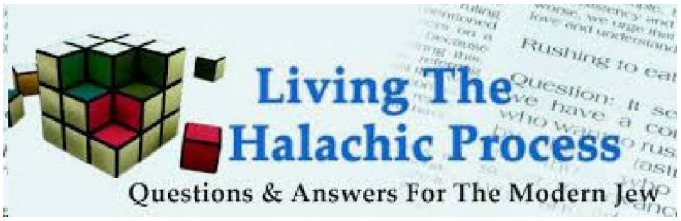

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Cutting down fruit trees

Question: May one cut down a fruit tree that is more bother than it is of value?

Answer: The Torah forbids cutting down fruit trees.[1] This is the most formal and strict application of the concept of the mitzva not to be destructive and wasteful, and it is the only application for which one can be punished with malkot (flogging).[2] Since the prohibition of cutting is not absolute but applies specifically to destructive activity,[3] the gemara and poskim cite examples of where it is permitted to cut down fruit trees.

The gemara[4] grants permission in the following cases:

1. The tree no longer produces a kav (around 1.5 liters) of fruit. (One may not take steps to cause a healthy tree to deteriorate to this point.[5])

2. The tree is worth more for wood than for fruit.[6]

3. One tree is damaging a more valuable tree in a significant way.[7]

4. The tree is damaging someone else's property.[8]

We must know how broadly we can apply these rules. We cannot properly deal with all the different possible cases or cite all of the opinions and will need to be satisfied with a discussion of some of the main issues.

The Rosh[9] derives from the gemara above[10] that one may cut down a tree if he needs to use its location.

The Taz[11] applies the Rosh's rule to building a home on the site. Most poskim understand that the Taz is referring even to expanding a home, at least when the addition is significant and objectively more

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1. *Devarim* 20:19.
2. *Rambam*, *Melachim* 6:8.
3. Ibid.
4. Primarily, *Bava Kama* 91b-92a.
5. *Rambam* ibid.
6. See *Rashi* ad loc.
7. See *Tosafot* ad loc.
8. *Bava Batra* 26a.
9. *Bava Kama* 8:15.
10. *Bava Kama* ibid., specifically in regard to case #3
11. *Yoreh Deah* 116:6.

valuable than the tree.[12] The gemara tells of the son of an Amora who died because he cut down a fruit tree prematurely. R. Yehuda HaChasid also warned about the consequences of violating this mitzva. Therefore, because of the potential severity of the matter, some prefer that the work be done by a non-Jew[13] or that an effort be made to uproot the tree with earth and to replant it.[14]

Questions sometimes arise in regard to cutting off branches. The gemara[15] forbids using wood from fruit trees to burn on the altar, but for a different reason. The Mishneh LaMelech[16] says that our prohibition doesn't apply in that case because he is only cutting branches and leaving the tree. The Be'er Sheva[17] says it could have been permitted in order to fulfill a mitzva (as it is, therefore, not in a destructive context). According to both explanations, it would be permitted to cut branches to use as s'chach.[18] One should keep in mind here that pruning is healthful for trees,[19] but, of course, not all cutting is healthful pruning.

Many practical cases combine a variety of factors (lenient or strict) and should be considered by a rav on an individual basis.

12. See *Chayim Sha'al* I, 22; *Yabia Omer* V, *Yoreh Deah* 12. Note that non-Jews are not commanded on the matter and should not be subject to negative consequences.
13. Ibid.
14. *Chatam Sofer*, *Yoreh Deah* 102.
15. *Tamid* 29b.
16. *Issurei Mizbei'ach* 7:3.
17. Cited ibid.
18. *Yechaveh Da'at* V, 46.
19. *Har Tzvi*, *Orach Chayim* 101.