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What's Yours is Yours

The *Mishnah* (7:4) states:

If one allows his vine to grow over the grain crop of his neighbour, he forfeits it (it must be burnt) and he is responsible for it (i.e., liable for the damage caused). *R' Yosi* and *R' Shimon* say "one cannot render forfeit something that does not belong to him."

The above debate requires further explanation. At first glance the opinion of *R' Yosi* and *R' Shimon* appears somewhat difficult, as in general one can make the property of his friend *assur*. The *Rishonim* therefore explain that *R' Yosi* and *R' Shimon* maintain that this case is an exception to the rule.

Some explain that the exception is built on a *passuk*. The *Tosfot Yeshanim* (*Yevamot* 83b) uses the following *passuk* to explain that one only has the ability to cause the prohibition to take effect on his own field:

"שדך לא תזרע כלאים"

The *Bartenura* argues similarly from the following *passuk* (*Devarim* 24):

"לא תזרע כרמך כלאים"

The debate in the *Mishnah* is therefore understood as being connected to an understanding of the *p'sukim*.

The *Tosfot* (*Yevamot* 83a) however cite the following *Mishnah* (5:6):

If someone sees vegetables in his vineyard and says, "When I come to them I will remove them – this is allowed; "When I come back I will pluck them" – if they increased by one two-hundredth, it is forbidden.

They continue, explaining that *R' Yosi* and *R' Shimon* maintain that this prohibition is different, in that it depends on the thought of the field's owner (*machshava*). Consequently without the consent of the owner, someone else cannot cause the prohibition to take effect on his field.

According to the *Tosfot*, how would they understand the position of the *Tana Kama*? It is very difficult to say that this *machshava* can be provided by another source. One could suggest that in the case here, since the person is performing an action by bending his vine over the field of his neighbour, no *machshava* is required. Consequently the prohibition can take effect on someone else's property like any other case. The *Tana Kama* may be arguing that

machshava is only significant when there is no identifiable action (*ma'aseh*) like in the case of *m'kayem* cited by the *Tosfot*.

According to *R' Yosi* and *R' Shimon*, even though the friend's produce is not effected, what is law regarding the vine? The *Yerushalmi* (7:3) analyses this issue in further detail. *R' Yochanan* maintains that benefit from the vine is indeed prohibited, while *R' Elazar* argues that just as the object that prohibits (referring to the produce) does not become *assur*, so to the vine, which usually would become prohibited in regular case, does not become *assur*.

R' Elazar does not view the vine and produce as two equal ingredients that are prohibited to come together (like milk and meat). Rather he views the produce as the object that acts upon the vine prohibiting them both. Interestingly, the *Gemarah* continues explaining that if someone directed his neighbour's vines over his own produce, then *R' Elazar* would agree with *R' Yochanan* that even though the neighbour's vine is unaffected, the produce becomes *assur*.

One should note from the above discussion that both agree that at some point, prohibition against deriving benefit from the produce (*issur hana'ah*) that has resulted from *kil'ei kerem* can be partially applied. A final open question may therefore be asked: Is this partial *issur hana'ah* resulting from a transgression of *kil'ei kerem*? Consequently, even though the *issur hana'ah* can only be partially applied, someone may still completely transgress *kil'ei kerem*. Alternatively, is *kil'ei kerem* inherently connected to a resulting complete *issur hana'ah* such that where the *issur* is only partially applied, the prohibition cannot be violated? Accordingly the partial prohibition would be the result of an externally applied rabbinic fine (*knas*).

These questions could underpin the debate between *R' Yochanan* and *R' Elazar*. *R' Yochanan* may also agree that the produce is defined as the object causing the prohibition and consequently no prohibition has been violated, yet the partial *issur hana'ah* is a rabbinic enactment. *R' Elazar* however argues that if the produce is unaffected, no prohibition is breached. Yet only once the produce become prohibited, even though the vine cannot be affected, the prohibition is still transgressed and as much that can be made *assur* (ie, the produce) becomes *assur*.

David Bankier

Revision Questions

כלאים ו' ח' – ח' ד'

- When is one allowed to plant underneath the reed extending out from an *aris*? (ו' ח')
- The *mishnah* list three forms of extension under which one is not allow to plant other produces – what are they? (ו' ט')
- Explain what is meant by the term *mavrich*? (ו' א')
- How much earth must cover a sunken shoot such that seeds can be planted over it? When is one allowed to plant seeds if less than this amount covers the vine-shoot? (ו' א')
- If someone is *mavrich* from three vines in a row, when does one regard all six vines as a *kerem*? (ו' ב')
- What is the law regarding planting near a dried-up vine? (ו' ב')
- What are the four cases listed in the *mishnah* where it is forbidden to plant in the area, yet if one does, the grain is not prohibited due to *kil'ei kerem*? (ו' ג')
- Explain the debate regard causing *kil'ei kerem* with one's vine in his friend's field? (ו' ד')
- What was the ruling of *R' Akiva* in the case where someone caused *kil'ei kerem* in their field during the *shmitah* year? (ו' ה')
- What should one do if their property, having been forcefully seized, was returned to them with *ki'lei kerem* during *chol ha'moed*? (ו' ו')
- What should one do if the wind blew his vines such that they bent over other produce? (ו' ו')
- If grain is within a vineyard during which period of time (include the start and finish times) of the growth of both plants do they become *assur be'hana'ah*? In other words, what is the *onat ha'kiddush*? (ו' ז')
- When is it forbidden to place a pot-plant containing a vegetable in a vineyard? (ו' ז')
- Explain the basic differences between *kil'ei kerem*, *kil'ei zeraim*, *kil'ei begadim* and *kil'ei behema*? (ו' ח')
- What is the scope of the law when the Torah forbids using an ox and donkey to plough together – does it also apply to other animals? (ו' ח')
- What is the punishment for *kil'ei behema*? (ו' ט')
- Would a passenger in a wagon being pulled by two different animals also transgress this prohibition? (ו' ט')
- Can one tie a horse to the side a wagon that is being pulled by two oxen? (ו' י')
- Does the prohibition of *kil'ei behema* apply to a horse and an animal which is a product of *kil'ei behema* whose mother was a horse? (ו' י')

Local Shiurim

Sunday -Thursday

Between mincha & ma'ariv

Mizrachi Shul

9:50pm (after ma'ariv)

Beit Midrash -

Naftali Herc

Friday & Shabbat

10 minutes before mincha

Mizrachi Shul

Audio Shiurim on-line!

- 613.org/Mishnah.html
- www.shemayisrael.com/Mishna/

DAF YOMI SIYUM

The Melbourne community will be celebrating the 11th completion of the entire Talmud learnt as part of the Daf Yomi (7½ year) program.

Sunday 27th February
At 7:00pm
Carlton Crest Hotel

Guest Speaker
Rabbi Noah Aizik Olbaum

For tickets and information:
email@siyum.info
mishnahyomit@hotmail.com

To add another mishnah yomit shiur send an email to: mishnahyomit@hotmail.com

Next Week's Mishnahyot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
6 th Feb. כ"ז שבט	7 th Feb. כ"ח שבט	8 th Feb. כ"ט שבט	9 th Feb. ל' שבט ראש חודש א'	10 th Feb. א' אדר א' ראש חודש ב'	11 th Feb. ב' אדר א'	12 th Feb. ג' אדר א'
Kilayim 8: 5-6	Kilayim 9: 1-2	Kilayim 9: 3-4	Kilayim 9:5-6	Kilayim 9: 7-8	Kilayim 9: 9-10	Shviit 1: 1-2

