

Cut Off Date

Dayan Yehoshua Grunwald

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Q There is a date tree in my backyard, but I would prefer to use the space it occupies to enlarge my sukkah. May I cut it down?

A The Gemara (Bava Basra 26, Sukkah 50b) says it is forbidden to cut down a fruit tree that bears at least one *kav* of fruit annually, and a person that does so evokes great *sakanah*. The Rosh (ibid.) writes that if one needs the tree's place, it is permitted. Based on the Rosh, the Taz (Y.D. 116:6) permits cutting down a fruit tree when one needs its space for the construction of a house.



The Sh'eilas Ya'avetz, however, says that although there is no prohibition when one needs the space, the danger still applies, so removing the tree is ill advised. But many *Acharonim* write that there is no *sakanah* (Shu"t Chasam Sofer Y.D. 102, Chaim Sha'al 1:22-23, Binyan Tzion 61). The Divrei Chaim (2:57) writes that when it is clear that others, too, would benefit more from the destruction of the tree than from its preservation, there is no danger, but if that is true only for the owner himself, it is dangerous. In a similar vein, some *poskim* rule that the leniency for construction is limited to a permanent structure—which is of greater utility than a tree—but not for the more limited benefit of a temporary structure (like a sukkah) or extra space (Kovetz Halachos, Sukkah, p. 29).

Some *Acharonim* permit fruit tree removal for the purpose of a mitzvah, and they point to Gemaros that discuss using the

wood of fruit trees for a sukkah and for the *mizbeiach* (Panim Yafos on Devarim 20:19 and Sh'eilas Ya'avetz 1:76). And some say that in the case of a mitzvah one needn't worry about the *sakanah*, as the mitzvah affords protection (Darchei Teshuvah 116:51), but many disagree. It emerges that according to many *Acharonim*, one shouldn't cut down a fruit tree to build a sukkah.

A solution is to sell the land with the tree to a non-Jew with an agreement that if the land is cleared, you will buy it back (Maishiv Bahalacha Y.D. 26 and Kovetz Halachos, Sukkah, p. 30). Consult a competent halachic authority for guidance on exactly how to effect the *kinyan*.