

HALOCHOSCOPE

This week's question:

What is the *halachic* status of the papaya fruit?

The issues:

A) Fruits and vegetables in *halacha*

B) The definitions of a tree or ground plant in *halacha*

C) Papaya

A) *Fruits and vegetables*

The best known difference between fruits and vegetables is their *brochos*. On fruits of a tree one recites *borei peri haeitz*. On fruits of the ground, leafy greens and root vegetables, one recites *borei peri haadama*. The after *brocha* on fruits of the seven species is *al hapairos*. If one eats other tree fruits with them, he need not recite *borei nefashos* separately. If he eats ground fruits, he must recite *borei nefashos* as well.

The *halachic* growing cycle is seven years. The seventh is *shvi'is*, or *shemita*, during which there should be no agricultural activity. The produce is considered ownerless, and is not tithed. All other years are subject to *terumah gedolah*, given to a *Kohain*, and *maaser*, the tithe given to a *Levi*. There is a second tithe. In the first, second, fourth and fifth years this is taken to be eaten in *Yerushalayim*, or its sanctity is transferred to money spent on food in *Yerushalayim*. In the third and sixth years the second tithe is given to the poor. The 'year' has a cutoff to determine that year's tithe. The cutoff between years is different for different crops, based on their growth and development patterns and on the agricultural practices in growing them. Two differences are considered: the time of year and the stage of development. Tree-fruits' cutoff is in *Shevat*. The stage of their growth is when the fruit blooms on the tree. This is actually the earliest point it is a recognizable fruit. Ground fruits' cutoff is *Rosh Hashanah*, and the fruit must be picked by then.

Shvi'is fruit has sanctity. The fruit is considered *shvi'is* fruit based on the same rules as for tithing, according to most poskim. Even according to those who make all cutoff dates *Rosh Hashanah*, the development stage cutoff is the same as for tithing. Before the onset of *Shvi'is*, it is also forbidden to cultivate the land as an extension of *Shvi'is*. The laws of when this is forbidden depend on whether it is a tree or not.

The Torah forbids various forms of *kilayim*, cross-breeding plants and animals. Aside from actually cross-breeding, growing plants in proximity to each other or working animals together is also forbidden. Not all plants are forbidden in proximity. One form is *kilai hakerem*, mixed species in a vineyard. This *mitzvah* forbids growing crops in a vineyard. The prohibition does not forbid growing tree crops. Thus, if papaya were to be considered a tree fruit, it could be planted in close proximity to grapes. If it is a ground crop, it is forbidden, at least Rabbinically.

For the first three years of its growth the fruit of a tree is *orlah*, forbidden to benefit

from. In the fourth year there is a second Scriptural *mitzvah* of *revai*. The fruit is treated like *maaser sheini*, for all practical purposes. This only applies to tree fruits.

It is Scripturally forbidden to cut down a healthy fruit bearing tree. One may not cause its destruction directly without cutting it down, such as starving it of its water supply. The Talmud says that one who does so puts himself in danger. This does not apply with the same severity to ground fruit bearing plants. Many are of the opinion that it is still forbidden Scripturally to destroy anything, and others maintain that it is forbidden Rabbinically. However, the punishment of lashes only applies to what is expressed openly in the Scriptures: fruit-bearing trees. Therefore, many more leniencies could apply if the plant in question is not considered a tree. [See refs in the next section.]

B) Trees and plants

The Talmud defines trees in various different contexts. In addition, the later poskim have added definitions, based on various *halachic* applications. First and foremost is the definition regarding the *brocha*, *borei peri ha'eitz*. Many poskim maintain that this definition is used for all other applications, unless stated otherwise. The Talmud also discusses a definition regarding *kilayim*. There is also discussion regarding tithing.

The Talmud considers tree fruit to be nourished by both the tree and the ground. Therefore, while its *brocha* is *ha'eitz*, one who recites *haadamah* has fulfilled his obligation. Conversely, one who recites *ha'eitz* on a ground fruit does not fulfill his obligation! The question is: why would anyone think otherwise!! To answer this, the Talmud cites an opinion that the wheat plant is called a tree. Nonetheless, one may not recite *ha'eitz*. It is not enough to be called a tree. There must also be *halachic* characteristics of a tree.

In the common language definition, a tree is a plant with a woody trunk that has branches and does not die at the end of the season. The *halachic* definition is not as simple. The Talmud says that after one removes the fruit the *gavza* remains, and it can produce fruit again. This *gavza* is the subject of much debate. One commentary says it is the branch. According to this view, the tree must have branches. Some trees produce fruit directly from their trunks. Some trees have no real branches, such as the palm that has *kapos*, something of a cross between a leaf and a branch. Another view maintains that the point is that the plant does not die from year to year, or that some of the wood remains. The slight difference would be whether certain berries are *ha'eitz*. Some of them do not leave any wood at the end of the season, but their roots remain to produce the following year. A variation of this view adds that if one needs to sow it each year it is not considered a tree. The need for this definition shows that there are plants that have external characteristics of trees, but are considered ground fruits. Another definition is that any plant that produces leaves directly from its *ikar* is not a tree. *Ikar* can mean the trunk or the root, depending on the context. The poskim debate what is meant here. Some vegetables have no real stem, but leaves rising directly from the roots. Others have a stem from which the leaves sprout, but no branches. Others interpret the *gavza* definition to be that the branches remain from year to year. The fruit, and usually the leaves, die and are shed, but branches remain. It is unclear whether this view requires branches for the definition.

It is important to note that the Yerushalmi maintains that certain plants are considered trees with regard to *kilayim* in a vineyard, yet the *brocha* on their fruit is *ha'adamah*. This refers to some very low shrubs that produce certain berries. In explaining the differ-

ence between the *halachos*, some say that for the *brocha*, the tree must have more prominence. Really, since the ground contributes to the growth of the fruit as well, the *brocha* on all fruit could be the same as that of ground fruit. However, since trees are more special, they carry a specialized *brocha*. Others maintain that it is also due to the additional nourishment that they get from the tree. This is determined by how the tree continues to produce after the fruit is picked.

This plant that grows very low, called *atad*, is also debated. Some maintain that it applies to any low growing plant. This raises problems with vines, that cannot grow high unless they are trained. However, since they are pruned and a substantial trunk is left behind, they are trees. *Atadim* might be pruned to within a hand-breadth of the ground, or they might be cut down to their roots and regrow from the root each year.

In discussing tithing, the Talmud gives a definition based on growth and agricultural patterns. Trees grow based on the water contained in their sap. Thus, once the rains have watered the plants, they are left alone. Vegetables are watered all the time, so that new growth after the rains is also counted. This is why vegetables are tithed according to when they are picked, while trees are tithed according to the blooming of their fruit at the end of the main rainy season. The *esrog* is debated. It is clearly a tree, yet it is watered all the time. Therefore, its tithing is determined differently. While this might have some bearing on how the papaya is tithed, it has little or no bearing on its other *halachic* status.

The later poskim suggest other signs of a tree. If we assume that non-trees need to be sown fresh each year, any plant that can be grown with a cutting is a tree. A variation of this is that the standard practice is to plant trees from cuttings. It is only considered practical to plant from seed if the plant will produce quickly. Accordingly, some say that if the plant produces in its first year, when planted from seed, it is not a tree, even if it produces again the next season. Another suggestion is that the fruit must be of the same or better quality the second season. If its quality deteriorates after the first year, though it has other external characteristics, it is not a tree. Some suggest that if the trunk is not solid wood, but a hollow cane, it is not considered a tree. This is based on observed characteristics of trees. Finally, a suggestion is made that any tree that does not bear fruit for more than three years must be considered a ground plant. It is impossible that there be a fruit that would be forbidden forever due to *orlah*.

The problems with the later suggestions are that the Talmud does not seem satisfied with appearances and language, but requires specific characteristics. In answer to these objections, the poskim suggest that some of the Talmudic passages can indeed be interpreted in accordance with these characteristics. Furthermore, certain plants seem to contradict the simple reading of the Talmud. [See Brochos 40a-b Tosefta Kilayim 3:13 Rosh Hashana 2a 10a 14a 15a, Poskim. Tur Sh Ar OC 202 203:1-3 Kaf Hachayim 2 13, YD 294:1 etc. Birkai Yosef 4, 296:1-2 15, commentaries. Shut Radvaz 966(531). Rav Pe'alim II:30. Chazon Ish, Orlah 12. Shevet Halevi YD: 165. Tzitz Eliezer II:15.]

C) Papaya

Papaya has the outward appearances of a tree, due to its height. However, it is grown from seed, starts producing in its first year, has a hollow trunk, produces its fruit directly from the trunk, and requires watering continuously. In addition, various strains have different characteristics. Most growers do not harvest the fruit after the third year, unless the

plant is specially good. The normal growth pattern is to produce for three years. After this is sometimes falls over, stops producing, dies, gets diseased, or is otherwise unproductive. However, in *Eretz Yisroel* it is common to grow them for five to six years.

The question of plants that have some characteristics of trees but not others is raised in regard to four fruits, at least, apart from papaya. Sugar cane is a hollow reed, similar to a grass. Yet the poskim discuss whether it should be viewed as a tree, both regarding *brocha* and *kilayim*. Bananas grow very tall each season, but their 'trunk' is just pressed leaves. The part of the plant above ground dies each season and grown fresh. The fruit comes straight out of the 'trunk'. Raspberries grow on low stalks, some of which remain above ground, but do not produce for their first year. They often do not last many seasons. Aubergines, or eggplants, have a very similar growth pattern to papaya. However, they grow, apparently, on branches. In tropical climates, eggplants can be grown for more than three years. In general, their fruit deteriorates after the first year. In temperate climates they are grown as an annual vegetable. However, it is common practice to graft eggplants with the devil plant, a related species that does not produce its own edible fruit. The devil plant is a tree that lasts many seasons. The grafted 'tree' produces eggplants for many years. However, certain manipulations are necessary, such as protecting the grafted branches during the cold season. This indicates that the fruit is really not a tree fruit.

The poskim debate all of these plants, with various different conclusions. Though they should be *orlah* always according to some poskim, there is consensus to recite *ha'adamah* on bananas. We say *shehakol* on sugar, and *ha'adamah* on raspberries, both to avoid the controversy. Some consider aubergines to be forbidden always as *orlah*. Some say that they are not tree fruits. Some permit outside *Eretz Yisroel*, for a variety of reasons, including the possibility that they are from an older plant, and the fact that they were not picked in the presence of the Jewish consumer. [Some poskim apply the same rule to sugar, bananas and raspberries.] *Sepharadim* generally recite *ha'adamah* on eggplants and papaya and do not consider them *orlah*. [See refs to section B. Kaftor Vaferach 56. Maharsham 197. Kochav Miyaakov 16-17. Chaye Adam 51:9. Kerem Zion Perek 3. Or Letzion 46:40. Raishis Degancha, Orlah.]

In conclusion, one should recite *ha'adamah* on papaya. Outside *Eretz Yisroel* it may be consumed. In EY one should follow the ruling of his own *Rav*.

On the Parsha ... For six years you will sow your land and gather its produce .. so too shall you do with you olive groves and vineyards .. [23:10-11] Why does the Torah tell us about the first six years? The object is really the prohibition in the seventh! Why does the Torah separate the *mitzvos* of sowing the crops from the trees? [See *Rashi*] The Torah is giving a *brocha*, that the land will be able to produce six years running, without a break. Perhaps this is why the Torah separates the crops from the trees. Trees are expected to produce continuously. If they do not produce for six years running, they might not really qualify as trees. Crops need to be sown fresh, and it is obviously a *brocha*. For the trees it would not look like a *brocha*.

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