

# HALOCHOSCOPE

## This week's question:

It is possible to purchase a fruit bearing sapling in enough earth to survive without being transplanted for a while. If this is purchased from a non-Jewish nursery owner, may he be trusted on the *Orlah* status?

## The issues:

- A) What is *Orlah*?
- B) Transplanting a sapling
- C) *Safeik Orlah*, doubts about *Orlah*

## A) *Orlah*

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*, (16<sup>th</sup> 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 Bishevat*, 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 Bishevat* is nurtured by the rains that come during the preceding year. *Tu Bishevat* 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 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. 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 this date, 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 be 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 section C we will discuss the difference in practical terms.

*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*, *B.Y. Sh. Ar. Y.D.* 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 root-

ed 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 less than a *tefach* 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', 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. 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.

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

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, it 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, *Poskim*. *Rambam* *Maaser Shaini* 10:esp. 8 11-20. *Tur*, *Sh. Ar. Y.D.* 294:16 18-20 26, commentaries. *Chazon Ish*, *Orlah* 2:13, *Tzitz Eliezer* I:19. *Minchas Yitzchok* VII:97.]

### **C) Safeik Orlah**

How does one ascertain the time of planting? Can one rely on the vendor? In cases of doubt, the laws of *orlah* are significantly different *Chutz La'aretz*. Normally, a doubt about a Scriptural law requires stringency. However, in this case, the Talmud teaches us that the *halacha lemoshe misinai* regarding *orlah* outside *Eretz Yisroel* was limited to cases of certainty. Thus, if one has reason to doubt the *orlah* status of fruit, he may rely on this to permit it. Fruit sold out of a plantation that has some *orlah* trees is permitted.

Some poskim forbid a Jew to pick it himself, but he may have a gentile pick it in his presence. Others allow a Jew to pick it himself.

A gentile who has *orlah* growing on his property is believed to say that fruit he sells is not *orlah*. Does this apply to the trees as well, or only to the fruit? On the one hand, the tree itself is never forbidden, even if it grew from a forbidden seed. The result of a combination of forbidden and permitted items is permitted. On the other hand, fruit could be from a really old tree, with only a chance that it comes from an *orlah* tree. The sapling has all the signs of being new. Furthermore, the age of the tree has little bearing on the fruit. The seller need not lie about it. The age of a sapling is important. Assuming that the sapling is definitely still in its *orlah* stage, the issue is whether to believe the gentile seller about when it was planted. At this point it is definitely *orlah*. The true doubt will arise when the fruits begin growing. The issue will then be how old the tree that produced the fruits is. Therefore, our question can not be limited to the tree. When the issue arises on the fruits, one will be relying on the information of the gentile about the time the sapling was rooted. While the Talmud describes situations where the gentile gives the information about the fruits, he clearly needs to inform about the age of the tree as well. The time a doubt arises is when it needs to be addressed. Therefore, the Jew might need to deal with the age of the tree, rather than with the fruit when it grows.

The poskim discuss cases where one is in doubt about the trees in his orchard. Some say that the rule of *safeik orlas chutz la'aretz* applies to all types of doubt. This includes doubts about facts, which do not qualify elsewhere. Others point out that this is not a real doubt. Furthermore, the unique application of *halacha lemoshe misinai* was on fruit, not trees. In another case, some maintain one may assume that the fruit-bearing trees are not *orlah*. Those that produce weak fruits must be considered highly suspect, and one may not rely on 'doubt' for these. To determine whether a sapling can survive once it is up-rooted, one needs to consult experts. If there is a doubt, some say that *Chutz La'aretz* one is lenient. Doubt about the date of the planting also pertains to the tree rather than the fruit. Accordingly, some would say that if the seller does not know whether the sapling was planted before the sixteenth of Av, one should wait to see how the fruits look in the projected fourth year. If they are strong, he may assume leniency *Chutz La'aretz*. [See Orlah 3:9, Kidushin 38b-39a, Poskim. Tur, Sh. Ar. YD 294:9-10, commentaries. Shivas Tziyon 49. Tesh. Chasam Sofer YD 286. Chazon Ish, Dinei Orlah 18. Tzitz Eliezer I:19.] **On the Parsha ...** *Take a tzintzeness and place an omer of mohn there .. to keep for your generations. [16:33] Tzintzeness, an earthenware jar, Rashi.*

*Mechilta* says *tzintzeness* comes from *maitzitz*, to suck out, as earthen vessels seep and suck water from elsewhere. Why was it important to keep the *mohn* in this vessel? It was not natural food anyhow. We mentioned that things growing in earthen vessels are considered connected to the ground. Perhaps the lesson for future generations would be that we are still connected to the original *mohn*. Unlike other nations, all our sustenance as the Jewish people goes back to the time Hashem gave us *mohn*. It is part of *Yetziyas Mitzrayim* and the formation of *Klal Yisroel*.



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