

OVERVIEW of the Daf

1) Clarifying the Mishnah (cont.)

In addition to the exposition that indicated that the verse quoted in the Mishnah refers to five varieties of seeds planted in one garden patch the Sages determined that this could be accomplished in a garden six by six tefachim.

The Gemara demonstrates how we know that the determinations of the Sages are reliable.

R' Asi clarifies that the six tefachim square does not include the borders. A Baraisa supports R' Asi's comment and the Gemara determines the width of the border to be a tefach.

Rav asserts that the Mishnah refers to a case of an isolated garden patch. If it was surrounded by other gardens, a kilayim issue would arise between the seeds of one garden and the next.

Shmuel disagrees and maintains that the Mishnah can even refer to a garden patch surrounded by others and it would be permitted to plant five varieties in each of the gardens as long as the seeds in parallel rows are staggered.

2) Maximizing the use of a garden patch

Ulla quotes the scholars from Eretz Yisroel as inquiring about the consequence of plowing a furrow down the center of the garden patch. Will it still be permitted to plant five species in that field or not?

R' Sheshes ruled it prohibited whereas R' Asi ruled it permitted.

R' Yochanan is quoted as ruling that one who wants to maximize the use of his garden should make a patch six by six tefachim, plant one variety in a five tefach diameter circle in the center and fill each row of the perimeter with another variety.

Following a clarification of R' Yochanan's suggestion the Gemara unsuccessfully challenges his ruling. ■

Daf DIAGRAM



ראש תור ירק נכנס לתוך שדה אחר מותר
If the arrangement in planting the row is clearly the extension of a nearby field, this is noticeable, and it is permitted.

REVIEW and Remember

1. Why are Bnei Seir called "inhabitants of the land"? _____
2. Does the measurement of six by six tefachim include the border? _____
3. What is a ראש תור? _____
4. How should a person plant his garden to maximize the available space? _____

Distinctive INSIGHT

Mixed Vegetables—Not Too Kosher

וקים להו לרבנן דחמשא בשיתא לא ינקי

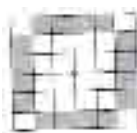
Our Gemara cites the Mishnah in Kilayim (3:1) among the series of Mishnayos of "מנין". Our sages taught that five different species can be planted within a garden patch of six by six tefachim. The precise arrangement of how the rows and seeds can be planted is understood differently by the various Rishonim. Rashi explains that the entire edge along the perimeter of the box is planted, one species along each edge. The middle of the garden is then planted with a single seed. Rashi clearly addresses the issue of having the perimeter plantings meeting at the corner, which is within the three-tefach range of prohibited overlap, and he explains that as long as we have "היכר—noticeable alignment change", the closeness of the planting in and of itself is not a problem. The seed in the middle does not benefit from this aspect of standing out (היכר), so it must be a full three tefachim distance from the rest of the plants, as it is. See Picture 1.

In the אמינא, הוה, Rabeinu Tam in Tosafos understands that we never allow any of the plantings to be within three tefachim from each other in the first place. The original suggestion of the Mishnah itself was only to allow planting along the center of each perimeter edge, for a distance of 1.75 tefachim. This will allow an empty linear distance of 2.12 tefachim along the perimeter edge to the corner, and therefore a full three tefachim distance (along the hypotenuse) between rows of the different species. See Picture 2.

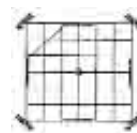
In his commentary to the Mishnah here and in Kilayim, Rambam writes that the plantings are within the minimum three tefach necessary for independent nurturing, but the reason this is allowed is due to the noticeable difference between the various species. In other words, according to Rambam, היכר is enough of a reason to allow planting different seeds, even when they are adjacent to one another. See Picture 3, where this approach allows a large planting in the center, because it utilizes the leniency of ראש תור to serve as a distinction between species. See Daf Diagram.

שנות אליהו of the Vilna Gaon and the Chazon Ish each ask about the Rambam's interpretation from our Gemara. The immediate conclusion our Gemara makes from this Mishnah is that our sages obviously knew that the range of nutrients needed by a plant is three tefachim. But, according to Rambam, this is not at all a relevant point of our Gemara, because it could very well be that the plants are near each other, but the reason it is allowed is due to the alignment of the patches of planting. See Picture 3.

We do find, however, that Rambam does acknowledge that distance and nourishing radius is a factor, as he explains in Hilchos Kilayim 4:9. See Chazon Ish, Kilayim 8:1. ■



Picture 1



Picture 2



Picture 3

HALACHAH Highlight

Grafted trees

וקים להו לרבנן דחמשא בשיתא לא ינקי מהדדי ומנלן דהא דקים להו לרבנן (דחמשא בשיתא) מילתא היא דאמר רבי חייה בר אבא אמר רבי יוחנן מאי דכתיב לא תסיג גבול רעך [אשר גבלו ראשונים] גבול שגבלו ראשונים לא תסיג

And the Rabbis ascertained that five [vegetable types] planted in [a patch off] six [tefachim] are not nourished from each other. And from where do we know that what the Rabbis ascertain is significant? As R' Chiya bar Abba said in the name of R' Yochanan: What is that which is written: Do not assail the boundary of your friend [which the ancient ones set out]? Do not assail the boundary that the ancient ones established.

Teshuvos Maharsham¹ cites a question concerning a Jew who bought an orchard full of fruit trees from a non-Jew that was grafted in manners that rendered them kilayim. Is the Jew obligated to uproot these trees?

Maharsham first notes that some Rishonim permit a Jew to retain kilayim that he has acquired, but the consensus is that it is forbidden to retain kilayim.² However, we do not find that a person who does retain kilayim is flogged. Why not?

Maharsham explains why there is no **מלקות**, based upon Tosafos³ here, who ask why a person who plants kilayim is only flogged once (see Chullin 82b). Why is he not flogged twice, once for the prohibition of planting kilayim itself and another for "assailing the boundary?" Tosafos give two reasons: 1) The prohibition of "assailing the boundary" is primarily directed against theft of one's neighbor's land. As such, it is a prohibition that is subject to restitution (return of the land), for which lashes are not imposed; 2) The prohibition of "assailing the boundary" refers to more than one form of forbidden activity. As such, it is a generic prohibition, for which lashes are not imposed either.

But Tosafos only considers the law of a person who plants kilayim. What of a person who retains kilayim? We have seen that most Rishonim forbid the retention of kilayim. The source of this prohibition is this verse: "Do not assail the boundary of your friend." Yet, as explained here by Rashi,⁴ "Do not assail the boundary of your neighbor" means that it is forbidden for a person to plant adjacent to his

friend's field, as this saps his neighbor's land's strength. Does this prohibition relate to retention in one's own field?

We see that Tosafos are of the opinion that although the verse focuses on assailing the boundary of one's neighbor, it also pertains to the planting of kilayim within one's own field. Otherwise, Tosafos might have answered that the Gemara in Chullin concerns planting kilayim in one's own field, while the prohibition of "assailing the boundary" pertains only to a case in which the planting caused a kilayim problem to affect one's neighbor's field.

But how does one "assail" one's own field? On the basis of Rashi's interpretation, Maharsham explains that in planting kilayim in one's own field, and causing different species to deprive each other of nourishment, one is literally "assailing" one's own field (and just as in the case in which you assail your friend's field by "stealing" his property you must make restitution, here too you must make "restitution" to your own field by uprooting the kilayim).

On the basis of this definition of the prohibition, Maharsham suggests a distinction between planted kilayim and grafted kilayim: From a botanic perspective, two species planted as kilayim deprive each other of nourishment, but two species grafted together enhance each other's nourishment. Thus, in retaining grafted trees one is not "assailing" one's field. On the contrary, one is "supporting" one's field. Hence, the prohibition to retain kilayim derived from the verse: "Do not assail the boundary of your friend" is not applicable to grafted kilayim.⁵

On the basis of this premise, and additional analysis and consideration of the issues involved, Maharsham concludes that the Jew who purchased the orchard need not uproot the grafted trees - but that he should sell them to a non-Jew.⁶ ■

1. שו"ת מהרש"ם חלק א' סימן קע"ט.
2. עיי"ש במהרש"ם: בשו"ת מהר"י אסאד חיו"ד סימן ש"נ ושם הביא דעת הכלבו דסובר דמות לקיים כלאים וכ"ה דעת הריטב"א קידושין ל"ט. אך דיש לומר דהריטב"א מודה דמודבנן אסור אבל הכלבו מתיר לגמרי. ועי' מהרש"א סוטה מ"ג ב' דס"ל דליכא שום איסור במקיים כלאים.
3. ד"ה לא תסיג גבול.
4. ד"ה גבול רעך - ליטע סמוך למיצר, להכחיש קרקעו כשיעור אשר גבלו הראשונים.
5. עיי"ש במהרש"ם: ולפי' נראה דבהרכבת אילן שידוע שאין ההרכבה מכחיש האילן אדרבא גורם הטבתו ושניהם נעשים אילן א' ויניקתם רק כשיעור אילן א' פשיטא דלי"ש בזה השגת גבול ולכן מותר לקיימם מן התורה.
6. עיי"ש במסקנת מהרש"ם: ועל כל פנים לדינא שחורות ולבנות ופירות גרועים שבאותו מין עם הפנים שבהם לאו כלאים ניהו ואם כן בהרכבות כאלו יש לחקל גם לכתחלה. ואם ההרכבות גם במבשאים"מ אז יש לעשות על ידי מכירה לעכ"ם שאינו מרכיב בעצמו וכמ"ש ר"מ. ■

Gemara GEM

Stay Clear, Not too Near

לא תסיג גבול רעך כו' גבול שגבלו ראשונים לא תסיג

Tosafos explains that this directive which prohibits planting a species of seed next to one's neighbor is referring to the laws of mixed breeds of seeds (**כלאים**). Accordingly, this restriction is in effect when one's neighbor has already planted one species, and the second neighbor is considering planting another species near the fence. This is not only

prohibited due to the laws of **כלאים**, but it is also a violation of infringing upon the border of one's neighbor. In fact, Tosafos wonders why there is not a second set of lashes for one who does this. One set of **מלקות** should be applied for **כלאים**, and another set should be administered for violation of **לא תסיג**. Tosafos gives two answers in response to this question (see *Halacha Highlight*).

Rashi learns that it is generally prohibited to plant next to one's neighbor, for it weakens the ground near the border as it depletes the nutrients from it up until a radius of a tefach and a half. According to Rashi, this has nothing to do directly with

the laws of mixed seeds.

Minchas Chinuch (Mitzvah 245) understands Rashi in this manner, and he analyzes Rambam and Chinuch to be of this opinion, as well. Because Rambam does not list this law among the halachos of kilayim, he obviously holds that it is associated to regular property rights issues, as Rashi explains. Minchas Chinuch points out that Rambam commonly lists all negative commandments connected with a particular act, whether or not **מלקות** are applicable. The omission of this law in Rambam's listing indicates that he learns as Rashi does in our Gemara, and not like Tosafos. ■

