



## Cutting Down Trees

The *Mishnah* (4:10) discusses the time from which one is allowed to cut down a fruit tree during *Shemittah*. The starting point, while debated, is early in the fruit's development. After the fruit develops to a point where *maaserot* apply (*onat maaserot*) then one is allowed again to cut the tree down. We will try to understand this *Mishnah*.

Normally, one is prohibited from cutting down a fruit tree. The *Mishnah* must be understood as being in the context where it is permissible, e.g. where the value of the wood greater than the fruit it produces or the tree is causing damage to his property. In this case then, the issue with cutting the tree is isolated to *Shemittah* (see *Tifferet Yisrael*).

The *Bartenura* explains that the *Torah* instructs us to eat *shemittah* food and not destroy it ("*le'ochlah*" *ve'lo le'hfsed*). Consequently, cutting the tree when the fruit are in their early stages of development, prior to being edible, would be equivalent to wasting them.

The *Bartenura* however provides an additional explanation. The *Torah* declared *shemittah* produce *hekfer* (ownerless). Effectively destroying the fruit at this early stage would be considered stealing from the public. While the *Rambam* provides this explanation in his commentary to the *Mishnah*, in the *Mishnah Torah*, he explains the law like the first understanding.

The *Tosfot Yom Tov* however finds the second explanation difficult since the *Gemara* (*Pesachim* 52b) explains that the "*le'ochlah*" *ve'lo le'hfsed* is the reason. The *Tosfot Yom Tov* suggests that while the *Rambam* in the *Mishnah Torah* is providing the basis for the law - "*le'ochlah*" *ve'lo le'hfsed* – in his commentary on the *Mishnah* he provided a "*ta'am*" (a way to relate to the law). In other words, why did the *Torah* only want us to eat *shemittah* produce and not waste it? The reason is because doing so would be

considered stealing from the public. Importantly, the *Tosfot Yom Tov* stresses that there is no legal difference between the two explanations.<sup>1</sup> Nevertheless, he concludes that the "*ta'am*" is unnecessary. The fact that the *shemittah* produce is important is reason enough not to waste them.

The *Mishnah Rishona* however explains that the *Rambam* was compelled to bring the reason of theft. Recall that every year there is a prohibition to cut down a fruit tree. This is based the *pasuk* "and from it you shall eat and not cut down". We addressed this prohibition by explaining that the case in the *Mishnah* is in a context where the prohibition does not apply. If that is the case, why should the "*le'ochlah*" *ve'lo le'hfsed* be considered stricter? Consequently, there must be another reason - theft. Indeed, this is how the *Mahara Fulda* understands the *Rambam*. In other words, despite the fact that there may be justifications to cut the tree down that would equally apply during *shemita*, since the tree is *hefker*, your gain cannot come at the expense of the public. Nevertheless, the *Mishnah Rishona* concludes that there is a difference with *shemittah* since the produce has *kedusha*. Even if ordinarily, one would be able to cut the tree down, during *Shemittah* we would treat the case more stringently.

The *Chazon Ish* (19:27) also understands that there is a substantial difference between the two different reasons. The reason why the *Rambam* explains that the law is based on the issue of *gezel*, is because "*le'ochlah*" *ve'lo le'hfsed* does not apply at that stage of development. In other words, according to *Rambam* in his commentary to the *Mishnah* the issue of waste is based on it useful now and not what it could be. When the *Rambam* however provides "*le'ochlah*" *ve'lo le'hfsed* in the *Mishnah Torah* as the reason for this law it would appear that he retracted from this understanding of *hfsed*.<sup>2</sup>

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<sup>1</sup> In contrast see the *Shoshanim Le'David* who explains that the two reasons address two different cases. It is for this reason that the *Rambam* provides both reasons to cover both cases.

<sup>2</sup> The *Chazon Ish* explains that based on this understanding, that it is not considered *hfsed* at that stage, if an immature figs fell from the tree, one would allowed to eat it.

**Revision Questions**

שביעית ג: טי – ה: בי

- What is special about *avnei katef*? (ג: טי)
- What are the restrictions placed on one who wishes to build a fence around his property during the *shmittah* year? (י: יי)
- What was the original and developed ruling regarding collecting branches from ones field during the *shmittah* year? (ד: יא)
- It is forbidden for one to prepare the field during the *shmittah* year for the next year. Which of the forbidden activities, if performed, incur a fine prohibiting one to work the field in the following year? (ד: יב)
- There are two other cases where *Beit Hillel* and *Beit Shammai* argue whether a fine is incurred if someone performs a prohibited activity – what are they? (ד: יב)
- Can a person work on a field (as a *choker*) if the field is owned and was ploughed by a Jew during the *shmittah* year? (ג: יד)
- Does it make a difference if the field was owned and ploughed by a non-Jew? (ד: יג)
- What is the definition of *medel*? What is the definition of *machlik*? According to which opinion is there a halachic difference between *medel* and *machlik*? (ד: יד)
- What are the restrictions placed on the way one treats an olive or sycamore tree that has had some of its branches removed? (ה: יד)
- Explain the debate regarding the manner in which one can trim the branches of a vine. (ו: יד)
- What can one do in a case where a branch is cracked? (ו: יד)
- At what point can one eat the following fruit as a snack in the field and when can he collect them and take them home:
  - Figs? (ז: יד)
  - Grapes? (ח: יד)
  - Olives?
  - Any other fruit? (ט: יד)
- From when is it forbidden to cut down a fruit tree in the *shmittah* year? (Include both opinions.) (י: יד)
- From when is this prohibition lifted? (י: יד)
- Explain the debate regarding cutting down an olive during any other year. (י: יד)
- Which fruit has their *kedushat shvi'it* applying in a year other than the *shmittah* year? (יא: ה)
- *R' Yehudah* includes an additional fruit – what is it? (יא: ה)
- What restrictions are place on one who stores his *lof* underground? (יב: ה)

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22 May כ"א אייר	23 May כ"ב אייר	24 May כ"ג אייר	25 May כ"ד אייר	26 May כ"ה אייר	27 May כ"ו אייר	28 May כ"ז אייר
Sheviit 5:3-4	Sheviit 5:5-6	Sheviit 5:7-8	Sheviit 5:9-6:1	Sheviit 6:2-3	Sheviit 6:4-5	Sheviit 6:6-7:1

