

# ליקוטי ופסקי הלכות "חוקי חיים"

ותלמוד  
"החוקי חיים"  
לעשות רצונך  
בלבב שלם



שע"י "חדר הוראה" שכונת מנחת יצחק פעיה"ק ירושלם תובב"א - בראשות הרב חיים אהרן בלייער שליט"א

Halochos compiled by HaRav Chaim Bleier – Translated from the Hebrew edition by R' Zerachya Shicker

# Cutting down fruit trees

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# ליקוטי ופסקי הלכות "חוקי חיים"

ותלמוד  
"תקופת התנאים"  
לעשות רצונך  
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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 (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" 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" (פי' רבינו דוד פארדו על הספרי שם, פי' (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, פי' 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 ה'). 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 (מחנה) (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) (בית יצחק יו"ד קמ"ב חצי שיעור). Others say it is assur due to the rule of חצי שיעור (שו"ת בית יצחק שם) no malkus even though there is no malkus. Yet others say it is assur d'rabanan just like destroying other items (see Issue 127, par. 3 regarding בל תשחית ל"ה) (שו"ת חסד לאברהם תניני יו"ד סי' ל"ה).
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"ז 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).

## Permissible Cases of Cutting Down a Fruit Tree

### Greater Value

20. The Torah only forbade cutting down a fruit tree in a destructive, wasteful manner. If, however, it is for a specific purpose which is much more valuable than the fruits are currently worth (ברכת השם) גמל ב"ק דף צ"א ע"ב, (רמב"ם) (סי' א' אות ל"ט), one may cut down the tree (פ"ו מלכים). See below (33) regarding sakanah.
21. **Needs the wood.** Thus, if a tree's wood is more valuable than its fruits, e.g., it can be used in construction (ש"ת ערוגות הבשם) (רש"י שם, ש"ת ערוגות הבשם) (רמב"ם) (סי' א' אות ל"ט), sold, used as fuel, or used for other purposes, one may cut down the tree (ה"ה) (רמב"ם, ס' ברכת השם סי' א' מקה"ב אות פ"ה).
22. **Current need.** If the fruits are technically worth more than the wood, but at the moment, one has a great need for the wood and it is more valuable to him for this purpose, e.g., he is cold and needs wood to make a fire for warmth and has no other wood at the moment, the poskim argue whether the "greater value" heter applies. Some say the wood is considered to have greater value and he can cut down the tree (רמב"ם) (רמב"ם) (פ"ו מלכים). Others say it is assur to cut it down since the wood is only worth more to him at the present moment, whereas for this heter, the wood must *always* be worth more to him (רמב"ם פ"ו מלכים, כס"מ) (ולח"מ שם ה"ט, ש"ת בית יצחק י"ד סי' קמ"ב אות ד').

### Damaging Other Trees

24. Sometimes, a tree's presence weakens the earth, thereby harming other, better trees (רמב"ם פ"ו מלכים ה"ח); a tree's shade ruins plants underneath it (ש"ת אבני צדק סי' מ"ב); or many trees crowded together cause too much of a burden on the earth, and the trees are not properly producing fruit (ש"ת מהרש"ם ח"ז סי' קע"ח). In these cases, one may cut down the harmful tree(s). If other trees are being harmed, why should these trees be more important (ש"ת דבר ח"ב סי' נ"ו)?

### Damaging Other Things

25. Many poskim hold that even if a tree is harming something other than another tree, one may cut down the tree. Some examples: a tree's roots are damaging a house's foundation (ש"ת הרשב"א ח"ז סי' תק"י); one is irritated by the many flies a tree's presence is attracting (ש"ת חקרי לב מה"ת י"ד סי' י"א); or a tree is preventing light from entering a window. If one is able to cut only the branches in the way, that is preferable (ש"ת חות יאיר סי' קצ"ה).

### Damaging Kevarim

26. Sometimes, there is a fruit tree near a kever and its roots are entering the kever, causing damage to the gravestone and the actual kever. The poskim offer some reasons to allow cutting away the roots or the tree to save the kever: it is a mitzvah purpose (below, 29); it might be assur to benefit from the fruits since they grew by a kever (רמ"א י"ד סי' שס"ח סי"א), in which case there is no issur to destroy them (דעת משה דפוס חדש סי' ל"ז); and other reasons (ש"ת שבט הלוי ח"ב סי' ר"ח, ש"ת חוקי חיים ח"ב בכתב"י).

### Needs the Space

27. One may cut down a fruit tree if he needs the area to be clear (רא"ש) (פ' החובל סל ט"ו, רבינו ירוחם מיישרים ח"ב נתיב ל"ב) or to build a house there (ש"ת י"ד סי' קט"ז סי' כ"ה, ש"ת הרשב"א ח"ז סי' תק"י); if that is a great need that is more valuable than the tree to most people.
28. **Somewhat of a need.** Some poskim say that if one wants the extra space, e.g., for improved aesthetics or light or as a place to stroll, although it is not a true need, he may cut down the tree since many people would spend money on this extra benefit (ש"ת מהר"י באסן) (סי' ק"א, ש"ת חיים שאל סי' כ"ב ד"ה אמנם) (ש"ת חוקי חיים ח"ב סי' קצ"ה, ש"ת בית יצחק י"ד סי' קמ"ב).

### Mitzvah Purpose

29. One may cut down a tree for a mitzvah purpose if there is no other way to fulfill the mitzvah. If there is a heter for greater value, all the more so for a mitzvah, which is priceless. Some examples: to expand a shul (ש"ת שאילת יעב"ץ ח"א סי' ע"ו, גידולי טהרה סי' כ"ט הובא) (בדרכ"ת סי' קט"ז סקנ"ד) or build a mikvah, which is also a public need (ש"ת דברי חיים ח"ב סי' נ"ו).
30. **Branches over a sukkah.** If a tree's branches are making a sukkah posul, the poskim allow cutting them to fulfill the mitzvah of sukkah (ש"ת ויעתר יצחק סי' ט"ד), particularly if he is only cutting off some branches, which is subject to a machlokes whether it is part of the issur in the first place (above, 16-17).

### Old Tree

31. One may cut down an old fruit tree that does not produce a lot and is not worth the effort to maintain it (רמב"ם פ"ו מלכים ה"ט). It is no longer called a fruit tree as it does not grow a proper amount of fruit. It has the status of a non-fruit-bearing tree (ברכת השם סי' א' מקה"ב אות קמ"ז).

32. **Amount.** Chazal determined what is considered a small enough amount that is not worth the effort: For an olive tree, less than a quarter kav of olives (ב"ק פ"א); for a date palm, less than a kav of dates per year more than the expenses (שיטמ"ק). One may not cut down a grapevine that produces any amount of grapes due to its importance (רא"ש שם). Regarding other trees, some say it depends on their importance (הג מהרש"ם שם בשם פיה"מ פ"ד שביעית, תפא"י שם) (הג מהרש"ם שם בשם פיה"מ פ"ד שביעית, תפא"י שם).

## When It Is Mutar, Is There a Sakanah?

### Halachically Mutar Cases

33. **More valuable.** Some poskim say that even when one has the "greater value" heter to cut down a tree (20), there is still a sakanah (ש"ת שאילת יעב"ץ סי' ע"ו, ש"ת מנחת אלעזר ח"ג סי' י"ג, ש"ת אמרי נועם ח"ב סי' ג, ט"ז י"ד סי' קט"ז סק"ו, ש"ת הרב, ש"ת) (ש"ת) (ש"ת) (ש"ת). However, most poskim hold that there is no sakanah according to the Gemara (ש"ת) (ש"ת) (ש"ת) (ש"ת). (חיים שאל סי' כ"ג, ש"ת השיב משה י"ד סי' ל"ז, אבני צדק י"ד סי' מ"ה).
34. **Damaging.** Some say that when a tree is damaging other things and one can halachically uproot it (25), there is also no sakanah since it is causing damage (ש"ת תשרות ש"י מה"ת סי' קס"ה, ש"ת זכר שמחה) (סי' כ"ג). This is especially so if it is damaging other trees (24) and cutting it down will save them (ברכת השם סי' א' מקה"ב אות ק). However, others hold there is a sakanah even if the tree is causing damage (שאילת יעב"ץ שם).
35. **Old tree.** Some say that if a tree is old and not producing fruit properly (above, 31), there is no sakanah in cutting it down even if there is a sakanah for other mutar cases (ש"ת) (ש"ת) (ש"ת) (ש"ת). Others say cutting it down still involves sakanah (ש"ת מהרי"א סי' כ"ה, יש"ש).

### Sakanah Based On R' Yehuda HaChassid

36. We cited various cases and opinions regarding sakanah according to the Gemara in mutar cases. But the poskim also discuss whether there is still a sakanah based on R' Yehuda HaChassid's tzava'ah. Some poskim hold that there is still a sakanah according to his tzava'ah even where it is technically mutar (ש"ת חיים שאל סוף סי' כ"ג), ש"ת חיים שאל סוף סי' כ"ג, ש"ת חיים שאל סוף סי' כ"ג). Thus, when allowing one to cut down a fruit tree, it is customary to combine other elements so that it is done in the best possible way.

### Cutting Down in the Best Possible Way

37. To allow one to cut down a fruit tree, poskim customarily stipulate many aspects of heter (ש"ת אבני צדק, מו"ר ברשת קנה בושם) as will be explained.
38. **Halachically mutar.** First of all, it must be a case where it is mutar to cut down or uproot the tree, e.g., that will have greater value, the tree is causing damage, it is old, or the like.
39. **Sell to a non-Jew.** Even when it is technically mutar, it is best to sell the tree to a non-Jew with a kinyan of money and a shtar and have the non-Jew cut it down (ש"ת אמני) (ש"ת) (ש"ת) (ש"ת). Although selling it to a non-Jew alone is just a trick and does not help (ש"ת נטע שורק י"ד סי' מ"ב ועוד), when there are also other considerations to allow it, the minhag is to be meikel (ש"ת בית יצחק י"ד ח"א קמ"ב).
40. **Uprooting the tree and replanting it.** Another mutar method when there are other factors to allow it is to have a non-Jew uproot the entire tree with its roots and some earth and replant it elsewhere (שאילת יעב"ץ שם) if experts think it will take root in its new location.
41. **Beis din of three.** Since some hold that there is a sakanah for the posek who allows cutting down a tree in addition to the one who cuts it down (ש"ת צבי תפארת י"ד סי' ו'), the minhag is to have a three-member beis din or three rabbanim permit it. This way, it is not an individual giving the heter but a beis din, and the zechus harabim will protect them (ש"ת מנחת אלעזר ח"ג סי' י"ג בשם הישמח משה, ש"ת אבני) (צדק סי' מ"ו, ש"ת דברי יואל י"ד סי' צ"ג, מו"ר ברשת קנה בושם ח"ג סי' נ')

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