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Emunat Itecha

The platform for articles combining Torah study and its practical application in the Land of Israel



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Emunat Itecha

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Payment at the end of a fruit picking tourism event / Rabbi Yehuda Amichay

Foreword

The guidelines to visitors at a fruit picking events at the Torah VeHa'artez Institute states as follows:

Fruit picking at various orchards is a wonderful activity, and can connect people who don't work the soil on a regular basis to our Holy Land, the fruits of the Land of Israel, and the *mitzvot* related to them. To strengthen the bond between the soil and the land-dependent *mitzvot* at the harvest, we need to pay attention to the following issues:

1. Ensure that the fruit being picked are not *orlah*. Ask the orchard owner for the Chief Rabbinate kashrut certificate (it should be readily available).
2. There is a difference between a visit when the payment is made upon admission to the orchard and one when payment is made at the end of the visit.
If the payment is taken at the end, the fruits snacked on during the tour are exempt from *terumot* and *ma'aserot*. However, if one sits down to eat several fruit in one sitting (such as at a picnic table and the like), it is considered *achilat keva* and *terumot* and *ma'aserot* need to be separated. Similarly, from all of the fruits taken home, *terumot* and *ma'aserot* need to be separated before eating.
3. If the orchard owner charges upon admission, *terumot* and *ma'aserot* should be taken at the beginning of the visit for the fruit that will be eaten, following the Institute's guidelines found on our website.

Question

What is the difference between payment upon admission to a fruit picking event and payment after the harvest? It seems that the payment is not what determines the sale, rather the desire of the seller to sell the fruit and the buyer to buy it. If so, then wouldn't the transaction take place upon harvest and consumption—meaning that the visitor would be obligated in separating *terumot* and *ma'aserot* even if payment is made at the end of the visit?

Answer

The Mishna (*Ma'aserot* 2:6) discusses a case where someone pays ahead of time on fruit that he will pick from the tree. In the case at hand, it is permitted for him to eat the fruit one at a time. If he picked two fruits together, though, they are obligated in *ma'aser* (*kavu'a lema'aserot*; fixed or determined, thus obligated in tithing). In the words of the Mishna:

One who says to his friend: "Here is an *issar* for ten figs which I choose for myself," he may choose them and eat [one at a time without tithing]. [If he said] "For a cluster of grapes which I choose for myself," he may pick grapes from the cluster and eat. [If he said], "For a pomegranate which I choose for myself," he may slice and eat [it one piece at a time]. [If he said], "For a watermelon, which I choose for myself," he may slice it and eat [one piece at a time]. But if he said "For these twenty figs," or "For these two clusters," or "For these two watermelons," he may eat them in his usual way and be exempt [from the tithe], because he bought them while they were still attached to the ground.

The Rambam, in his gloss on the Mishna, writes as follows:

But if he bought from the [fruit] attached to the ground and picked it afterwards, he can snack on it just as the owner of the field can. But if he bought it and did not specify [which fruit], it is if he bought produce already detached, and thus determined for tithing at the time of the transaction. Just as it will be explained in this tractate how sales transactions determine [produce] for tithing.

The Mishna stresses that in the case when the buyer can pick any fruit he so chooses the fruit is determined for *ma'aserot* at the time of the transaction (when the money changes hands). In this case, it is as if the fruit was purchased after being disconnected from the tree, even though when the money was given the fruit is still connected to the tree. The Aruch HaShulchan explains that money without taking the fruit creates this *kevi'ut* due to the importance of the money. This is despite the fact that money does not transfer the ownership of chattels *miderabanan*, and even though there is no determination for *ma'aser* when the fruit is bought when attached to the tree. If money is paid at the outset, the importance of the money is what confers the status of a purchase. Thus, the fruit may only be eaten one by one. However, if two fruits are picked at a time, they may not be eaten without tithing. The picking of two fruits give them the status of *kavu'a*, since the purchase goes into effect only after the stage of *gemar melacha* (completing the task), and only two fruits harvested are considered *gemar melacha* where harvest is concerned.

However, if the money is paid at the end of the visit, covering any fruit eaten along the way, there is no *kevi'ut* based on an earlier transaction (since the transaction is performed at the end). In this case, the fruit attached to the tree is not determined for *ma'aserot* so it can be snacked on without having to take *terumot* and *ma'aserot*. In light of the above explanation it is clear why the Mishna and Rambam discuss the payment of money prior to the fruit harvest, and did not simply mention a transaction: this advanced payment has a special halachic status.

Planting a Yemenite *etrog* tree next to a lemon tree or an *etrog* tree of a different strain / Rabbi Yehuda Amichay

Question

One of the distinct characteristics of the Yemenite *etrog* is the absence of citrus kernels inside the fruit. In my garden, a Yemenite *etrog* tree was planted next to a lemon tree. As time went on, the fruits changed and the *etrogim* grew with citrus kernels inside. Rabbi Ratzabi relates to a similar case, and concludes: "from now on it is prudent to publicize that *etrog* and lemon trees should not be planted side by side, and not even near *etrog* trees that might be grafted." What should I do with my *etrog* tree now?

Answer

In the responsum that you refer to above, Rabbi Yitzhak Ratzabi wrote that when an *etrog* and lemon tree are planted within 7.5 m from each other, the roots of each tree influence one another. This could be either because roots graft onto one another or because of the roots simply being close to each other. This is the reason why, in his opinion, some *etrogim* grow with

juice vesicles (a.k.a. citrus kernels) and some do not. As you mentioned in your question, he concludes that one should not plant *etrog* trees next to lemon trees or grafted *etrog* trees.

First, it is important to understand that with any graft (not necessarily just *etrogim*), the rootstock (the tree segment planted in the soil) rarely influences the scion (tree grafted onto the rootstock, which produces the fruit). The rootstock serves as a pipeline to transport water and everything else the tree needs to the scion. This topic has been researched extensively in scientific studies. Even when there is a graft of a lemon and *etrog* tree, there is hardly any practical influence on the *etrog*. While halachically, this could be a forbidden act and could disqualify the *etrog* for use in the *arba minim*; nevertheless, the graft does not change the makeup of the fruit whatsoever.

The responsa above is based on the notion that a grafting of roots is what causes the change in the tree's fruit. This hypothesis is unfounded: if an actual graft of a lemon and *etrog* tree, the rootstock does not influence the scion, it is even less likely that this would happen when the roots of each tree graft onto one another. Moreover, note that according to expert botanists, natural root grafts are an extremely rare phenomenon. Albeit, the Tosafot do mention root grafting in the context of grapevines, but they explain that this can take place thanks to their soft roots. For other trees, however, this phenomenon does not exist, especially not when there is a distance of 7.5 m between the trees in question. Moreover, the roots of *etrog* trees are short and are close to the surface, so the notion that there could be a root graft and that this would influence the fruits and the way they develop is especially puzzling.

The phenomenon described in the question can perhaps be explained in a different manner. In an article by Prof. Goldschmidt, it appears that *etrog* trees are known to have major differences among fruit; not only from tree to tree, but also among different fruits on the same branch. This is also recorded by Dr. Raanan, who explains at length the phenomenon of differences among *etrog* fruit. This is why the shape of the fruits can vary from branch to branch. In any case, this has nothing to do with forbidden grafting. The two articles mentioned above cite new studies based on DNA testing of the *etrog* fruits, which prove that there is no genetic difference between all strains and varieties of *etrog* fruit. This is explained by a unique phenomenon in *etrogim* that they are not receptive to cross-fertilization from other species.

In any case, there are many mutations present in the *etrog* itself that are unconnected to the roots of other trees or various types of pollination. This is how very different *etrogim* form that are not grafted whatsoever; all can be used in the *arba minim*. For this reason, there is no need to distance a non-grafted *etrog* tree from a lemon tree or a grafted *etrog* tree (any more than three *tefachim*), since the roots do not graft onto one another, and even if they did there would be no impact on the fruit. One need not worry about seeds or stamens; in any case they can travel hundreds of meters and pollinate *etrog* trees near and far. Even so, as mentioned above, no genetic difference has been found among various *etrog* strains. Furthermore, we have not found throughout Chazal or in any halachic responsa that it is necessary to distance an *etrog* tree from a lemon tree. This also indicates that there is no prohibition involved, even if planted side by side.

Using an aloe vera leaf to facilitate shoots taking root / Rabbi David Eigner

The world of agriculture is constantly progressing and developing. To help various shoots take root in the ground, several growers have recently begun inserting the shoot into an aloe vera leaf and planting them together in the ground. Thanks to its fleshy leaves full of sap, the aloe leaf provides moisture and protection from fungus. Note that the intent is not to propagate the aloe vera leaf, rather to use it to aid the shoot in the process of striking roots.

Aloe vera is used primarily for cosmetic purposes, so it is halachically defined as a non-fruit-bearing tree, *eitz seraq*. Like other such trees, it is forbidden to graft fruit-bearing trees onto it.

The Mishna in *Kila'im* (1:8) cites examples of connecting plants in different ways—seemingly unrelated to actual grafting: "They may not plant a young fig shoot in sea squill so that it might provide shade for it. They may not insert a vine branch into a melon, in order that the latter might shoot its moisture into the former."

The Mishna describes two cases that seem to have different purposes: (1) planting a fig shoot into sea squill; (2) inserting a vine branch into a melon. Both acts are prohibited due to the prohibition of *kila'im*.

The explanations of the *Rishonim* here are that the very act of connecting two plants is prohibited, even though it doesn't actually produce a graft. This is also the understanding of the Yerushalmi: it is forbidden to insert a grapevine into a melon, since the plants receive nourishment from one another, even though they do not mesh into one another.

Nevertheless, many *Acharonim* maintain that in the case where it is impossible for one of the plants to produce foliage independently for the long-term, and it shrivels and dries up after several days, this is not a grafting prohibition.

For this reason, shoots should not be inserted into aloe vera leaves, since (1) the aloe vera plant is fleshy and can self-propagate, and (2) it contains a significant amount of sap from which the grower wants the shoot to receive its nourishment. This method can only be used if one ascertains that the aloe vera leaf does not take root whatsoever or have the ability to do so on its own.