someone else.

"There are two ways to serve Hashem. There are parents, who, upon rising in the morning, get up with a complaint: 'I am tired, this hurts, and that hurts. If I could only sleep a little longer. Why do I have to go to davening so early?' All of this is part of their daily morning litany. Then they go to shul. Their son asks, 'Why do you have to go to shul?' 'I have to daven' is the curt answer. 'Why?' asks the son. 'Because Hashem says so.' The father does not indicate a sense of personal desire or sense of satisfaction in davening - just, 'Hashem says so.' A similar response is given concerning Shabbos. 'I observe Shabbos, because Hashem says that I should.' Yom Tov, be it Pesach, with the matzah that does not appeal to everyone, or the cold, unwelcoming Succah in which we must sit, all raise questions in the son's mind. The answer is always the same: 'Hashem says that I have to; subject is closed. I do not have much choice in the matter. I do what I am told.'

"When this is a father's response, it reflects an attitude that cries out, 'I clearly do not want to do this, but I have to because Hashem says so.' Well, the son will grow up and say, 'Maybe my father has to, but I do not, and I will not!'

"Then there are parents whose approach to mitzvah performance is positive. When they rise in the morning, they are excited, happy to be able to serve Hashem for another day. 'I can go to shul, put on Tallis and Tefillin and pray to Hashem, thanking Him for all the wonderful things He has given to me.' When a child grows up hearing this, when he sees his father's enthusiasm for Yiddishkeit, he naturally wants to follow."

When the unfortunate father heard this, he began to cry. His tears were filled with guilt over lost opportunities and often foolish mistakes which his son had either heard or observed. The message that he must have conveyed to his son was: "I have to be an observant Jew; I must keep Shabbos. Kosher may not be fun, but this is what I must do as a Jew."

Imagine, buying your spouse an expensive gift and saying, "I really did not want to buy this for you, but I have to, since it is our anniversary." Such presents leave a bad taste.

If this will be found among you... who commits evil... and he will go and serve gods of others... and it will be told to you and you will hear; then you will investigate well, and behold! It is true, the testimony is correct - this abomination was done in Yisrael. (17:2,4)

The Torah seems to employ a lengthy vernacular in order to describe this idol worshipper. The words, ki yimatzei, "If there will be found," is an unusual phrase to describe the discovery of one who worships idols. It could simply have said, "If there will be among you." "Finding" focuses on the detection of something unknown, whereas this case is one in which witnesses attest to a man's guilt. It is a fait accompli - a done deal; it happened; now we must punish the sinner. Why does the Torah emphasize the next step in the process of establishing guilt: then you shall investigate well? What need is there for investigation? Witnesses have testified. The Torah implies that if we do not investigate the veracity of the

testimony, guilt cannot be established. Why? In every other case of capital punishment the witnesses are believed and the dependent is punished - case closed.

Horav David Chananyah Pinto, Shlita, explains that an important lesson is being taught here. In the Talmud Berachos 29a, Chazal teach, Gemiri tava lo hava bisha, "A good man does not become bad." Therefore, when we discover that one is guilty of idol worship, we must understand that the process of spiritual disintegration did not just begin. It goes back some time. One does not throw away his Judaism overnight. It is a process that began years earlier with some innocuous deviation from traditional observance. Over time it festered and germinated, until it grew into consummate rebellion. Why were we unaware of his nefarious activities? Because he was able to conceal them - either out of shame or weakness. Viewing it from a positive perspective, perhaps he thought he could turn himself around; and thus, he was not yet prepared to declare his mutiny.

In any event, today, here and now, the fellow has left the fold. How do we view this? The Torah teaches us that just as a lost object has actually always been here - only we were unaware of it; like-wise, this idol worshipper did not just decide today to take the plunge into spiritual extinction. It began much earlier - only it was covert. Therefore, we must investigate deeply into his past behavior and, after careful examination, we will discover that these activities have been going on for quite some time. Perhaps, if his original deviation had been caught and addressed earlier, he might still be with us.

According to the teaching that they will teach you... shall you do; you shall not deviate from the word that they will tell you, right or left. (17:11)

One must obey the decision of the court even if he is convinced that the court has erred in its ruling. Even if the ruling seems to be saying that right is left and left is right - you must obey. It goes without saying that, if one is certain that the court has ruled correctly, he must obey its decision. The law is timeless. We must listen to daas Torah, the wisdom of the Torah as interpreted and expounded by our Torah leaders. The Sefer HaChinuch comments: "In every generation, we must listen to the rulings of the wise men who have studied under and received their understanding of the law from the sages of the previous generation. They toiled to understand the meaning and logic of every halacha and spent days and nights laboring in the field of Torah to understand its truth. One should not rely on his own understanding of the truth. He must ask, listen and obey. This is the meaning of the Torah's admonition not to deviate from what they will tell you."

Regrettably, we have witnessed individuals who have taken the mantle of Torah leadership into their own hands, deciding what is right and what is wrong, when one should be stringent and when one may be lenient. They feel that they are also scholars and that they understand the situation better than the Torah leaders. Thus, they have no problem ruling according to what they see fit - even if they are going against the ruling of the mora d'asra, rav of a community, who has already rendered his decision. They will seek out a scholar elsewhere who neither has a clue concerning the issues involved, nor has a right to render a ruling regarding a community which has a mora d'asra who has already ruled in the matter. In their desire to pander to the forcers of secularism and modernity, they are willing to usurp the Torah and wrest it from its leadership. They are themselves often well-meaning, but misguided, and willing to act unconscionably in their encroachment of Torah leadership.

There is nothing worse than a "little" knowledge. One who is an am ha'aretz knows nothing and will, for the most part, stay out of the fray, because he knows quite well that he is out of his league. It is the one who has studied in high school, perhaps even continued on to yeshiva gedolah, who has perhaps accumulated some yedios, knowledge. He knows the "lingo," the correct phrases; he may even have studied some of the texts on an elementary level. He is now caught up in a misplaced sense of outreach and social justice, and he is willing to throw it all away for a little bit of fame or ego enhancement. Thus, he will have no problem standing up to a rav, rosh yeshiva - even gedolei ha'dor, the generation's Torah leadership, in pursuit of his goals. Make no mistake: These are Orthodox Jews who, for the most part, are observant and do listen to the words of the gedolei Yisrael - when it serves their purpose. They just feel that anything beyond the realm of issur v'heter, kosher and not kosher - is the pot permissible to use or not? - is outside the purview of the Torah scholars. Indeed, they feel that a Torah scholar's lifelong dedication to - and toil in the sea of - Torah gains him no more insight than anyone else.

In a famous letter concerning such people who pick and choose Judaism and its leadership as they see fit, the Chazon Ish wrote: "The notion that the Torah can be divided into different parts - one addressing the laws concerning issur v'heter, and the other concerning guidance in other areas of life - with the rulings of the Torah sages applicable and binding only to laws of issur v'heter, what is kosher and what is not, is, in fact, the ancient position taken by the German Reform movement, which led to the near total assimilation of German Jewry. To delineate between the powers vested in the Chachmei Yisrael is tantamount to one who is megaleh panim

ba'Torah (literally, one who reveals face in /at the Torah, or debunking the Torah) by issuing interpretation which subverts the traditional and accepted perspective.

After all is said and done, does this mean that a student may not question his rebbe? What is the accepted criteria concerning intellectual dialogue? In his Michtav M'Eliyahu, Horav Eliyahu Eliezer Dessler, zl, asks why Miriam HaNeviyah's critique of Moshe Rabbeinu was labeled as lashon hora, slanderous speech. Does this mean that if a student has a question concerning his rebbe's position regarding a certain issue, it is considered lashon hora to voice an opinion? Rav Dessler explains that it is dependent upon what the questioner thinks in his heart. If he acknowledges that his rebbe is acutely attuned to the truth as seen by the Torah, then he may ask his question as a medium through which he can get closer to the truth. If, however, the student thinks, "I am no slouch. I know how to learn, and I feel that my rebbe is not cognizant of all the issues; he does not see the wider picture. I feel that if I do not take issue with my rebbe, his opinion could backfire," then he had better keep his peace. We can go on and on with various scenarios. I think the reader understands what we are saying. If one has emunas chachamim, if he sincerely believes in what the gedolim say, and he feels this is Torah mi'Sinai, then he may seek a deeper understanding of their position. If, however, he thinks that he knows better - he manifests the early symptoms of a disease called kefirah, heresy.

An inspired episode concerning the significance of emunas chachamim and its power took place with Horav Moshe Feinstein, zl. A woman who was still childless after many years of marriage came to Rav Moshe and pleaded with him for a brachah. Apparently, her husband had approached the Rosh Yeshiva a number of times, to no avail. This time, however, the wife came. She refused to settle for a blessing, actually demanding, that Rav Moshe issue a decree that Heaven grant her a child. The woman felt, Tzaddik gozer, v'HaKodesh Baruch Hu makayeim, "A righteous man decrees and Hashem fulfills his decree." In other words, this woman felt that Rav Moshe's gezeirah, decree, was "money in the bank." She would have a child.

Rav Moshe looked at the woman incredulously, as he asked, "Me? I should issue a decree? What power do I have to achieve efficacy?"

The woman was intractable. She would not budge. "The Rosh Yeshiva has it within his power to intercede in my behalf. I want a child! Please!"

Clearly, she was having difficulty understanding the meaning of the word "no." Finally, Rav Moshe relented and acquiesced to her request. He said, "I cannot decree that you have a child. On the other hand, in the merit of your emunas chachamim, in which you believe that one who studies Torah possesses incredible powers, Hashem should bless you."

One year later, the woman gave birth to a healthy child.

And you shall do to him as he planned to do to his brother. (19:19)

In the beginning of Meseches Makkos, the Mishnah asks the question: "In what manner do witnesses become zomeimim?" Hazamah is the process by which witnesses are proven false by testimony that places them elsewhere at the time that the alleged incident took place. The penalty for hazamah is reciprocal punishment, meaning the punishment the false witnesses sought to impose on the dependent by their testimony is meted out to them, be it monetary payment or corporal punishment. This is the meaning of, V'asisem lo kaasher zomam laasos l'achiv, which is the Scriptural reference to the reciprocal penalty incurred by those witnesses. The laws of hazamah play a significant role in establishing the criteria for all. If one's testimony is not susceptible to refutation by hazamah or eidus shei atah yachol l'haazimah, it is not admissible. Likewise, if the very nature of their testimony is such that they could not be reciprocally punished for testifying falsely, if they are found to be zomeimim, such testimony is not admissible.

Returning to the Mishnah's opening question, it replies, "If they said, we testify concerning this person, who until now had been considered a Kohen who is qualified to perform the Temple service, that he is actually the son of a divorced woman, which would render him a Kohen challal, disqualified Kohen, we do not say that the witnesses themselves become challalim (in the event that they are Kohanim). Rather, the witnesses receive malkos, lashes. The Talmud explains that this halachah is derived from the above pasuk. "And you shall do to him as he planned," which implies, lo - to him, v'lo l'zaro - but not to his offspring. If we were to disqualify the witness from service by considering him a challal, it would affect his children who would also become challalim. The Talmud then wonders why we cannot simply disqualify the witness and not his children. Thus, there would not be an impediment to applying the law of reciprocal punishment. They reply that, in order for the punishment to be reciprocal, it is necessary for bais din, the court, to do to the witness exactly as he had planned to do to the defendant. This is lacking, since his testimony would have inevitably disqualified the victim's children - something which we could not reciprocate.

Tosfos question this, since we do find cases in which a false witness intends to disqualify an individual, and this disqualification will not pass down to his children. For instance, if the witnesses were to testify that a certain person was actually the son of an Egyptian, his children who are the third generation would be permitted to convert and marry a Jewish girl. (An Egyptian is prohibited from entering the Jewish congregation until the third generation.) Therefore, the false witness will become a Mitzri, an Egyptian, and will not be permitted to marry a Jewess. His children, however, will not become disqualified, since only the subject of his testimony himself was affected by his words - not the subject's children. Tosfos reply that while his children are not disqualified, his wife will not be permitted to remain with him, since he is considered an Egyptian. Thus, the reciprocal punishment cannot be carried out.

In addressing the question raised by Tosfos, Horav Yechiel Yaakov Weinberg, zl, explains that the laws concerning hazamah do not fully apply to a pesul ha'guf, disqualification of the body of the person, such as legitimacy of birth and Egyptian pedigree. Bais Din can only issue monetary or corporal punishment. They are not able to alter the status of a person if such status is birth-related. One who is not himself disqualified through birth cannot have his status altered by judicial punishment.

The Rosh Yeshivah explains the reason for this as relating to the core understanding of the punishment meted out to a false witness. Through its punishment of the witness, the Torah seeks to bring the witness into a state of kaparah, atonement. Veritably, this cannot occur concerning a sin against one's fellowman unless the victim wholeheartedly forgives his assailant/the witness. Regarding sins between man and his fellowman, there must be ritzui, appeasement, and mechilah, forgiveness. Otherwise, Hashem will not atone for the man's sin.

Therefore, the Torah established reciprocal punishment, in which the witness becomes like the intended victim, creating circumstances whereby the victim is appeased and the false witness can achieve atonement. When witnesses testify that a Kohen is the product of a prohibited marriage, they engender within the Kohen a feeling of doubt, of inadequacy concerning his Priestly status. "Maybe it is true," the Kohen begins to wonder. "Perhaps I am pasul." This sense of doubt, this feeling of ambiguity, is something that only the victim can feel. Even if we were to reciprocate and declare the witness pasul, it would not engender doubt within his mind, because he knows the truth. Thus, he will not achieve atonement. So, why bother if the desired consequences will not be realized?

Since a bais din does not have the ability to find an appropriate punishment for the false witnesses, and to stigmatize him as disqualified will not be effective because he knows that it is not true, the Torah instead gives the witness makkos, lashes, in place of what they would have liked to give him. A balance must be struck between the crime and its punishment. Therefore, to label the witness an Egyptian is not realistic, since the witness knows it is not true. Thus, we revert to a punishment which is just and represents integrity: makkos.

Va'ani Tefillah B'chol levavcha u'b'chol nafshecha.

The Talmud Berachos 61b relates that when the Tanna Rabbi Akiva was led to his execution, it happened to be z'man Krias Shema, the appropriate time for reciting Krias Shema. The Romans began to scale his skin with metal combs. As he endured indescribable pain, he recited Krias Shema and was mekabel, accepted upon himself, ol malchus Shomayim, the yoke of the Heavenly Kingdom. His students asked him, "Rebbe, ad kan? Until even now?" In other words, "It is enough." Rabbi Akiva replied, "My entire life I was troubled concerning this pasuk (b'chol levavcha u'b'chol nafshecha), which implies that we must love Hashem - even when He takes your life from you. Now that I have the opportunity to fulfill this pasuk, I should not fulfill it?"

Rashi explains the students' question as: How did you achieve such a sublime spiritual plateau in which you maintain your sense of devotion to Hashem amidst joy and gladness of heart, despite being subjected to excruciating pain and deprivation. Rabbi Akiva replied, "My entire life I aspired for this moment." This means, explains Horav Zalmen, zl, m'Vilna, my fear of this moment did not just begin. No! I have been living with it, practicing the feeling of having a sharp blade across my neck, feeling the anxiety of being moments before a painful death. Every time I recited Krias Shema, this is what went through my mind. In fact, the image of death amidst the pain is for me very real, for I lived through it many times. Now that everything for which I had aspired and practiced is becoming a reality, should I not fulfill it?"

Rav Zalmen relates the well-known incident that occurred during the Spanish Inquisition concerning the righteous mother, whose two young sons were slaughtered before her eyes. She looked Heavenward and declared, "Hashem, my G-d, I have always loved You, but it was not totally complete because I shared my love with my two sons. Now that it has been decreed upon me that I should be left

bereft of my sons, I turn all of my love to You." This is the meaning of b'chol, "with all," levavcha, "your heart," and with all your soul.

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njop.ccsend.com reply-to: ezbuchwald@njop.org to:  
internetparshasheet@gmail.com date: Mon, Aug 5, 2013 at 3:57 PM subject:  
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Shoftim 5773-2013

**"Egypt: Off Limits to Jews"**

**by, Rabbi Ephraim Z. Buchwald**

In this week's parasha, parashat Shoftim, we learn of the Torah's prohibition for Jews to return to the land of Egypt.

In Deuteronomy 17:16, in the midst of the portion in which the issue of appointing a king for Israel is discussed, the Torah states, "Lo to see'foon lah'shoov bah'derech ha'zeh ohd," You shall no longer return on this road [to Egypt] again.

Unexpectedly, the issue of returning to Egypt is raised in the context of appointing a king because of the Torah's concern that the Jewish king not have too many horses, which will lead him to return the people to Egypt where horses were bred and raised in those days.

The many restraints placed upon the Jewish king that are found in Deuteronomy 17:17-20, are intended to ensure that the Jewish king devote the throne of his kingdom entirely to G-d. In addition to not having too many horses, the king shall not have too many wives, so that his heart not turn astray. Nor may a king greatly increase silver and gold for his coffers. The king is required to write for himself two copies of the Torah, that are to be with him at all times. He is to read from the Torah all the days of his life, so that he will learn to fear G-d, and observe all the words and decrees of the Torah and perform them. With these restraints, it is hoped that the king not become haughty over his brethren and turn from the commandments right or left. His loyalty to the Al-mighty, will ensure that his and his family's reign over Israel will be prolonged.

The Yalkut May'am Lo'ez notes that even before the above references, the Torah had previously alluded to the prohibition of residing in Egypt. Prior to the Splitting of the Red Sea, G-d tells the Jewish people (Exodus 14:12), that the way they see Egypt at that time (powerful and mighty), will never be seen again. In the Tochacha, G-d's reproof of the Jewish people, the Al-mighty warns (Deuteronomy 28:68) that if the people misbehave, they will be sent back to Egypt in boats, on the very path which G-d had said they would not see again.

The injunction against returning to Egypt is understood to mean that a Jew may reside in any place in the world, with the exception of dwelling permanently in Egypt. Therefore, one may return to Egypt for business reasons or to participate in the conquest of other nations. If the land of Egypt is conquered by a Jewish king with the approval of the Jewish Court of Law, Jews may then live there freely.

The Ramban underscores that due to the profoundly degenerate lifestyle in Egypt, Jews may not live there, lest, they too, adopt a decadent lifestyle.

Despite the clear Torah prohibition of living in Egypt, for many centuries, Jewish communities flourished in Egypt, especially in the city of Alexandria. The great sage and physician Maimonides resided in Fostat (old Cairo) Egypt, where he served as the court physician to the Egyptian sultan, the great Saladin.

Varied explanations are offered by the commentators and interpreters, in an effort to explain the fact that, despite the prohibition, many noted Jews settled in Egypt.

Rabbeinu Bachya felt that the prohibition of living in Egypt was not meant to be permanent. Rather, it was to be in effect only in Biblical times, when the period of Egyptian bondage was still a recent memory. By the time of Alexandrian Jews and of Maimonides, the prohibition to reside in Egypt had lapsed.

Another view propounded by some authorities, is that the prohibition applied only to those Jews who specifically left the land of Israel to settle in Egypt, and did not apply to those who came from other countries.

Radbaz rejects that suggestion, and concludes instead that Jews may have gone to Egypt initially for the purpose of business, and subsequently found it unsafe to return to their homelands. They, therefore, remained in Egypt. Both Bachya and the Radbaz point out that Maimonides was called by the king to be his personal physician, and that his residence in Egypt was involuntary.

A most interesting footnote to this discussion may be found in a brief review of the history of the Jewish community of Alexandria.

Jews settled in Alexandria in the third century before the Common Era, when that metropolis became a major seaport and the center of commerce and culture. The city was named after King Alexander the Great, who was a great friend of the Jews. Fully one-third of the 300,000 residents of the city were Jewish, which is a greater proportion of Jews than is found in New York City today. So large were the synagogues in Alexandria, that the leaders would have to wave flags for the people in the rear of the synagogue to know when to say "Amen" to a blessing. Nevertheless, many Jews attended synagogue only one day a year.

The Jews of Alexandria were enamored with Greek culture, language, and especially the philosophy of Plato. They gave their children Greek names. The Bible was known only from the Greek Septuagint. Hebrew was hardly ever used, except for the presence of the word "Shalom," found on tombstones. Apparently, not even the great Hellenistic Jewish philosopher, Philo of Alexandria (20 BCE–50 CE, also called Philo Judaeus), was familiar with the Hebrew Bible in the original.

Soon after their arrival, the Jews of Alexandria gave up most of their Jewish rituals, and instead developed a minute acquaintance with the Greek culture and lifestyle. They were prominent in literature, philosophy, theater and drama. Eventually, the Jews became so assimilated, that, but for archeology and the Christian scriptures, there would be no record of their presence in the city. To such an extent had they assimilated, that Tiberius Alexander, a nephew to Philo, served as the Chief of Staff to Titus, during the siege and the destruction of Jerusalem!

Although the Torah prohibition of dwelling in Egypt applies specifically to Egypt, the lessons that may be derived from that prohibition are universally applicable. The prohibition is intended to convey a warning not only about residing in Egypt, but to serve as a firm reminder to all Jews of the dangers of residing in any locale where immoral living prevails.

Those who wish to learn from that lesson, must take heed.

May you be blessed.

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from: Rabbi Kaganoff <ymkaganoff@gmail.com> reply-to: kaganoff-a@googlegroups.com to: kaganoff-a@googlegroups.com date: Sun, Aug 4, 2013 at 7:45 AM subject: When may i destroy a fruit tree?

#### **When May I Remove a Tree?**

##### **By Rabbi Yirmiyohu Kaganoff**

**Question #1: Expansion or Destruction?** A community has been renting a house for their shul. Though the membership has now grown, thank G-d, the building has not and is no longer large enough to accommodate their needs. Their landlord has allowed them to expand the building, even though doing so will require removing a fruit tree. May they expand the shul at the expense of the tree?

**Question #2: Shady Mitzvah** We just moved into a new house, and the only place for a sukkah is shaded by fruit trees. May we level the trees in order to build our sukkah?

**Question #3: Darkening Peaches** A peach tree that grew on its own is now blocking the light from entering our house. May we cut down the tree?

**Question #4: George and the Cherry Tree** If cherry wood prices had spiked, would George Washington\* have been permitted to chop down the cherry tree for its valuable lumber? (\*Please note: George Washington did not ask me a shaylah about chopping down the cherry tree. The other shaylos mentioned are all actual cases. With the exception of George, all names have been changed to protect individuals' privacy. Since George was not Jewish, he was not required to observe this mitzvah.)

**Answer:** In this week's parsha, the Torah teaches: When you lay siege to a city for many days to wage war against it in order to capture it, do not destroy its trees by wielding an axe against them, because from them you shall eat, and for this reason you should not cut them down. For, is a tree of the field a man, that you are besieging it? Rather, a tree that you know will not produce food – it you may destroy and cut down, and with it build a battlement against the city that is waging war against you, until you conquer it (Devarim 20:19-20). The Ramban explains that the Torah is discussing a very specific situation, in which the Jewish army needs to construct an earthwork to attack the enemy city, and has available both trees that are producing fruit and others that are not. The Torah prohibits razing the fruit trees, since one has the option of using only those trees that do not produce fruit. However, should obliterating the fruit trees be helpful militarily, one may destroy them (Ramban Commentary ad loc., and in his notes at the end of Sefer HaMitzvos, "Mitzvas Asei #6 that the Rav omitted").

**Use of Fruit Trees in War** Several possible scenarios exist in which razing fruit trees has battlefield benefit, and in all of these situations one may destroy the trees. For example, if there are not enough non-fruit trees available to build the earthwork

or when the enemy might use the fruit trees either as cover, for wood or for food; in these cases, one may raze the fruit trees. What the Torah is banning is a scorched-earth policy of destroying everything around the city, simply to wreak devastation (Ramban Commentary, ad loc.).

**Peach or Teakwood?** For this reason, some rule that if a non-fruit tree is valuable for use in furniture, one may spare that tree, even though as a result one will need to chop down fruit trees for the fortifications (Shu't Chasam Sofer, Yoreh Deah #102, quoting Shitah Mekubetzes in the name of the Geonim). Thus, one could raze a fruit tree and use it for building the rampart and spare a teak tree for a commercially beneficial use.

**Indirect Destruction** Looking back at the Torah's verse that I quoted above, I would like to call attention to a redundancy: Do not destroy its trees by wielding an axe against it... you should not cut it down. The Torah appears to be stating the same thing twice. What additional lesson is the Torah teaching by repeating the command? Some authorities, indeed, explain that there are two different negative commandments here (Baal Halachos Gedolos). The Sifrei explains that, with its seemingly redundant words, the Torah teaches that it is even prohibited to destroy the tree indirectly, such as by blocking its water source (see Lechem Mishneh, Hilchos Melachim 6:8).

**In Peace Time** Although the Torah explicitly discusses razing trees in wartime, this prohibition applies equally in peaceful times. While comparing destroying trees to injuring oneself, the Mishnah states: Someone who cuts down his trees, although it is prohibited for him to do so, is not obligated to pay (Bava Kamma 90b). In its commentary on this Mishnah, the Gemara records the following discussion: Rav said: "One may not chop down an aging date palm, as long as it is still carrying a kav-weight of dates..." Ravina noted: "If the tree was worth more for its lumber, one may chop it down" (Bava Kamma 91b). Thus, the Mishnah teaches that one may not level a productive fruit tree, and the Gemara explains that a tree valued for its lumber and not its fruit, either because of the quality of its lumber or because of its age, is no longer considered a "fruit tree" and may be cut down.

Thus, one can explain that the Torah means: Even when you are involved in warfare, and the tendency is to destroy randomly everything in one's path, keep in mind what fulfills your goal and what does not, and destroy only what is required. Surely, we must build a rampart, but we do not need to destroy productive fruit trees that the enemy cannot use to help him in the battle. However, just as one may destroy a fruit tree in war when there is a tactical reason to do so, one may chop it down in peacetime, when it is no longer productive. In addition to the two cases mentioned above -- when it is worth more as wood, or it is not producing enough fruit to make its maintenance worthwhile -- the Gemara adds a third example when one may raze a fruit tree: when it is damaging other fruit trees (Bava Kamma 91b-92a; Rambam, Hilchos Melachim 6:8-9).

**Clear for Construction** (1) The Goldbergs purchased a new house, hoping to expand it onto the huge lot that they have that contains several beautiful fruit trees. May they remove the trees to expand their house? (2) or, the question I asked above: "A peach tree that grew on its own is now blocking the light from entering our house. May we cut down the tree?"

**Beneficial Razing** May one raze a fruit tree in order to build on its location? May one raze an aging, but still productive, fruit tree to move new tree saplings to its location? Fruit farmers regularly level areas that are aging and becoming less productive in order to replant a new orchard in their place. Is this halachically permitted? What we are asking is: Can we expand the three cases where the Gemara permitted destroying a fruit tree to other cases when it is beneficial to remove the tree? One very early authority, the Rosh (Bava Kamma 8:15) seems to accept this approach, permitting cutting down a fruit tree to create an area on which to build a house. It seems that he understands that the Torah prohibited destroying a fruit tree only when there is no benefit from the destruction, or at least less gain than the tree is worth. Many authorities indeed rule like the Rosh and permit razing a tree when there is some resultant advantage (Taz, Yoreh Deah 115:6; Shu't Chavos Yair #195; Shu't Har Tzvi, Orach Chayim 2:102). Other authorities permit this only when the house is worth more than the tree (She'eilas Yaavetz 1:76). Similarly, it would seem to me that, according to these authorities, there is a halachic basis for allowing the approach of farmers to destroy older trees and replace them with new ones. However, other authorities dispute this conclusion, rallying evidence that other Rishonim prohibit chopping down a viable fruit tree for the sake of construction (Shu't Beis Yaakov #140, quoted by above-mentioned Har Tzvi; Shu't Meisheiv Davar 2:56).

**A Shady Deal** Let us refer to one of our opening questions: A peach tree that grew on its own is now blocking the light from entering our house. May we cut down the tree? This actual question was addressed to the Chavos Yair, a great 17th century Central European posek. Based on the above-quoted Rosh, who permitted cutting down a tree in order to construct a house, the Chavos Yair

allowed chopping down the offending peach tree. However, the Chavos Yair rules that this is permitted only when he cannot simply remove some branches to allow the light into his house. When one can simply remove some branches and spare the tree, the Chavos Yair prohibits chopping down the entire tree, since it is unnecessary to do so. Even though the branches will eventually grow back again and block his light, the Chavos Yair does not permit chopping down the tree, but requires one to repeatedly trim it, since it is not necessary to destroy it for the sake of the house. Thus, although he accepts the Rosh's ruling permitting removing a tree for the sake of a dwelling, the Chavos Yair notes that this is permitted only when one cannot have the house and eat the fruits, too.

**Expanding Living Space** The Chavos Yair further rules that the Rosh, who permitted chopping down a tree to have construction done on its place did so only when the construction filled an essential need for the house, and not when it was merely to make the house nicer, such as to widen the yard or to provide a place to relax. At this point, we can probably answer the Goldbergs' question. They purchased a new house, hoping to expand it onto the huge lot that they have that contains several beautiful fruit trees. May they remove the trees to expand their house? Even according to the Rosh, they may remove the trees only to provide something essential for the house. Since the house was already usable, it is prohibited for them to raze the trees. (However, we will soon share with them a possible solution.)

**Some are Much Stricter** The Chavos Yair follows the Rosh's approach and permits removing a fruit tree if there is no other way to build a house. However, not all later authorities are this lenient. When asked this exact question, "May one cut down a tree to construct a house," the Netziv, one of the leading authorities of 19th century Lithuania, was not comfortable with relying on the opinion of the Rosh and permitting it. Rather, he concluded that there are early authorities who disagree with the Rosh and permit razing a fruit tree only in the three situations that the Gemara mentions: when the tree is more valuable as lumber, when it is producing almost no fruit, or when it is affecting the growth of other fruit trees. In the first two instances, it is no longer considered a fruit tree. The Netziv provides two different reasons why, if it is still considered a fruit tree, one cannot remove it, unless it is damaging other trees. (1) One may chop down the tree only because it is damaging other fruit trees, but for no other reason. (2) Chopping down a fruit tree is permitted only when removing it provides immediate benefit. However, when one clears a tree to make room for construction, there is no immediate benefit when one clears away the tree. The benefit is not realized until one builds the house, which does not take place until later, and we do not see from the Gemara that this is permitted. Following this latter approach, it is prohibited to destroy older trees and replace them with new ones, and halachically-abiding farmers must wait until the trees are hardly productive before replacing them with new saplings.

**Hazardous to one's Health** There is another reason to be concerned about chopping down fruit trees. In addition to the Torah's prohibition, Chazal consider cutting down trees to be dangerous. To quote the Gemara, "Rabbi Chanina stated: My son Shivchas died only as punishment for cutting down a fig tree prematurely" (Bava Kamma 91b). Thus we see that cutting down a fruit tree is not only an issue of bal tashchis, but also a safety concern.

**What About for Temporary Use?** A community was renting a house from a non-Jew for their shul. The number of congregants is now, thank G-d, exceeding the capacity of the shul building, and the gentile owner has allowed them to expand the building on which they still have nine more years on their lease. However, there is only one direction in which they can expand their building, and there is a grape vine growing there, which they would need to uproot to perform their expansion. The gentile owner has permitted them to rip up the vine for this purpose. The community's question is whether expanding the shul is a valid reason to permit ripping up a grape vine, which is halachically considered a fruit tree; particularly since the community's benefit may be only temporary, since the gentile landlord may not renew their lease, and they may then need to look for new quarters. The Yaavetz ruled that even the temporary use of a shul is a valid reason permitting the ripping up of the grape vine. However, because of his concern that it is dangerous to do so, he advises hiring a gentile to uproot the vine. Since the mitzvah of destroying fruit trees is not included among the mitzvos that a ben Noach must observe, the gentile is not required to observe it, and therefore it is not dangerous for him to remove the vine. The Yaavetz then mentions another factor. In every instance mentioned by the earlier authorities, the tree could not be removed and planted elsewhere. The Yaavetz suggests that there is no prohibition to uproot a fruit tree, if one will replant the tree elsewhere. Thus, he concludes that even when no other solution exists to permit destroying a fruit tree, one may remove it by its root and replant it elsewhere and then use the land for whatever one chooses.

**Saving the Goldbergs!** The Yaavetz's suggestion is very welcome news to the Goldbergs. They purchased a new house hoping to expand it onto the huge lot that

they have that contains several beautiful fruit trees. May they remove the trees to expand their house? According to the Yaavetz, they may remove the trees and plant them elsewhere, and then expand their house onto the extended lot. This ruling of the Yaavetz is not without its detractors. The Chasam Sofer (Yoreh Deah #102) concludes that one should not rely on this idea of the Yaavetz to remove a tree when other lenient reasons do not apply. However, he does accept the Yaavetz's rule as a stringency -- that if one can replant a fruit tree it, one may not destroy it, since the demolition of the tree is unnecessary. Thus, if a fruit tree is damaging other trees, one may destroy it only when replanting it is not an option.

**Shady Mitzvah** At this point, I would like to discuss one of the above-mentioned questions. "We just moved into a new house, and the only place where we can put a sukkah is in an area which is shaded by a fruit tree. May we chop down the tree in order to have a place to build our sukkah?" This exact question was asked of Rav Tzvi Pesach Frank, who was the rav of Yerushalayim for many decades until his passing in 1960. Rav Frank cites and analyzes many of the above-mentioned sources, and is inclined to be lenient, reasoning that the performance of a mitzvah cannot be considered a destructive act. He concludes that one should have a gentile remove it, but not as an agent for a Jew, although he does not explain how one accomplishes this (Shu't Har Tzvi, Orach Chayim II #102).

**Conclusion** Thus, we see that there are different ways of understanding when one may destroy a fruit tree for a valid reason, and each person should ask his own rav what to do in his particular circumstances. The Ramban explains that the reason for the mitzvah is that one should have trust in Hashem that He will assist us in vanquishing our enemies, and then we will be able to use the fruit from this tree. So why destroy it? One should treat the tree as if it is already in my possession!