



Ein Mevatlin Issur Lechatchila in an Orchard

As we discussed in the previous issue, one is prohibited from gaining benefit from the fruit of a tree in the first three years of its planting. This prohibition is referred to as *orlah*. We have also explained that if *orlah* produce is mixed with other *chulin* (regular produce) of the same type, then a ratio of two-hundred *chulin* to the one-part *orlah* is required in order to annul and disregard the *orlah*. If there is less *chulin*, then the entire mixture is prohibited.

The *Mishnah* (1:7) discusses a case where one planted a tree of *orlah* amongst other trees but is unaware of its location. The *Mishnah* rules that one is not allowed to pick any fruit in the orchard. If however one does harvest the fruit, then provided that there is a two-hundred to one ratio (or more) then the mixture is permitted.

The *Tifferet Yisrael* explains that prior to harvesting the fruit, since they are still attached to the ground, they are considered *kavuah* – each item in our “mixture” has a fixed location. Consequently, the laws of *bitul* (annulment) do not apply. In other words, while the fruit is still attached to the trees, ratios are irrelevant and all the fruit is prohibited. The *Chachamim* however prohibit harvesting the fruit as it would be tantamount to deliberately causing the nullification of the prohibited component – *mevatlin issur lechatchila* – which one is not allowed to do.

R' Yossi however argues that one can even intentionally harvest the fruit even though it would cause the *orlah* to be *batel* (nullified). Why?

That *Gemara* explains that this mistake is different from normal accidental mixtures. Normally one would be very careful when planting trees in his orchard to mark out which one is *orlah*, as he runs the risk of causing the entire orchard to be *assur*. Since this case is so rare, *R'*

Yossi maintained that there was no reason to make a *gezeira*.

The *Tosfot R' Akiva Eiger* notes however that the *Gemara* (*Gittin* 54b) however has a slightly different version. The *Gemara* writes that, “*R' Yossi* says, [regarding] one that harvested the fruit deliberately [the *orlah*] would be annulled in two-hundred parts to one”. The difference between the version in our *Mishnah* and the one in the *Gemara* is that while the *Gemara* discusses how to deal with one that deliberately harvested the fruit, it does not permit the practice in general. He understands that this is indeed *Rashi's* understanding of *R' Yossi's* position.

According to our version of the *Mishnah* however, *R' Yossi* simply permits the practice. Furthermore the *Rambam* (*Maachalot Assurot* 15:25) rules that one is allowed to intentional harvest the fruit from this mixed orchard. How do we understand this position in the face of *ein mevatlin issur lechatchila*?

The *Chazon Ish* explains that according to this reading, *orlah* is already *batel* even prior to the fruit being picked. That is because on a biblical level it is annulled if it is in a minority whether it is attached to the ground or harvested. The position of *Chachamim* however is that \ a mixture of planted products is far more negligent, resulting more for carelessness or forgetfulness rather than an accident. Consequently, they instituted a decree that a mixture under these circumstance is *assur*.

Based on this understanding, it is not an issue of *ein mevatlin issur lechatchia* since according to the *R' Yossi* it is already *batel*. The *Chazon Ish* continues that according to *R' Yossi* one would not need to harvest the entire orchard to permit the mixture. Each fruit picked is already permitted as the *issur* was already *batel*.

Yisrael Bankier

Revision Questions

ערלה א' ב' – ב' ג' :

- Were trees that were planted in Israel after *Bnei Yisrael* entered the land, yet prior to the conquest, obligated in *orlah*? (א' : ב')
- Explain the debate regarding whether a tree that is planted for the needs of the public is obligated in *orlah*? (א' : ב')
- Which of the following trees is obligated in *orlah*: (א' : ב')
 - A tree planted in the public domain?
 - A tree planted by a *nochri*?
 - A tree planted on a boat?
 - A tree that grew without any human assistance?
- When is an uprooted tree not obligated in *orlah*? (Include 2 cases). (א' ג' ד' : ע')
- Explain what a *breicha* is? (א' ה' : ע')
- How does one count the years of *orlah* for a *breicha*? (א' ה' : ע')
- What is the *orlah* status of an uprooted tree whose *breicha* is still attached? (א' ה' : ע')
- When does fruit on a *breicha* detached from its parent tree become *assur*? (א' ה' : ע')
- What can one do if shoots of *orlah* and *kil'ei kerem* get mixed up with ordinary shoots? (א' ו' : ע')
- Which of the following laws apply to dry branches of a vine: (א' ז' : ע')
 - *Orlah*?
 - *Reva'i*?
 - *Nazir*?
 - *Asheira*?
- Which of the above four laws applies to grape-kernels (*chartzanim*)? (א' ח' : ע')
- According to *R' Yosi* can one plant a shoot/branch of an *orlah* tree? (א' ט' : ע')
- What things become annulled in one part to 100? (א' י' : ע')
- What things become annulled in one part to 200? (א' י"א : ע')
- Can *orlah* and *kil'ei kerem* combine to prohibit a mixture containing *chulin*? (ב' : ע')
- In a mixture, how can *trumah* combine with *chulin* to annulled *orlah*? (ב' : ע')
- In a mixture, how can *orlah* combine with *chulin* to annulled *kilayim*? (ב' ג' : ע')
- What type of mixture containing *chulin* and *orlah* is never absolved irrespective of the ratio of *chulin* to *orlah*? (ב' ד' : ע')
- What did *Dostai* testify that *Shammai* held? (ב' ה' : ע')
- Last week we learnt that if a forbidden product adds a distinct flavour when mixed with an ordinary product it prohibits the entire mixture. When is the rule applied only in a stringent manner? (ב' ו' : ע')

Melbourne, Australia

Sunday -Thursday
10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Friday & Shabbat
10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Efrat, Israel
Shiur in English

Sunday -Thursday
Rabbi Mordechai Scharf
9:00am
Kollel Magen Avraham
Reemon Neighbourhood

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
22 January כ"ד טבת	23 January כ"ה טבת	24 January כ"ו טבת	25 January כ"ז טבת	26 January כ"ח טבת	27 January כ"ט טבת	28 January א' שבט
Orlah 2:7-8	Orlah 2:9-10	Orlah 2:11-12	Orlah 2:13-14	Orlah 2:15-16	Orlah 2:17-3:1	Orlah 3:2-3



