

HALOCHOSCOPE

This week's question:

May live bait be used to catch fish? May one feed animals live animals, that they may or may not kill before eating them?

The issues:

- A) *Tzaar baalei chaim*, causing pain to living creatures; *Bal tashchis*, wasting resources
- B) *Tzorech adam*, servicing man's needs
- C) Hunting and fishing

A) *Tzaar baalei chaim*; *Bal tashchis*

[Much of this material is reprinted from Volume XII, Number 25.] The clear assumption is that *tzaar baalei chaim* is forbidden. There is an ethical concept of *achzarius*, cruelty, in general, but the Talmud considers *tzaar baalei chaim* a *halachic* issue. An ethical concept is not invoked to override a *halachic* concept. A *halachic* concept might override another *halachic* concept, depending on the context. Furthermore, a *halachic* concept might be suspended, though apparently unethically. The Talmud debates whether *tzaar baalei chaim* is considered Scriptural or whether it is Rabbinical. Though the ethical concept applies logically, which is usually considered Scriptural, the *halachic* concept might have been institutionalized Rabbinically. The consensus of the poskim is that the conclusions drawn by the Talmud follow the opinion considering it Scriptural. A minority considers it Rabbinical. The poskim debate whether it may be considered a *mitzvah* or a concept. A positive *mitzvah* can override other *mitzvos* using *dichuy*, the order of precedence.

There is no specific *mitzvah* forbidding general cruelty to animals *per se*. A number of *mitzvos* forbid or require certain behaviors with regard to animals. In many of these one of the themes is the prevention of cruelty to the animal. There is an obligation to help one whose donkey is overloaded. Due to the wording of the *mitzvos* associated with this, the applications include: helping unload the donkey, helping to load it up, shoring up the load as it falls, and the like. The *mitzvah* seems to be an interpersonal obligation, to help one's fellow Jew. By parsing the *mitzvah*, it becomes clear that there are situations when there there is no obligation to help the owner. Yet, there is always an obligation to help the innocent animal. The Torah also commands us against slaughtering an animal's offspring in its presence. We may not take the offspring from its mother within eight days of its birth, to use as an offering in the *Bais Hamikdash*. One must send away a bird before taking its eggs or chicks. When slaughtering, one must cut the animal in the least painful part, so that it will not die painfully. When an animal is threshing grain that it usually consumes as fodder, it may not be muzzled. There is even an explanation given for what is otherwise considered a *chok*, statute. One may not harness an ox and a donkey together. One reason offered for this is that they work at different paces or strengths. It is considered cruel to force them to work like this. Neutering or spaying are forbidden. Some

say that this is partly due to the pain. It is forbidden to eat a limb torn from a living animal. The Talmud considers tearing the limb *tzaar baalei chaim*. Therefore, some cite this as a reason for the prohibition against eating it. These last two apply to *Benei Noach*, gentiles, as well as Jews. Accordingly, some poskim maintain that gentiles are also forbidden to cause pain to animals. [On the other hand, they are not required to slaughter humanely! Also, *bal tashchis* is a *mitzvah* for Jews.]

The Midrash mentions the concepts of mercy and kindness to animals in connection to these *mitzvos*. On the other hand, we may not imply that a *mitzvah* is due to Hashem's compassion on His creatures. The *mitzvos* are decrees. Some say, while Hashem's reasons for the *mitzvah* may not be revealed to us, we may understand how they affect us. *Mitzvah* observance refines the character. These *mitzvos* refine the person's attitude to creatures in general. This becomes especially important when slaughtering that is likely to desensitize one to animals' feelings. He needs to refine this part of his character. In addition, we are always obliged to emulate the ways of Hashem, Who is the All-merciful.

There are Rabbinic restrictions on feeding and handling animals on *Shabbos*. Some involve *muktze*, moving items that are not meant to be moved on *Shabbos*, or *tircha*, too much effort. If an animal has become very dependent on being force-fed, one may force feed it in certain ways. If an animal needs help getting out of a hole, one may do certain things that would otherwise be forbidden. If an animal is carrying a load that includes *muktze* items, one may place pillows under it and loosen the load so that it falls. An itchy animal may be scratched with certain types of tool.

Apart from hurting a living animal, killing or starving an animal involves *hashchasa*, wastefulness. *Bal tashchis* applies to anything that has a use for man. One may not destroy it for no purpose. Even items that do not have an apparent direct use, may sometimes not be destroyed wantonly. *Bal tashchis* is extended to forbid even productive destruction, when preserving the item would be more productive. Thus, one may not cut down a fruit-bearing tree for its lumber. This involves at least one negative *mitzvah*. Some say that it is a violation of two negative *mitzvos* and one positive. The poskim debate whether the Scriptural *mitzvah* applies to items other than fruit-bearing trees. It is definitely forbidden, somewhat Scripturally, even if it does not violate this specific *mitzvah*. Even destroying it indirectly, such as starving it of water, or weakening it without destroying it, is considered a violation of *bal tashchis*. There is a minority opinion that the Torah only permits killing an animal for food. Otherwise, even a dangerous animal may only be killed by a *Bais Din* of twenty-three *dayanim*. [See Emor 22:28 (Targ Yon, Midr) Shoftim 20:19 Ki Saitzai 22:6-7 (Ibn Ezra Ramban) 22:10 (IE Daas Zekainim, Baal Haturim). Shabbos 53a 128b 154b 155b Beitza 23a Baba Kama 91b Baba Metzia 31a-33a 85a Avoda Zara 13a, Poskim. Chinuch 294 451 545. Tur Sh Ar OC 305:19 324:9-10, YD 24:8 116:7 117:Taz 4 (Darkei Teshuva 35 44 etc.), EH 5:14, commentaries. Sh Ar Harav, hil. Tzaar Baalei Chaim. Kitz. Sh Ar 191.]

B) Serving mankind's needs

The purpose of the creation of the animals is to serve humankind. Therefore, when man's needs are served by causing pain to animals, the *halachic* considerations of *tzaar baalei chaim* are suspended. However, while there is no violation of this *mitzvah*, there is concern for non-ethical *achzarius*, and causing the pain should be avoided anyway. Thus,

when it is avoidable, one should not cause the pain. When it is unavoidable, one must serve the needs of man. One source for this is the *mitzvah* to unload an animal. Furthermore, on *Shabbos* there is the case of loosening a *muktze* load to save the animal carrying it from pain. Why was the animal carrying it in the first place? When it was transporting the goods, it was serving man's needs. After it arrives at its destination, there is no point in keeping the animal loaded down.

Another source, according to many commentaries, is the original process in the construction of the *Mishkan* that involved dyeing. Some say rams were beaten to redden their hides. Later these rams would be slaughtered for the red hides. When a Jewish king dies, his animals are rendered useless by having their legs cut at the knees or ankles. This is done out of respect for the king, and thereby for all of Israel. This is viewed as an example of mankind's needs overriding *tzaar baalei chaim*. [In a similar ruling, the same is done to animals traded in an idolaters' marketplace. However, that ruling is connected to rooting out idolatry. That is more significant than general needs.] Other examples include advice given by the Talmud to sterilize a rooster by cutting off his crest [which is indirect and not considered mutilation]. The most reliable way to extract the dye of *techailess* is by puncturing the sac of the animal while it is still alive.

Based on this idea, the poskim discuss the practice of pulling out the neck feathers of a bird before slaughtering it, so the knife will not be hidden at any point (which renders the *shechita* unfit). Similarly, the poskim discuss removing a quill from a live goose, and clipping the wings of birds in captivity.

Bal tashchis is much more lenient in this respect. It forbids destructive activity. Serving man's needs, is, by definition, productive. There is no need to override the *mitzvah*. It simply does not apply when there is a human need. Furthermore, the ethical logic for *bal tashchis* is canceled by the ethical priority to provide human needs. [See refs to section A, Beraishis 1:26-30. 9:2. Tehilim 8:7-9. Kidushin 82a Shabbos 106b Chagiga 14b, Poskim. Tur Sh Ar YD 24:8 117:Taz 4. EH 5:14, commentaries.]

C) Hunting and fishing

Human needs include necessities that cannot be provided without harming or killing animals. Most poskim maintain that they also include pleasure needs. Thus, caging pets, providing their food, medical experiments, even for cosmetics, and the like, are cited as examples of a human need. Nonetheless, an ethical person might correctly feel that if something is unnecessary, he will refrain from benefiting from it.

Hunting a wild animal for sport, with no intent to trade the hide, is also a form of *bal tashchis*. Some poskim maintain that the enjoyment gained from the activity justifies it, in strict *halachic* terms. However, it is still considered somewhat un-Jewish to delight in such sport. Others cite a Talmudic prohibition against joining in a hunt using dogs as cruel. Some distinguish between the types of hunting. One may not engage in hunting that involves cruelty. Hunting for food is permissible. The animals or birds trapped alive must be kosher, and then slaughtered properly. The traps must not cause injuries, that might render the animal a *traifah*. Thus, inevitably, the animal will be trapped humanely.

Fishing can be done with nets, hooks, or traps that might have live bait in them, usually in the form of small fish held in place. It is natural for many species to eat live creatures. In the case of larger predators, including canines, felines and birds of prey, the

same species might behave differently with different types of prey. The Talmud discusses an almost severed limb of an animal, lying in a window to reduce its space. The case involves an animal tied up so it won't leave. The Talmud says one would not sever the limb to feed to dogs, due to *tzaar baalei chaim*. Some discuss why one would not feed the entire animal to dogs. There is little indication whether the animal would be killed first.

The poskim debate whether *tzaar baalei chaim* applies to killing an animal humanely, or is there no issue of pain since it is dying anyhow. Some cite the *mitzvah* of humane *shechitah* as proof that one should avoid cruelty. After *shechita*, while the animal is still flailing, one may cut off a limb, but may not eat it. Thus, it seems that to feed a larger animal alive to a predator would be considered *tzaar baalei chaim*, at least according to some. However, feeding the pet predator might qualify as a human need. Based, in part, on the hunting debate, it would appear that keeping such pets is un-Jewish. In addition, if the pet is dangerous, one is in violation of other *mitzvos* to prevent danger in one's home.

Fishing using live bait is really not forbidden at all. One may sever the limbs of live fish or insects. They are excluded from the prohibition. One may eat the limbs of permitted species. One may eat them whole alive, were it not for the prohibition of *bal teshaktzu*, forbidding revolting activities. Evidently, there is no issue of causing pain. Otherwise, one would be required to kill them first. In fact, there seems to be a consensus to permit *tzaar baalei chaim* on fish and insects. In one view, even larger animals that do not provide service to mankind are excluded from the prohibition. This is based on the concept that it is not purely based on logic. One requires a source to forbid it, and there is no source to forbid it on wild animals. As for the revulsion with hunting with dogs, who maul the animals alive, this view might consider that cruelty, but not a violation. Finding sport in cruelty is also wrong. Indeed, people on an elevated spiritual level should avoid doing all of these things. However, to catch animals, or to provide for their needs, it seems to be permitted. [See Shabbos 90b Baba Kama 15b 46a 54b 80b Baba Basra 20a Avoda Zara 11a 18b Chulin 30b, Poskim. Or Zarua Alfa Baisa, Tzadi. Trumas Hadeshen 105. Tur Sh Ar YD 13:1 27 28:18, commentaries. Shaylas Yabetz 110. Noda Biyehuda YDII:10. Shemesh Tzedaka YD:18. etc.]

In conclusion, one may fish with live bait, and feed live animals to guard dogs if necessary. However, if possible he should kill the animals first.

On the Parsha *slaughter of your cattle and sheep .. but eat them as you eat the deer and the antelope .. [12:21-22]* Why does the Torah compare eating meat of domestic animals to eating wild game? [See *Rashi*] Eating meat is an indulgence, as the Torah states. Therefore, one should not eat it all the time, since it is readily available. Rather, one should eat it the way he eats deer and antelope, after all the hard and treacherous work of hunting and trapping it. [*Kli Yakar*] Perhaps it also alludes to the way one should hunt wild game. It should be done as humanely as slaughtering one's own domestic livestock. Indeed, when slaughtering wild game there is the additional *mitzvah* to cover its blood, to increase the refinement of the act.

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whose *yahrzeit* is on the 27nd of Av. ☞

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