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Yeshivat Ateret Yerushalayim

IN THE HEART OF THE OLD CITY OF JERUSALEM

Ha-Rav Shlomo Aviner on...

14 Shevat 5768

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Tu Bishvat Torah:

Uprooting Fruit Trees in Kibbutz Lavi

[Shut She'eilat Shlomo vol. 2 #55]

Question:

Is it permissible to uproot fruit trees which did not grow properly, in order to plant other trees in their place?

Answer:

1. "When you besiege a city for many days to wage war against it to seize it, do not destroy its trees by swinging an ax against them, for from it you will eat, and you shall not cut it down" (Devarim 20:19).

2. "We must not cut down fruit trees outside a city nor prevent an irrigation ditch from [bringing water to] them so that they dry up as it says, 'Do not destroy its trees.' Anyone who cuts down [such a tree], should be lashed. This applies not only during a siege, but in all situations. Anyone who cuts down a fruit tree in a destructive manner should be lashed. Nevertheless, it may be cut down if it causes damage to other trees, to fields belonging to others or if [its wood] can be sold for a high price. The Torah only prohibited [cutting down trees] in a destructive manner" (Rambam, Hilchot Melachim 6:8).

3. "Shmuel's field laborer brought him some dates. He ate them and tasted wine in them. He said to him: 'What is this?' He told him: 'The dates were placed between vines and absorbed

their taste.’ He [Shmuel] said to him: ‘Since they weaken the vines so much, bring me their roots tomorrow (i.e. uproot them).’ When Rav Chisda saw certain palm trees among the vines he said to his field laborers: ‘Uproot them. Vines are worth more than palm trees” (Baba Kamma 92a).

4. "And so too if its place is needed it appears that it is permissible" (Rosh, Baba Kamma 8:15).

5. "Based on this, I permitted one person, who had land with trees, to cut down the trees even though they had fruit in order to build a house on it" (Taz, Yoreh Deah 116.6); if the house is worth more than the trees" (Shut She'eilat Ya'avetz vol.1 #76).

6. This implies that the law would permit uprooting in order to plant more profitable trees.

7. Furthermore, it is permissible to uproot a tree which does not produce a minimum yield. "One may cut down a fruit tree that has become old and produces only a slight yield which does not warrant the effort [required to care for it]. What is the yield that an olive tree must produce to warrant that it should not be cut down? A quarter of a kav of olives (approximately 52 ounces). A date palm which yields a kav of dates should not be cut down" (Rambam, Hilchot Melachim 6.9). And perhaps a tree which does not grow properly is within the category of "which does not warrant the effort [required to care for it]."

8. The Achronim (Later Authorities), however, wrote that besides the prohibition of cutting down trees, there is also danger involved (Taz, Yoreh Deah 116.6) as is related in the Gemara. Rabbi Chanina said: "My son Shivcha only died [young], because he cut down a tree before its time" (Baba Kamma 91b). The Achronim wrote that even when it is permissible according to the basic law, as in the case where its space is needed to build a building, one should be cautious on account of the potential danger and avoid doing so as much as possible (Hagahot Meharsham on the Tzava'at Rabbi Yehudah Ha-Chasid #45).

9. In order to distance oneself from any doubt, there are those who suggest selling the tree to a non-Jew before cutting it down by means of an acquisition through money and a contract as we do when selling the "chametz" (leaven) before Pesach (brought in Makor Chesed, end of note 62).

10. A few years ago I wrote to Ha-Gaon Rav Avraham Dov Auerbach, Av Beit Din (Head of the Rabbinic Court) of Tiveria, with the following issue: "There is the intent to uproot a vineyard in Kibbutz Lavi (located in the Galil and where Rav Aviner served as Rabbi from 5731-5737), because it is not yielding a profit and, at times, even causes a loss, and to plant other vegetation in its place. It appears quite clear that it is permissible since the spot of the tree is needed (as explained in the Rosh, Baba Kamma 8.16 and Taz, Yoreh Deah 116:6). And perhaps it is even in the category of "It does not yield a quarter of a kav of olives" if the profit is less than the expenses. I nevertheless saw in Shut Meishiv Davar (by Rav Naftali Tzvi Yehudah Berlin – the Netziv – vol. 2 #56) that he disagrees with the Taz, since who says that it (i.e. the new planting) will succeed in the place of the tree, and if this occurs one will have transgressed a negative commandment. My heart also pounds on account of the potential danger involved in this act."

11. This was Rav Auerbach's response: "Regarding the uprooting of a vineyard, one should rule only according to the Rosh in the case when its space is needed and like the Taz. One must be certain, however, that the future planting will be more profitable. Ha-Gaon Rav Shlomo Kluger (Shut Tuv Ta'am Ve-Da'at, telita vol. 2 #8) was asked about this very case and he permitted it by means of a non-Jew. Even with all this, I am concerned about issuing a ruling and it is worthwhile to check with Kibbutz Chafetz Chaim (a religious kibbutz in the southern coastal plain of Israel) and similar places – perhaps they have a 'paved road' (clear ruling which they follow) from an outstanding halachic authority."

12. This was part of my letter to Ha-Rav Meir Schelezinger, Rav of Kibbutz Chafetz Chaim: "17 Kislev 5734 (1974)...We have an issue regarding uprooting a vineyard...by means of a non-Jew...in any event, there is a concern about issuing a ruling."

13. This was Rav Schelezinger's response: "In general when we permit this act, it is preferable [to do so] by means of a non-Jew. I acted this way various times. The heart of the matter is that if the vineyard when it is not cared for will cause sicknesses which will damage the surrounding growth, it is permissible to uproot it according to the basic law. This is preferable to the leniency of "greater yield" [even though I presume that Kibbutz Lavi would not uproot over a doubt and risk danger over losses]. Ha-Rav Shlomo Zalman Auerbach told me that even though in such a case there is no doubt that it is permissible, there is a need, to try, however, to do so through the means of a non-Jew. Based on this, you learn that there is no possibility to forbid it according to the basic law, even by means of a

Jew. For us in this area, the majority of the contractual work is performed by non-Jews, and I presume that non-Jews are also available in the Galil, and even more so than here. In a case where there are no non-Jews, the ruling to have it performed by a non-Jew is simply in the category of 'good advice.' And it therefore seems to me that one cannot prohibit it."

Summary:

It is permissible to uproot fruit trees which did not grow properly, in order to plant other trees in their place. And one should try as much as possible to perform it by means of a non-Jew.