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Cutting Down a Fruit Tree

Parshas Shoftim 5782

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## Issur to Cut Down a Fruit Tree

1. There is an issur to cut down a food-producing tree. In some circumstances, there is no issur, but it entails sakanah according to the Gemara. Additionally, some are careful about the sakanah in accordance with R' Yehuda HaChassid's tzava'ah. We will attempt to introduce some rules to determine when it is assur and when it is mutar, as well as when there is a sakanah and when there is not even an aspect of sakanah.

### Issur D'oraisa

2. There is an issur d'oraisa to cut down a food-producing tree, as the posuk says (פ' שופטים כ', י"ט) "Do not destroy its trees ... for you may eat from them, but you shall not cut them down. For is a tree in the field a man ...? Only a tree which you know is not a food-producing tree may you destroy." One who cuts down a food-producing tree violates this lav (רמב"ם פ"ו מלכים) "כי ממנו תאכל" (ה"ח) and the aseil of "כי ממנו תאכל" (ספרי סוף פ' שופטים).
3. Although the posuk discusses not cutting down a fruit tree when conquering a city in wartime, that is just a common application of the issur (רמב"ם פ"ו מלכים, קריית ספר); the issur applies in all places and times (חינוך תקכ"ט).

### Sakanah

4. **Based on the Gemara.** The Gemara in Bava Kama (דף צ"א ע"ב) says that R' Chanina's son Shivchas died because he cut down a fig tree while it still bore figs (שיטמ"ק). Some understand this as a punishment for Shivchas, who was a tzaddik, as Hashem is extremely exacting toward tzaddikim. However, this is not a basis to say that there is a sakanah for everyone (ש"ת מקור ברוך סי' ה' הובא בשו"ת חיים שאל סי' כ"ג), (ש"ת שאילת יעב"ץ סי' ע"ו, שו"ת עצי חיים יו"ד סי' י"ב).
5. However, others understand this as a real Gemara source that cutting down a fruit tree entails sakanah (הרב הל' שמירת הגוף והנפש, חכ"א כלל ס"ח סק"ז).
6. The sakanah is based on the posuk "כי האדם עץ השדה" (פ'). If one cuts down a tree, there is, ch"v, a sakanah that he will also be cut down. The earlier part of the posuk can be interpreted to mean "Do not destroy ... and he will not be cut down" (פ' רבינו דוד פארדו על הספרי שם, פ' (הש"ך עה"ת בשם הרקאנטי, שו"ת צבי לצדיק סי' ט"ו).
7. **Based on Tzava'as R' Yehuda HaChassid.** It says in R' Yehuda HaChassid's tzava'ah: "Do not cut down a fruit-producing tree." The Acharonim wonder about this: it is an issur d'oraisa – what is he adding to an explicit mitzvah in the Torah? They prove that his intent was that even in circumstances where it is halachically mutar, as will be explained, one should still not cut down a fruit tree due to sakanah. This is like many other things in his tzava'ah which are mutar but he instructs to avoid due to sakanah (חיים שאל סוף פ' כ"ג, ס' מילי דחסידותא, פ' שבעים תמרים).
8. Since cutting down a fruit tree has an aspect of sakanah, rather than rushing to be meikel, the minhag is to be very machmir, as sakanah is more severe than issur. When a shailah arises, one should ask a posek and receive a psak before doing anything.

## Types of Trees Under the Issur

### All Food-Producing Trees

9. All food-producing trees are included in the lav of "לא תשחית את ..." עצה." This includes olive trees, grapevines, fig trees, apple trees, pear trees, etc. Even trees shorter than three tefachim whose fruits are Ha'adamah are included (נשמת אדם ה' ברכות כלל נ"א אות ז'), (מ"ב סי' ר"ג סק"ג, ברכת השם סי' א' אות ו' Similarly, one would get malkus for cutting down a tree whose fruits are Shehakol due to their

insignificance, e.g., crab apples. This is because it is still called a "food-producing tree" (שו"ת אבני צדק יו"ד סי' מ"ה).

10. **Tea leaves, herbs, etc.** Only a tree whose fruits are used is included in the issur. Trees whose leaves are used for their flavors but not actually eaten, e.g., tea plants or the like (שו"ת פני מבין סי' ק), as well as trees that produce medicinal herbs are not subject to the issur since they are not considered food-producing trees (שו"ת רדב"ז ח"א" (סי' מ"ד וסי' תצ"ט).

### Tree Planted on a Roof or in a House

11. **Roof.** When it comes to orlah, if a tree was planted on a roof filled with dirt, in a pot [even without a hole at the bottom], or on a balcony under the open sky, e.g., in a dirt-filled trough attached to the ground, it is considered to be planted in the ground (תוספתא) (ערלה מ"ג, שו"ת יו"ד סי' רצ"ב סכ"ו (ברכת השם סי' א' אות ו'). Accordingly, one would also be liable for destroying it.
12. **House.** As far as a tree in a house, if it was planted in a pot with a hole at the bottom or in a dirt-filled trough on the floor of the house, it would seem that it is assur to destroy it. However, the poskim are unsure whether the same is true if it is in a pot without a hole (הגרמ"י פארהאנד בספרו הנפלא ברכת השם שם).

### Using the Wood

13. One may not cut down a fruit tree even if he wants to use the wood if the value of the wood is not more than that of the fruit (see below, 21). This is certainly true if he has the option of cutting down a non-fruit-bearing tree for wood (תוס' ב"ק שם ד"ה אלא).

### Instructing a Non-Jew

14. Also, one may not tell a non-Jew to cut down a food-producing tree, as the halachah is that amirah l'akum is assur for all issurim in the Torah (רמ"א חר"מ סי' של"ח ס"ו, ב"י אהע"ז סי' ה'). If one pays a non-Jew to do it, some say it is assur d'oraisa since an employee's actions are attributed to his employer (אפרים שלוחין פ"יא).

### Cutting a Branch

15. **The whole tree will dry up.** If severing a branch or multiple branches of a fruit tree may cause the whole tree to dry up, one obviously violates the issur of destroying a tree if he does so, and it is also a sakanah (שו"ת באר חיים מרדכי ח"ב סי' י"ז, שו"ת יד אליהו יו"ד מ"ו).
16. **Tree won't dry up.** The poskim argue about cutting down a branch or multiple branches in a destructive way. Some say this also incurs malkus, as there is no difference between cutting down a whole tree or part of a tree (שו"ת מהר"י באסאן סי' ק"א, באר שבע תמיד כ"ט ע"ב, שו"ת) חצי שיעור (בית יצחק יו"ד קמ"ב). Others say it is assur due to the rule of the ones that were cut off even though there is no malkus (שו"ת בית התורה). Yet others say it is assur d'rabanan just like destroying other items (see Issue 127, par. 3 regarding חסד לאברהם תניא יו"ד סי' ל"ה) (בל תשחית).
17. Others say the issur is only to cut down a whole tree, but it is mutar l'chatchila to cut off part of a tree (שו"ת בית משל"מ פ"ו מאיסורי מבח, שו"ת בית (יעקב סי' ק"מ, שו"ת פני מבין יו"ד סי' צ"ט, ערוה"ש יו"ד סי' קט"ז ס"ג). Some stipulate that this is only if new branches will grow in place of the ones that were cut off (שו"ת די יצחק ח"ב סי' רנ"ט).
18. **Part of a branch.** Some hold that it is only assur to cut off an entire branch, but if one leaves over part of the branch by its base, there is no issur (הגרמ"מ שטרנבוך, תשובות והנהגות ח"ה סי' שצ"ב).
19. **For the tree's benefit.** Obviously, there is no issur or sakanah involved in cutting a young tree's branches to enable it to grow more branches and widen its canopy, pruning a grapevine each year to help it grow, or similar actions. This does not destroy the tree; on the contrary, it improves the tree (שו"ת חקרי לב יו"ד מה"ת סי' (י"א הובא בדרכ"ת יו"ד סי' קט"ז סקנ"א).

