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are reviewed by Horav Yisroel Belsky Shlita

Destroying a Fruit Tree

When one begins construction in an area which contains fruit trees the question arises is one allowed to cut them down or not. This is a very common issue when doing construction especially in the mountains where there are a lot of fruit trees. Many people are not aware of the *halachos* that pertain to this issue and hopefully after learning through the *halachos* in this issue one will be more knowledgeable in this area.

The Source / Reason

The *posukim* in *Parshas Shoftim*¹ tell us “when you lay siege to a city for many days do not destroy the fruit trees there by swinging an ax because from them you will eat. A tree which is not going to be a fruit tree you may destroy.”² The *Chinuch*³ says the reason for this *mitzvah* is to teach people to love and respect good things. This love will help ensure that they will keep away from bad, destructive things. The way of good people is to be happy

with the world and not to destroy even a mustard seed.

Danger

Besides being a *mitzvah* mentioned in the *Torah* not to destroy fruit trees, *Rav Yehuda Hachassid* mentions this *inyun* in his will as one of the items which can be a danger.⁴ The aspect of danger is also mentioned by many *poskim*.⁵ *Rav Chanina* blamed the untimely death of his son on his son’s having cut down a fig tree when it was still bearing fruits.⁶ The *Gemorah*⁷ says one who cuts fruit trees will not see a good sign all his life. The *poskim* grapple with the uncertainty if this is an *issur* or a danger.⁸ Some say that *Rav Yehuda Hachassid* added that even if in a certain situation it may be permitted to cut down a fruit tree (as will be discussed later in this issue) one should still not cut it down.⁹

¹ 20:19-20.

² Refer to Rambam Hilchos Melachim 6:8, Rosh Bava Kama 8:15, Taz 116:6, Be’er Heitiv 116:8, Chuchmas Adom 68:7, Kitzur Shulchan Aruch 33:11, Aruch Ha’shulchan 116:13, Kaf Ha’chaim 85. Some mention why this *din* is not brought in *Shulchan Aruch*. (Refer to Taz Y.D. 116:6, Shevus Yaakov 1:159, Minchas Elazar 3:13:page 9b).

³ Mitzvah 529.

⁴ Item number 45 on list.

⁵ Chuchmas Adom ibid, Kitzur Shulchan Aruch ibid, Aruch Ha’shulchan ibid, Kaf Ha’chaim ibid.

⁶ Mesechtas Bava Kamma 91b.

⁷ Mesechtas Pesachim 50b, see Maharsha. Refer to Shemiras Haguf V’hanefesh 250:footnote 1:page 623, Modanei Yom Tov 2:pages 27-28.

⁸ Refer to Madanei Yom Tov 2:3:pages 24-25.

⁹ Mekor Chesed 62. Refer to Shemiras Haguf V’hanefesh 250:footnote 1:page 622.

In Eretz Yisroel vs. Chutz L'aretz

Although some say this *issur* only applies in Eretz Yisroel,¹⁰ this is not the overwhelming opinion and one should not rely on it.¹¹

Need for the Place

There is a discussion in the *poskim* if one is allowed to cut down a fruit tree when one needs the space where the tree is located. Some say if one needs the place in order to build something there it is permitted,¹² but for an extension etc. which is not needed it is not allowed.¹³ Others are stringent in any case.¹⁴

If Permitted - Does Danger Exist?

There is a big discussion in the *poskim* if one is permitted according to the letter of the law to destroy a fruit tree does some level of danger still exist if one were to destroy the tree, or once it is permitted according to the letter of the law then no danger exists at all. The opinion of the *Yaavetz*¹⁵ and others¹⁶ is that even though a fruit tree may be permitted to be cut down in certain situations one is forbidden to do so because the danger still exists and this is the reason why the son of *Rav Chanina* died. However, the consensus of most *poskim* is not in accordance with the stringent view and *l'maseh* if it is permitted to cut down a fruit tree

one may do so without being concerned for any danger.¹⁷ Many still require a non-Jew to cut it down although the letter of the law says it is permitted.

Selling the Tree to a Non-Jew

Some say although one may be lenient and cut it down when it is permitted, one should sell the property containing the tree to a non-Jew who may cut it down.¹⁸ Before selling the property one should dry out the tree.¹⁹

Telling a non-Jew to cut the Tree

According to some *poskim* one may not tell a non-Jew to cut down the tree since the non-Jew is the agent of the *yid* it is considered as if the *yid* is cutting it down himself.²⁰ Others say one may tell a non-Jew to cut down the tree.²¹

Prohibited Tress

Only trees which are *halachically* considered trees are included in this *issur*. Accordingly a tree which produces nuts may be chopped down.²² According to the opinion of *Horav Dovid Feinstein Shlita* any tree whose fruit is not sold in stores may be destroyed.²³ According

¹⁷ Natei Surok Y.D. 42, Bais Shlomo Y.D. 1:191, Divrei Chaim Y.D. 57, Be'er Chaim Mordechai O.C. 2:17, Aruch Ha'shulchan 116:13, Yabea Omer Y.D. 5:12:3, Yechaveh Da'as 5:46, Shevet Ha'Levi 6:112:3, Modanei Yom Tov 2:pages 25-26.

¹⁸ Bais Shlomo *ibid*, Bais Yitzchok Y.D. 1:142, Be'er Chaim Mordechai O.C. 2:17, Yabea Omer Y.D. 5:12:5-7, Shevet Ha'Levi 5:95, Kinyan Torah 1:39, 5:91:2, Ohr Yisroel *ibid*.

¹⁹ Shevet Ha'Levi 6:112:4.

²⁰ Besaim Rosh 334, Be'er Moshe 5:137, see Shemiras Haguf V'hanefesh 250:6:footnote 7 in depth.

²¹ Ikrei Hadat Y.D. 14:8, Neta Serok Y.d. 42, Tov Tam V'das tlisa 2:8, Binyan Tzion 1:61, Maharsham 1:22, Hag'oes on the Sefer Chasidim 45, Bais Yitzchok *ibid*, Darchei Teshuva 116:51, Yechaveh Da'as 5:46, Teshuvos V'hanugos 2:729, Eitz Hasadeh 6:2:page 68. The Har Tzvi O.C. 2:102 says one should say he does not want the non-Jew to act as his messenger.

²² Hakesav V'hakabalah Devarim 20:20.

²³ His opinion is quoted in the Journal of Halacha and Contemporary Society 38:page 89.

¹⁰ Shem Aryeh Y.D. 27, see Darchei Teshuva Y.D. 116:51.

¹¹ Eitz Hasadeh 1:footnote 11.

¹² Rosh *ibid*, Taz *ibid*, Chuchmas Adom *ibid*, Kitzur Shulchan Aruch *ibid*, Aruch Ha'shulchan *ibid*, Darchei Teshuva 116:51, Heishiv Moshe Y.D. 37:page 19, Yabea Omer Y.D. 5:12, Ohr Yisroel 18:pages 58-64.

¹³ Kaf Ha'chaim 116:85, see Chavos Yuer 195. Refer to Mahari Beisan 101 (pages 69b-70b) who says cutting a fruit tree down is permitted for any purpose.

¹⁴ Bais Yaakov 140.

¹⁵ Sheilas Yaavetz 1:76, see Gilyon Maharsha Y.D. 116:6.

¹⁶ Chai Shaul 1:23, Minchas Elazar 3:13. The Divrei Yoel 1:92:9 says he has a *kabbalah* from his *Rebbe* that this is the *din*. See Darchei Chaim V'sholom 865.

to this opinion, acorn, crab apple, and wild berry trees may be destroyed since their fruit is

not commonly sold. Additionally a tree which is not capable of bearing fruits may be destroyed and is not included in this *issur*.²⁴

The *Gemorah*²⁵ says that any tree which produces a *kav* (around 1.9 liters) of dates is forbidden to be cut down. The *shiur* is less in regard to olives. The *Rambam*²⁶ says any tree whose produce is so minute that it is a bother to deal with may be destroyed.²⁷ According to some *poskim* a tree which bears fruits that contain many worms may be cut down because people may come to eat them.²⁸ A tree which is young and only in its first year of growth may not be cut down even if there are only a few fruits on the tree.²⁹ A tree whose fruits taste sour is also forbidden to be cut down.³⁰

For *Mitzvah* Purposes

One is permitted to cut down a fruit tree in order to do a *mitzvah* with the property.³¹ Accordingly, one may cut down a fruit tree

down in order to build a *mikvah*,³² *shul*³³ cemetery, etc.³⁴

Branches

According to the opinion of many *poskim* the *issur* is only to cut down the fruit tree itself and cutting branches of a fruit tree is permitted.³⁵

This is true even if the branches contain fruit. This is very common when one is cutting branches to place on top of his *succah*.³⁶

Many still require a non-Jew to cut it down although the letter of the law says it is permitted.

Ownerless Trees

It would seem that cutting fruit trees which do not have any owner should not be done.³⁷

If the Tree Causes Damage

A tree which causes damage may be destroyed. For example, one may destroy a fruit tree if it is darkening the light coming into one's house.³⁸ Others say it is better to cut down branches than to destroy the whole tree.³⁹ A fruit tree which is dangerous to walk under may be

²⁴ Kesef Mishnah Hilchos Malachim 6:9, Shulchan Aruch Harav Shemiras Haguf V'nefesh 16, Milei D'chadidusa 45, Hag'oes of the Maharsham on the Sefer Chasidim 45, Darchei Teshuva 116:51, Pri Hasadeh 3:168:1, Yechavh Da'as 5:46, Minchas Yitzchok 10:69, Teshuvos V'hanhugos 2:728, see Piskei Tosfas in Mesechtas Pesachim 132 who is stringent.

²⁵ Mesechtas Bava Kama 91b.

²⁶ Hilchos Melachim 6:9, see Eitz Hasadeh 2:2.

²⁷ Refer to Shulchan Aruch Harav ibid.

²⁸ Mekadshei Hashem 2:55:psges 186-198, Be'er Moshe 5:136:14.

²⁹ Eitz Hasadeh 2:3:footnote 13.

³⁰ Darchei Teshuva ibid.

³¹ Ikrei Hadat ibid, Milei D'chadidusa ibid, Sheilas Yaavetz ibid, Otzros Yerushalayim 158:pages 916-919, Be'er Moshe 5:133:5, Avnei Yushfei 1:140:1. Some say a non-Jew should do it even if it is for a *mitzvah* (Aveni Yushfei ibid).

³² Divrei Chaim Y.D. 2:57.

³³ Sheilas Yaavetz ibid, Teshuvos V'hanhugos 2:729.

³⁴ Be'er Moshe 5:136:14, Shevet Ha'Levi 2:208, 6:112:5.

³⁵ Aruch Ha'shulchan 13, Darchei Teshuva 116:51, Be'er Chaim Mordechai 2:17, Har Tzvi O.C. 2:101, Kinyan Torah 3:8, Shraga Hameir 3:44:3, 6:42:2, Teshuvos V'hanhugos 2:729, Shemiras Haguf V'hanefesh 250:8:footnote 9, see Pri Hasadeh 1:27 who is stringent. Refer to Be'er Moshe 5:136:10, 16.

³⁶ When one cuts branches off a tree for *sechach* he should be careful not to cut it from city owned trees since it is stealing. (Yechaveh Da'as 5:46).

³⁷ Shulchan Aruch Harav ibid 15, Nodeh B'Yehuda Y.D. 2:10, Har Tzvi O.C. 2:102, Eitz Hasadeh Y.D. 164.

³⁸ Shulchan Aruch Harav ibid, Aruch Ha'shulchan 116:13, Bais Yitzchok Y.D. 1:142, Otzros Yerushalayim 157:pages 900-902, Teshuvos V'hanhugos 2:729, Eitz Hasadeh 3:6. See Divrei Yoel 1:92:9 who is stringent.

³⁹ Chavos Yuer 195.

destroyed.⁴⁰ In a situation where a fruit tree causes flies it is better to sell the tree to a non-Jew who may cut it down (see above).⁴¹ A fruit tree which was planted to serve as a fence (and not to eat) may be cut down.⁴²

A Tree Which Produces Fruits Twice a Year

According to the writings of *Rav Yehuda Hachassid* a tree which produces fruits twice a year must be destroyed.⁴³

Please note since there is danger involved one should consult his Rav before cutting down a fruit tree.

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⁴⁰ Divrei Shalom (piskei halachos) 4:117, see 3:201.

⁴¹ Be'er Moshe 5:135:13-15. However, if by cutting the branches the flies would leave then one should do that, rather than cutting down the entire tree. (Ibid). Refer to Eitz Hasadeh 3:9.

⁴² Eitz Hasadeh 5:3.

⁴³ Item number 52 or 44 depending on the print, see Darchei Teshuva 116:51, Shemiras Haguf V'hanefesh 250:footnote 18 in depth, Eitz Hasadeh 5:6:footnote 16 in depth.