

HALOCHOSCOPE

This week's question:

Regarding *orlah*, if one moves a fruit tree from one location to another, must he count another three years? Similarly, if a tree is purchased more than three years old and transplanted to one's property, does *orlah* apply? Do the size of the root-ball or the age of the tree play a role? What are the rules for a tree in a pot, that is taken outside for summer and brought inside for the cold season?

The issues:

- A) What is *orlah*?
- B) Transplanting a sapling
- C) *Atztitz*, a plant pot

A) *Orlah* [excerpted from Halochoscope X:29]

Fruit is forbidden for the first few years after the tree is planted. The first three years of produce is called *orlah*. Some commentators explain this as, literally, the same as the term used to describe a flap of skin that is useless, bothersome, or even harmful. Others explain it as 'blocked or stopped up', or 'distancing'. The fruit is considered this type of *orlah* to us, each according to his interpretation. We may not benefit from it at all.

The produce of the fourth year is *neta revai*, or *revai*. For a vineyard (a minimum of five vines in formation) it is known as *kerem revai*, with slightly different laws. This produce is not forbidden to eat, but has sanctity. It must be taken to *Yerushalayim* to be eaten there. The sanctity may be transferred to money to be spent on food in *Yerushalayim*. Then, the fruit may be eaten anywhere. Transferring it is a *mitzvah*, and a *brocha* is recited when it is performed. When the *Bais Hamikdash* is in ruins, and the walls of *Yerushalayim* are not standing, *revai* may not be taken there. It must be transferred. Whereas in temple times it had to be redeemed for its full value, nowadays it is redeemed for a nominal amount of real coinage. The money assumes its sanctity and must be destroyed, or have its sanctity transferred onto a small amount of food, which, in turn, is destroyed.

The three or four years are counted from when the tree is planted. However, the first year is not necessarily a complete year. If the tree is planted with enough time to take root for thirty days before *Rosh Hashana*, this may be counted as its first year. The time it takes to root sufficiently for *halachic* purposes is a matter of Talmudic debate, based on different degrees of rooting. We follow the opinion that it takes two weeks. Thus, if a tree is planted forty-four days before *Rosh Hashana*, (16th Av) its first year is up on *Rosh Hahshana*. Its third or fourth year, for *orlah* or *revai*, is also not a calendar year. It ends on *Tu Bishvat*, the Fifteenth of *Shevat*, 'new year for trees'. This is derived from the terminology of the verses discussing these *mitzvos* and juxtaposition of its words. Some of the next year is added to the third or fourth years, after *Rosh Hashana*. Really, the third

year ends on *Rosh Hashana*. However, all fruit that grows until *Tu B'shevat* is nurtured by the rains that come during the preceding year. *Tu B'shevat* is the new year for trees, because this is the time that the tree begins benefiting from the new rains.

Determining the stage it is called fruit of the preceding year or of the new year is debated by the poskim. For tithing *mitzvos*, each year in the seven year *halachic* agricultural cycle has its own set of tithes. This is also governed by *Tu B'shevat*. A fruit is considered part of a year's crop if it has its *chanatah* before *Tu B'shevat*. *Chanatah* is a stage in its development, which is debated by the poskim. Some say it is when the nascent fruit can be seen, after the blossom has fallen off and it has begun to take shape. Others say it is when it reaches a third of its growth, or the equivalent, the earliest it could be picked for tithing reasons. Some use the same measure for *orlah*. Many poskim maintain that for *orlah* an earlier stage in *chanatah* must be observed. If the fruit began to develop before *Tu B'shevat* in its 'third' year, it is *orlah*. A fruit that blossomed before *Tu B'shevat*, but did not begin forming as a fruit, is not considered last year's fruit. It is fourth year fruit, and is permissible, provided the *revai* conditions are satisfied. In a pressing situation, it might be permissible to rely on the lenient view, using a later stage of *chanatah*.

If it is planted later than the 16th of *Av*, the first year can not be shortened until *Rosh Hashana*. It must be counted until its anniversary date. According to some poskim the extension to *Tu B'shevat* is only added to a tree that had a shortened first year. A tree that had a full first year gets three (or four) full years, counting by its anniversary date. Fruit developing after this date is permissible. Others maintain that the last year is extended to *Tu B'shevat*, no matter what. Thus, the longest time one would have to wait to avoid *orlah* is three full years (including extra months of a leap year), or three and a half according to the stringent view. The shortest possible wait is two and a half years plus one day.

Only fruit bearing trees or shrubs are *orlah*. Ground fruits are not included. A tree sustains continuous growth from the same branch, season after season. If *orlah* fruit is mixed with non-*orlah* it must have been neutralized one part to two hundred. Otherwise, the entire mixture is forbidden. The fruit, juice, pits or seeds, skin or peel, dyes and anything of benefit of the actual fruit is forbidden to benefit from. Leaves and branches are permissible, to plant, for fuel or for animal feed.

Orlah and *revai* apply inside *Eretz Yisroel*, but *Chutz La'aretz* the rules change slightly. *Orlah* is forbidden on a different level. Inside *Eretz Yisroel* it is Scriptural, even, according to many views, nowadays. *Chutz La'aretz* one view in the Talmud permits it. The majority view is that it is forbidden *halacha leMoshe miSinai*. This means, that, basically, the *halacha* is Divinely ordained like any Scriptural law, rather than Rabbinically. Rather than inscribing it in the Written Torah, Hashem transmitted it orally to Moshe at Mount Sinai. In practical terms, this affects the status of *safek*, a doubt about the fruit, based on doubt about the age of a tree. In our case, the issue could arise when relying on the nursery to determine when the sapling was rooted. [See *Halochoscope* X:29.]

Revai's applicability *Chutz La'aretz* is debated. Some maintain that it does not apply at all, while others maintain that it applies fully. A third view maintains that *kerem revai* applies to vineyards, but *revai* does not apply to other trees. This opinion is followed by Diaspora communities nowadays. [See *Kedoshim* 19:23-25, commentaries. *Orlah* 1:6-9

2:1 3:9, Yerushalmi, Brochos 35a, Rosh Hashana 9b-10b, Kidushin 38a -39a, Poskim. Rambam, Maachalos Asuros 10:9-10 15-18, Maaser Shaini 9 Maasros 2:5. Tur, BY Sh Ar YD 294:1-8 12, commentaries. Hakashrus (Fuchs) 16:12:33-34.]

B) Transplanting a sapling

In order to count the years to outgrow *orlah* and *revai*, the tree must be rooted in the ground for the entire duration. If it is uprooted and transplanted, the count begins when the new transplant begins rooting again. It has the same status as a fresh seedling or rooted branch. However, if the new transplant is in any way still considered connected to the old roots, it need not be counted afresh. On the other hand, if a plant is already three years old, but is then attached to a new plant, it might attain the status of the new plant. Thus, it might require a new counting. Furthermore, if an old tree is cut down to the ground, and its roots begin a new growth, it needs a new counting, beginning from its cutting. If a stump less than a *tefach*, hand-breadth, grows, i.e., a very short 'tree', it is considered *orlah* due to *mar'is ayin*, appearances. However, if an entire grove looks this way, the onlookers will all know that this is the way these plants grow, and there is no issue of *mar'is ayin*.

By *havracha*, 'kneeling' (called *layering* in horticultural terms), a rooted plant can be made to grow another plant. The top branches are 'kneeled' down into the ground. They eventually take root themselves. They can be disconnected from the original plant, by snipping the arch of connection. Until then they are considered part of the old plant, but once they are disconnected they become a new plant. They require a new count. *Havracha* can be done many times in series. As long as the new growths are connected to the original roots they are exempt of *orlah*. If the original tree is disconnected from the ground, it becomes part of the new growth, requiring a new counting.

By *harkavah*, one grafts a fresh branch to an old tree, or vice versa. If both are fruit-bearing, the graft is secondary to the tree. If the tree is not fruit-bearing but the grafted branch is, it is as though the new branch is just being planted. A new count must begin after the graft takes, even if it was taken from an old tree.

If the earth around the roots erodes, the tree is considered uprooted. If a root is left attached that could draw enough sustenance to keep the tree alive, it is still considered attached. Some say it must be able to live three years. The consensus seems to be that it need not be able to live more than a few days, as long as it does not die right away. If the entire tree is washed away and placed in another location, in is considered replanted. However, if the roots had enough soil to sustain the tree, it need not begin a new count.

Accordingly, if one buys a sapling in a pot with a hole or in burlap, having been rooted in the ground, he should be able to count the time it rooted before transplanting it. Usually, enough soil is left on the plant to keep it alive for a while. Even if the pot does not have a hole, according to some one might not need to restart the count. [See *Orlah* 1:3-5 3:9, *Kidushin* 38b-39a, *Poskim*. Rambam *Maaser Shaini* 10:esp. 8 11-20. Tur, Sh Ar YD 294:9-10 16 18-20 26, commentaries. Shivas Tziyon 49. ST Chasam Sofer YD 286. Chaz. *Ish Dinei Orlah* 18 *Orlah* 2:13. *Tzitz Eliezer* I:19. *Minchas Yitzchok* VII:97.]

C) Atzitz

A tree rooted in a plant-pot could be considered attached to the ground. If there is a

hole in the pot, known as *atzitz nakuv*, or for certain *halachic* applications if it is made of earthenware or wood, the natural draw of the roots to the ground to draw moisture and nutrition through the hole connects it. If there is no hole, known as *atzitz she'aino nakuv*, it is considered disconnected. *Orlah* applies to potted plants. If it is transplanted, the poskim ponder whether the time it roots in a closed bottomed pot would be counted towards the three years. In the case of *orlah*, the Torah does not require the tree to be planted in a field. Anywhere in the 'land' is considered planted. This includes indoors, on a rooftop and the like, as long as they are attached to the ground, and regardless of whether the floor is porous. The Talmud, in reference to various laws, debates an *atzitz nakuv* that is not directly on the ground, but is suspended on pegs. The conclusion of the poskim is generally to consider it attached. However, regarding the prohibitions on *Shabbos* of detaching or attaching plants from or to the ground, this is not so clear. The poskim also debate whether a pot requires a hole for all other applications. Specifically, a tree-type plant is less likely to require a hole in order to draw moisture through the material of the pot.

There is also some discussion regarding transplanting from a pot, either to a larger pot or to the ground. When the Talmud describes transplanting with enough dirt to survive a few days, it means that the sapling could have grown three years in its original location. Thus, as long as it is not totally cut off from its sustenance, the new location is a continuation of the old. There is no need to start counting three years again. In a pot, it might not have enough dirt to survive three years in the first pot. Thus, some question whether one may rely on the period in the first pot.

Furthermore, most of this discussion relates to earthen or wooden pots. The poskim debate whether the roots could draw water or moisture through the porous material without water. A metal pot, or for our purposes, plastic, is not porous. In Israel, *orlah* applies Rabbinically, but not *Chutz Laaretz*. Thus, three years begin when it is later transplanted. Moreover, if a sapling with its earth is moved from place to place in a metal car, it is cut off from the ground. Putting it back might indeed require a new counting period. These issues are discussed and debated, but not necessarily resolved. They may be treated as a *safek*. We have mentioned that this means that *Chutz Laaretz* one may tend to leniency. [See e.g. *Shabbos* 81b *Gittin* 7b-8a 22a 37a *Menachos* 84b etc., Poskim. Tur, Sh Ar YD 294:26, commentaries. *Derech Emunah*, *Terumos* 1:25 *Orlah* (*Maaser Sheini*) 10:8-9.]

In conclusion, in general, *Chutz Laaretz* one may count the three years from the original planting. One should ensure that there enough dirt to keep it alive a few days. If possible it should not be transported in a metal or plastic container, unless it has a hole. If a plant is potted in a plastic pot with no hole and is never transplanted, there is no *orlah*. If there is a hole, moving it inside or outside do not make a difference.

On the parsha ... the earth swallowed [the congregation of Korach] .. But the sons of Korach did not die [26:10-11] .. [Tzelaphchad] was not with Korach [27:3]. Why is Korach mentioned here? The Torah is discussing who would be entering Israel and inheriting the Land. Those who were swallowed by the earth were permanently 'planted' in the wilderness.

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