**S.A.L.T. – PARASHAT SHOFTIM**

**By Rav David Silverberg**

Motzaei Shabbat

The Torah in Parashat Shoftim reviews the laws of the *arei miklat* – the cities of refuge where people who accidentally killed would find protection from the victim’s vengeful relatives. In discussing the topic of *arei miklat*, the Torah refers to this law with the phrase “*devar ha-rotzei’ach*” (literally, “the matter of the killer” – 19:4). The Gemara in Masekhet Makkot (12b) infers from the word “*devar*,” which can mean “speech,” that the killer must verbally inform the people in the *ir miklat* where he seeks refuge that he had inadvertently killed as a result of negligence. More specifically, the Gemara establishes that if the townspeople wish to treat the new arrival with honor – such as if he is a person of stature – he must inform them of why he had come to live with them, that he had negligently killed another person.

This *halakha* perhaps reminds us of the need for complete honesty when we introspect and assess ourselves. Often, we make the mistake of viewing ourselves the way we assume others view us. At times, this results in harmful low self-esteem and overly harsh self-criticism, when people judge us unfairly without taking into account all the various different factors, of which only we ourselves are aware. At other times, however, this results in too charitable an assessment. When people accord us respect and honor, we can easily be misled into thinking too highly of ourselves, assuming that the respect shown to us reflects genuine stature and accomplishment. The *halakha* regarding an inadvertent killer perhaps represents the need to remind ourselves of who we are when people treat us with respect. Of course, we are not required to publicize our failings and shortcomings the way the inadvertent killer is required to inform the townspeople that he was guilty of criminal, fatal negligence. Nevertheless, we might learn from this *halakha* to at very least “inform” ourselves of the truth, to remind ourselves that what people see and think of us is not always an accurate reflection of who we are. The process of introspection requires making an honest assessment based on what we know of ourselves, rather than relying on the respect and compliments we receive from others as a basis for feeling content and satisfied with who we are.

(Based on a *sicha* of the Tolna Rebbe)

Sunday

The Torah in Parashat Shoftim (20:19) issues the prohibition against cutting down fruit-bearing trees, which is the source for the well-known prohibition of *bal tashchit* – the wasteful destruction of food or other commodities.

There is considerable discussion among the halakhic authorities as to whether this prohibition applies to ownerless property. While intuitively we might have assumed that the Torah forbids destroying usable property regardless of whether anybody legally owns it, the Rosh appears to suggest otherwise. The context of the Rosh’s comments is a startling Mishna, in Masekhet Middot (1:2), which tells that in the times of the *Beit Ha-mikdash*, an official would circulate among the *Leviyim* who stood guard in the Temple throughout the night. If the official noticed a guard sleeping, he whipped him, and even had the right to burn the guard’s clothes as punishment for his laxity. The Rosh, in his commentary to Masekhet Tamid (28a), raises the question of why this punitive measure did not transgress the prohibition of *bal tashchit*, and he answers by invoking the principle of “*hefker beit din hefker*.” This means that rabbinical authorities had the legal power to confiscate property or transfer it from one person to another when necessary. The Rosh does not elaborate, but it appears that in his view, the prohibition of *bal tashchit* applies only when one destroys something which he or another person owns. Hence, as *Chazal* felt it appropriate to allow destroying a sleeping guard’s clothing as a deterrent to laxity in guarding the Temple, they declared a sleeping guard’s garment to be *hefker* (ownerless), such that it was then permissible to destroy it. And thus in the Rosh’s view, it seems, the law of *bal tashchit* applies only to property that is under somebody’s legal possession.

Rav Tzvi Pesach Frank, in one of his responsa (O.C. 2:102), cites the Aderet (Rav Eliyahu David Rabinowitz-Teomim) as observing that *Tosefot* appear to disagree with this view. The Gemara in Masekhet Berakhot (36b) comments that one may not cut down fruit trees during the *shemita* year, due to the prohibition against wasting *shemita* produce. It seems from the Gemara that this is forbidden only due to the prohibition against destroying *shemita* fruit, and would otherwise be permissible. The question thus arises as to why this would not be forbidden regardless of the laws of *shemita*, by force of the prohibition of *bal tashchit*. Tosefot answer that the prohibition of *bal tashchit* does not forbid cutting down trees containing less than a “*kav*” (a certain quantity) of fruit, or trees with wood whose value exceeds that of its fruit. The Gemara therefore instructs that even such trees may not be cut down during *shemita*, due to the *halakha* requiring that *shemita* produce be eaten, and not destroyed. The Aderet observes that Tosefot would never have asked this question if they had followed the Rosh’s view, that the prohibition of *bal tashchit* does not apply to ownerless property. *Halakha* treats *shemita* produce as *hefker*, and thus, according to the Rosh, the law of *bal tashchit* is inapplicable to *shemita* produce. It is forbidden to destroy *shemita* produce only because of the requirement to eat it, but not because of the prohibition of *bal tashchit*, and thus, seemingly, Tosefot’s question would not be asked according to the Rosh’s position.

Rav Frank, however, refutes this proof, noting the distinction between the fruit and the branches. Although *shemita* produce is considered ownerless, and is thus not subject to the prohibition of *bal tashchit* according to the Rosh, the wood of the tree – which is not edible – remains under its owner’s legal possession. Hence, even according to the Rosh, we might question why the Gemara resorted to the special laws of *shemita* to explain the prohibition against cutting a fruit tree during *shemita*, as chopping the wood – which still belongs to the tree’s owner – seemingly violates *bal tashchit*.

Rav Asher Anschel Schwartz ([*Ma’adanei Asher*, Parashat Shoftim, 5768](http://hebrewbooks.org/pdfpager.aspx?req=48309&st=&pgnum=188)) defends the Aderet’s argument. The prohibition against cutting a fruit tree is, of course, a function of its fruit; after all, a tree without fruit may be cut down. It stands to reason, then, that if a tree’s fruit, for whatever reason, is excluded from the *bal tashchit* prohibition, then the entire tree is likewise excluded. Hence, if we take the position that the law of *bal tashchit* does not apply to *shemita* fruit, since it is ownerless, then by extension, the law does not apply to the tree’s wood, either. In other words, all trees – including fruit-laden trees – are considered during *shemita* as fruitless trees, and are thus not subject to the prohibition of *bal tashchit*. Therefore, once Tosefot assert that the prohibition of *bal tashchit* indeed does apply to fruit trees, we may justifiably conclude that in their view, this prohibition applies even to ownerless property.

Monday

The Torah in Parashat Shoftim (16:21) introduces a prohibition against planting a tree alongside the altar, which *Chazal* understood as including building a structure in the *azara* – the Temple courtyard (Tamid 28b). The *Yalkut Shimoni*, here in Parashat Shoftim (907), comments that this prohibition applies even to a *sukka*, which may not be constructed in the *azara*.

The *Panim Yafot* notes that earlier (end of Parashat Re’ei), the *Yalkut Shimoni* comments that sacrificial food must be eaten in a *sukka* during Sukkot just like ordinary food. At first glance, these two passages of the *Yalkut Shimoni* seem contradictory. How can sacrificial food require a *sukka* if the Torah forbids constructing *sukkot* in the Temple courtyard, where sacrificial food is eaten? The *Panim Yafot* writes that we are compelled to distinguish in this regard between the two basic categories of sacrificial food – *kodashei kodashim* and *kodashim kalim*. The sacrifices in the category of *kodashim kalim* may be eaten anywhere in Jerusalem, and do not have to be eaten specifically in the Temple courtyard, and, as such, they require a *sukka* during Sukkot. By contrast, *kodashei kodashim*, which may be eaten only in the *azara*, necessarily are eaten without a *sukka*, given the prohibition against building *sukkot* in the *azara*.

Rav Avishai Maitlis, in [*Ve-darashta Be-chagekha* (p. 34)](http://hebrewbooks.org/pdfpager.aspx?req=36063&st=&pgnum=34&hilite=), cites his father as explaining this distinction based on the famous rule of “*teishvu ke-ein taduru*” – the *mitzva* of *sukka* requires treating the *sukka* as one’s home. Since the *kohanim* are obligated to eat *kodashei kodashim* in the Temple courtyard, these are not foods that are normally eaten at home. As such, unlike other meals, the *kohanim*’s consumption of this sacrificial food does not require a *sukka*, and thus *kodashei kodashim* are eaten without a *sukka*.

The *Minchat Kena’ot* commentary to Masekhet Sota (41b) disagrees with the *Panim Yafot*, and maintains that the *kohanim* did, in fact, eat their sacrificial food in *sukkot* constructed in the *azara*. He notes that the prohibition against building in the *azara* applies only to building wooden structures, and thus it would be entirely permissible to build a *sukka* out of other materials, such as stone. And although the *sekhakh* requires vegetation, the *Minchat Kena’ot* cites sources that state that the prohibition is limited to building with wood *derekh gedilatan* – the way they are grown, meaning, with the branches upright. The *sekhakh* is formed by laying the wood horizontally across the top of the structure, and thus this would not transgress the prohibition against constructing a building in the *azara*. Accordingly, it is entirely possible to construct a *sukka* in the *azara* in a permissible manner, and so even *kodashei kodashim* could be eaten in a *sukka* during Sukkot.

(See also Rav Asher Anshel Schwartz’s [*Ma’adanei Asher*, Parashat Shoftim, 5768](http://hebrewbooks.org/pdfpager.aspx?req=48309&st=&pgnum=189&hilite=))

Tuesday

Yesterday, we noted the question raised by the *Panim Yafot* concerning a comment by the *Yalkut Shimoni* in Parashat Shoftim (907). The Torah forbids planting a tree alongside the altar in the *Mikdash* (16:21), and the Gemara (Tamid 28b) establishes that this prohibition includes building a structure in the Temple courtyard, where the altar stood. The *Yalkut Shimoni* remarks that this applies even to a *sukka*, which may not be built in the area of the *azara*. Earlier, however, in the end of Parashat Re’ei, the *Yalkut Shimoni* comments that *kohanim* eating sacrificial food during Sukkot must do so in a *sukka*. The question thus arises as to how *kohanim* were able to fulfill this requirement when eating those sacrifices (*kodashei kodashim*) that may not be eaten outside the *azara*.

Rav Aharon Levine (the “Reisha Rav”), in his *Birkat Aharon* (Berakhot, 197:6), suggests that these different passages reflect different views regarding the nature of the *sukka* obligation. In several contexts in Masekhet Sukka, the Gemara notes that the Sages were divided on the issue as to whether the *sukka* required on Sukkot must be a “*dirat keva*” – a structure resembling a permanent residence – or a “*dirat arai*” – a temporary structure. The Gemara (Sukka 7b) points to several different aspects of the *sukka*’s construction that depend on this debate. For example, the Gemara views the debate in the opening Mishna of Masekhet Sukka as to the status of a very tall *sukka* (twenty *amot* or higher) as a reflection of this question. If the *sukka* is to be a permanent structure, then a very tall *sukka* is acceptable, whereas according to the view that the *sukka* must have the qualities of a temporary dwelling, a tall building is invalid, as people do not construct temporary dwellings in such a fashion. (This is, indeed, the accepted ruling, as *Halakha* follows the opinion that a *sukka* must be constructed as a “*dirat arai*.”)

Rav Levine suggests that the question of “*dirat keva*” and “*dirat arai*” directly affects the question of whether a *sukka* may be constructed in the *azara*. The prohibition against building structures in the *azara*, Rav Levine writes, applies only to permanent structures; the Torah allows constructing a temporary dwelling in the Temple courtyard. Therefore, it is only according to the view that the *sukka* must have the qualities of a “*dirat keva*” that *sukkot* may not be built in the *azara*, as according to the view of “*dirat arai*,” this is permissible. Hence, it is possible that the *Yalkut Shimoni* in these two passages is expressing the two different views among the *Tanna’im* in this regard.

Some (including Rav Levine himself, in *Ha-derash Ve-ha’iyun*, Parashat Emor)have noted that in Sefer Nechemya (8:16), which tells of the first Sukkot celebration held in Jerusalem after the Jews’ return from the Babylonian exile, we read that *sukkot* were built on people’s rooftops, in people’s courtyards, and “in the courtyards of the House of God.” This seems to imply that *sukkot* were built in the courtyard of the *Beit Ha-mikdash* for the *kohanim*, thus proving that it was, in fact, permissible to construct a *sukka* in the Temple courtyard.

(See also Rav Asher Anshel Schwartz’s [*Ma’adanei Asher*, Parashat Shoftim, 5768](http://hebrewbooks.org/pdfpager.aspx?req=48309&st=&pgnum=189&hilite=))

Wednesday

The final verses of Parashat Shoftim present the law of *egla arufa*, the ritual required when a murder victim is discovered near a city and the killer has not been identified. The Torah requires breaking the neck of a calf near a stream to atone for the crime, and it refers to the stream as an area “*asher lo yei’aveid bo ve-lo yizarei’a*” – which is not cultivated or sown. The Gemara (Sota 46b) interprets this as a halakhic prohibition against plowing or sowing the land upon which an *egla arufa* ceremony was performed, forever.

Many *Acharonim* discuss the intriguing question posed by one of the lesser-known *Rishonim*, Rav Shimshon of Chinon (in his work *Sefer Ha-keritut*), regarding this prohibition. Since nowadays we do not know where in the Land of Israel *egla arufa* ceremonies have taken place, it should, seemingly, be forbidden to sow or plant anywhere in *Eretz Yisrael*. Although we may certainly presume that the majority of lands in *Eretz Yisrael* were not used as sites for *egla arufa*, nevertheless, Rav Shimshon writes that the standard rule of *rov*, which allows relying on a statistical majority with regard to halakhic prohibitions, cannot be applied. There is a famous exception to the rule of *rov* known as “*kol kavu’a ke-mechetza al mechetza dami*,” which suspends the principle of *rov* if the forbidden and permissible entities are fixed in place. If an item was taken from a mixture, and it is unknown whether it originated from the minority forbidden group or the majority permissible group, then we may rely on the statistical majority and permit the item. If, however, the question arises regarding places themselves, rather than an object that was taken from one of them, then we cannot rely on a statistical majority. Seemingly, then, every single piece of agricultural land in *Eretz Yisrael* has the status of “*safeik*” – potentially forbidden for cultivation – and since we cannot apply the rule of *rov*, it should be halakhically prohibited to cultivate it. Clearly, if this were the case, it would have been mentioned in halakhic sources that agriculture anywhere in *Eretz Yisrael* is forbidden, and thus clearly this cannot be correct.

Rav Shimshon answers this question by proposing a significant limitation on the principle of “*kol kavu’a ke-mechetza al mechetza dami*.” Namely, he asserts that this rule applies only when the prohibited entity was at one point identifiable. If it had been known that a certain area was the site of an *egla arufa*, and its location was then forgotten, then seemingly, all areas in question would be forbidden for cultivation. But since we do not know of any particular area that became forbidden, this case does not fall under the rule of “*kol kavu’a*,” and we may therefore rely on the statistical majority and permit cultivating the lands of *Eretz Yisrael*.

Rav Naftali Chayim Horowitz of Zhikov, in his *Mincha Chadasha* (Sota 45a), notes this question posed by Rav Shimshon of Chinon, and writes – somewhat surprisingly – that there is no indication that an *egla arufa* ceremony was ever performed at all. We have no reason to assume that a situation requiring an *egla arufa* actually occurred, and so there is not any uncertainty whatsoever regarding the status of the lands of *Eretz Yisrael* in this regard. Similarly, Rav Yehonatan Eibshitz, in *Kereiti U-peleiti* (110:12), discusses this question and writes that it is entirely possible that the *mitzva* of *egla arufa* was never performed, and thus there is no concern of agricultural lands being forbidden to cultivate.

Some questioned this assertion based on the Mishna’s comment towards the end of Masekhet Sota (47a) that when murder became frequent, the law of *egla arufa* was suspended. This *mitzva* applied only when murder was a rare occurrence, and thus once the moral fabric of the Jewish society declined and murder became frequent, the *mitzva* was no longer practically relevant. This would appear to indicate that *egla arufa* was, before that time, observed as a practical matter, seemingly in direct contradiction to the theory advanced by the aforementioned scholars. The answer, perhaps, is that the Mishna does not mean that *egla arufa* ceased being practiced once murder became rampant, but rather that it ceased being even a theoretical possibility. According to this reading, there is no proof that this *mitzva* was ever practically observed.

(See also Rav Asher Zev’s Schreiber’s [*Mateh Asher*](http://hebrewbooks.org/pdfpager.aspx?req=42892&st=&pgnum=35&hilite=), pp. 35-36)

Thursday

The Torah in Parashat Shoftim reiterates the various gifts that must be given to the *kohanim*, commanding that one give to a *kohen* “the first of your grain, your wine and your oil,” as well as “the first of your sheep’s shearing” (18:4).

Rav Avraham Saba (a scholar from the generation of the Spanish Inquisition), in his *Tzeror Ha-mor*, makes an intriguing comment to explain the purpose of these gifts. He writes that since the *kohanim* performed the service in the *Beit Ha-mikdash* outdoors, in the Temple courtyard, without shoes, they naturally felt very cold in the winter. Part of the intent of these gifts, Rav Saba suggests, were to address this need. Drinking wine warms a person’s body, and the wool received from the first shearing of sheep could be used as warm clothing. Additionally, in the previous verse, the Torah requires giving *kohanim* certain portions of any animal which one slaughters (*zero’a*, *lechayayim* and *keiva*), and Rav Saba writes that as the *kohanim* were also the nation’s scholars, and intensive engagement in Torah depletes one’s energy, the *kohanim* were given portions of meat to maintain their physical strength.

These comments of the *Tzeror Ha-mor* perhaps remind us to think carefully about other people’s conditions in order to identify what they are lacking. People might not intuitively realize that the *kohanim* suffered from the cold while performing the service in the Temple courtyard during the cold, rainy Jerusalem winter. We naturally focus our attention on meeting our own needs, and are not always attuned to the needs and concerns of other people, especially those whose lives are much different than ours. According to the *Tzeror Ha-mor*, the priestly gifts were intended to draw the people’s attention to the needs of the *kohanim*, who lived much different lives than they did. These requirements called upon the people to think about the conditions in which the *kohanim* lived, take note of the challenges these conditions posed, and to assume the responsibility to help the *kohanim* overcome these challenges. And these *mitzvot* remind us that we must try, as much as possible, to understand and take into consideration the situation of people whose lives are different from ours, so we can accurately identify their needs and do what we can to provide them.

(Based on a *sicha* by the Tolna Rebbe)

Friday

The Torah in Parashat Shoftim (20:19) introduces the prohibition of *bal tashchit* – cutting down fruit trees. The Rambam, in Hilkhot Melakhim (6:10), writes that this prohibition applies not only to the destruction of fruit trees, but also to the wasteful destruction of any property. Interestingly, however, he writes that only the destruction of trees is punishable with *malkot* (lashes); the wasteful destruction of other items does not render one liable to court-administered punishment. (Although, the Rambam adds that one who destroys other forms of property receives *makkat mardut* – lashes ordained by *Chazal*.) At first glance, the Rambam appears here to take the position that the Torah prohibition of *bal tashchit* is limited to the destruction of fruit trees, whereas other forms of destruction are forbidden only *mi-de’rabbanan*, by force of rabbinic enactment. After all, if the Torah prohibition included the destruction of all kinds of property, then there would be no distinction made with regard to the punishment. Indeed, this is how several *Acharonim* understood the Rambam’s position, including the *Noda Bi-yehuda* (*Tinyana*, Y.D. 10) and the *Chayei Adam* (11:32).

However, elsewhere, in *Sefer Ha-mitzvot* (*lo ta’aseh* 57), the Rambam writes explicitly that the Torah prohibition of *bal tashchit* includes the destruction of any kind of property, such as burning garments and breaking utensils. The question thus arises as to why, in the Rambam’s view, destroying items other than trees does not yield the punishment of *malkot*, if it, too, constitutes a violation of the Torah prohibition of *bal tashchit*.

Rav Asher Weiss (*Minchat Asher*, Sefer Bereishit, 44:4) points to these comments of the Rambam as an example of a broader position taken by the Rambam, that a distinction exists between the primary aspect of a Biblical command and its secondary applications. For example, many writers struggled to understand the Rambam’s view in Hilkhot Ma’akhalot Assurot (8:16) that one who derives benefit from forbidden foods in a manner that does not involve eating is not liable to *malkot*. The Gemara (Pesachim 21b) clearly establishes that as a general rule, unless indicated otherwise, any food which the Torah forbids for consumption is likewise forbidden for any other type of benefit. Benefit is certainly included in the Torah prohibition against eating forbidden foods, and the question thus arises as to why one would not be liable to *malkot* for violating the prohibition through other forms of benefit. Rav Weiss posits that the Rambam drew a distinction between the primary prohibition and its subsidiaries. Even though the Torah includes in its prohibition both eating and other forms of benefit, nevertheless, *malkot* is warranted only when one violates the primary prohibition, which is mentioned explicitly in the verse, and not for violating secondary aspects of the prohibition which the oral tradition includes under the Torah law.

Consistent with this approach, the Rambam distinguishes between destroying fruit trees and other violations of *bal tashchit*. Although all forms of wasteful destruction are included under the Torah prohibition, nevertheless, a distinction exists between the destruction of fruit trees, which the Torah explicitly mentions, and the destruction of other items, which is a secondary component of this law. *Malkot* is warranted only in the former cases, when one violates the primary aspect of the prohibition, but not for violating its secondary component.

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