

מוֹנַחִין בְּאָרוֹן. וְכֵן הוּא אוֹמֵר: "וַיִּשְׁלַח  
 אֹתָם מֹשֶׁה אֶלֶף לְמִטָּה לְצַבָּא אֹתָם  
 וְאֶת פִּינְחָס." "אֹתָם" – אֵילֹו סְנֵה־דְרִין;  
 "פִּינְחָס" – זֶה מְשֻׁחַ מִלְחָמָה; "וּכְלֵי  
 הַקִּדְשֵׁי" – זֶה אָרוֹן וְלוּחֹת שִׁבּוּ;  
 "וְחֻצְצֹרוֹת הַתְּרוּעָה" – אֵילֹו הַשּׁוֹפְרוֹת.

were resting in the Ark. And similarly, it says in the verse with regard to the war against Midian: "And Moses sent them, a thousand of every tribe, to the war, them and Pinehas the son of Elazar the priest, to the war, with the holy vessels and the trumpets for the alarm in his hand" (Numbers 31:6). The verse is interpreted as follows: "Them"; these are the Sanhedrin. "Pinehas"; he was the priest anointed for war. "And the holy vessels"; this is the Ark and the tablets<sup>N</sup> that were within it. "And the trumpets for the alarm"; these are the *shofarot*.<sup>N</sup>

## NOTES

And the holy vessels; this is the ark and the tablets – וְכְלֵי הַקִּדְשֵׁי, זֶה אָרוֹן וְלוּחֹת: Some sources suggest other interpretations of this verse. According to one opinion, the verse refers to the vestments of the High Priest (*Tosefta* 7:17). In a variation on this opinion, Rashi suggests that the holy vessels mentioned are the Ark and the priest's frontplate (Rashi on Numbers 31:6).

אֵילֹו הַשּׁוֹפְרוֹת – *shofarot*: The Maharsha is at a loss to explain the Gemara's interpretation that the trumpets in the verse are referring to *shofarot*. He maintains that it should be self-evident that these trumpets are those identified elsewhere (Numbers, chapter 10) as meant for use in war. The Rashash, based on the Gemara (*Shabbat* 36a), suggests that the Gemara here is referring to the trumpets, but these trumpets were called *shofarot* at that time.

It was not for nothing that Pinehas went, etc. – לא – לְהָנֵם הַלֵּךְ פִּינְחָס וְכִי לְהָנֵם הַלֵּךְ פִּינְחָס וְכִי: If, as the Gemara states, Pinehas was the priest anointed for war, there need not be any other reason for him to be selected to participate in the war; he simply went out to war in this appointed role. The *Tosefot HaRash* offers two resolutions. First, it is possible that this statement contradicts the previous one, stating that Pinehas was sent for the personal reason described here and not as the anointed priest. Alternatively, Pinehas was in fact the anointed priest, and this statement is suggesting why he was singled out for this role.

The Maharal insists that the selection of Pinehas was not meant, as it would seem at first glance, to allow him to settle a personal grievance. After all, this war was waged hundreds of years after Joseph was sold into slavery, and all the relevant parties were long dead. Rather, the fact that the Midianites had sold Joseph was relevant to this war only insofar as that event demonstrated a natural opposition between Midian, a nation characterized by promiscuity, and Joseph, a man characterized by sexual self-control. Joseph's descendant, Pinehas, shared his forebear's strong personal resistance to promiscuity, and he was therefore chosen to lead this campaign, whose objective was to avenge the Midianites' luring the Jewish people into crimes of promiscuity and idolatry.

### HALAKHA

**One who builds** – אָחַד הַבּוֹנֵה: If one has built a home, a barn for cattle, a shed for wood, or a warehouse, if it has the potential to serve as a domicile, he returns from the military ranks. This applies not only to one who has built the house himself but also to one who has purchased or inherited a house, or was given a house as a gift.

However, if he has built a gateway, a veranda, a balcony, or a house that is smaller than four by four cubits, he does not return from the military ranks. The *Kesef Mishne* suggests that the omission of a storehouse for straw from this list may be due to a scribal error (Rambam *Sefer Shofetim, Hilkhot Melakhim UMilhemoteihem* 7:5).

**One who plants** – אָחַד הַנּוֹטֵעַ: If one planted a vineyard or five fruit trees, even from five different species, he returns home from the military ranks. This applies equally whether he planted a tree, or bent a vine into the ground, or grafted different trees together. There is no difference whether one planted the trees himself or whether he bought them, or inherited them, or if a vineyard was given to him as a gift. However, one who planted four fruit trees or five non-fruit bearing trees does not return (Rambam *Sefer Shofetim, Hilkhot Melakhim UMilhemoteihem* 7:5).

**One who betroths** – אָחַד הַמְּאַרְס: If one betrothed a woman, whether she is a virgin or a widow, or if one is in line for a levirate marriage, he returns home from the military ranks (Rambam *Sefer Shofetim, Hilkhot Melakhim UMilhemoteihem* 7:7).

תָּנָא: לֹא לְחַנֵּם הַלֵּךְ פִּינְחָס לְמַלְחָמָה, אֲלֵא לְיִפְרַע דִּין אָבִי אָמוּ, שְׁנֵאמַר: "וְהַמְדִּינִים מְכָרוּ אוֹתוֹ אֶל מִצְרַיִם" וְגו'. לְמִימְרָא, דְּפִינְחָס מִיּוֹסֵף אֲתֵי, וְהָא בְּתִיב: "וְאֵלְעָזָר בֶּן אֶהֱרֹן לָקַח לוֹ מִבְּנוֹת פּוּטִיאל לֹו לְאִשָּׁה". מֵאִי לָאוּ דְאֲתֵי מִיתְרוֹ שְׁפִיטָם עֲגָלִים לְעִבּוּדָה זָרָה? לֹא, מִיּוֹסֵף שְׁפִיטָפֵט בְּיַצְרוֹ.

וְהֵלֵא שְׁבָטִים מִבּוֹיֵן אוֹתוֹ: רְאִיתָם בֶּן פּוּטִי זֶה, בֶּן שְׁפִיטָם אָבִי אָמוּ עֲגָלִים לְעִבּוּדָה זָרָה יְהוּגוּ נְשִׂיא מִיִּשְׂרָאֵל! אֲלֵא, אִי אָבוּה דְאִימִיָּה מִיּוֹסֵף – אִימִיָּה דְאִימִיָּה מִיתְרוֹ, וְאִי אִימִיָּה דְאִימִיָּה מִיּוֹסֵף – אָבוּה דְאִימִיָּה מִיתְרוֹ. דִּיקָא נִמְי, דְּכְתִיב: "מִבְּנוֹת פּוּטִיאל", תְּרִי מִשְׁמַע. שְׁמַע מִינָהּ.

**מתני** "וּדְבָרוֹ הַשְּׁטָרִים אֶל הָעָם לֵאמֹר מִי הָאִישׁ אֲשֶׁר בָּנָה בַּיִת חֲדָשׁ וְלֹא חֲנָכוּ יֵלֶךְ וְיָשׁוּב לְבֵיתוֹ" וְגו' – אָחַד הַבּוֹנֵה בַּיִת הַתְּבָנָה, בַּיִת הַבְּקָר, בַּיִת הָעֵצִים, בַּיִת הָאוֹצְרוֹת, אָחַד הַבּוֹנֵה וְאָחַד הַלּוֹקֵחַ, וְאָחַד הַיֹּרֵשׁ וְאָחַד שְׁנֵתָן לוֹ מִתְּנָהּ.

"וּמִי הָאִישׁ אֲשֶׁר נָטַע כֶּרֶם וְלֹא חָלְלוֹ" וְגו' – אָחַד הַנּוֹטֵעַ כֶּרֶם, וְאָחַד הַנּוֹטֵעַ חֲמִשָּׁה אֵילָנִי מְאָכְל, וְאִפְלוּ מִחֲמִשַּׁת הַמִּינִין, אָחַד הַנּוֹטֵעַ וְאָחַד הַמְּבָרֵךְ וְאָחַד הַמְּרַכֵּב, וְאָחַד הַלּוֹקֵחַ וְאָחַד הַיֹּרֵשׁ וְאָחַד שְׁנֵתָן לוֹ מִתְּנָהּ.

"וּמִי הָאִישׁ אֲשֶׁר אָרַשׁ אִשָּׁה" וְגו' – אָחַד הַמְּאַרְס אֶת הַבְּתוּלָה וְאָחַד הַמְּאַרְס אֶת הָאֵלְמָנָה, אִפְלוּ שׁוֹמְרַת יָבָם, וְאִפְלוּ שְׁמַע שְׁמַת אַחֵיו בְּמַלְחָמָה – חוּזֵר וְבָא לוֹ. כָּל אֵלוֹ וְאֵלוֹ שׁוֹמְעֵין דְּבָרֵי כְהֵן מַעֲרֵכֵי מַלְחָמָה וְחֹזְרִין, וְמִסְפָּקִין מִיָּם וּמִזֶּן, וְמִתְקַנְיִן אֶת הַדְּרָכִים.

A *tanna* taught: It was not for nothing that specifically Pinehas went<sup>N</sup> to war with Midian; rather, it was to exact the rightful judgment of his mother's father, Joseph, as it is stated: "And the Midianites sold him into Egypt to Potiphar, an officer of Pharaoh's" (Genesis 37:36). The Gemara asks: Is this to say that Pinehas came, on his mother's side, from the family of Joseph? But it is written: "And Elazar, Aaron's son, took himself a wife from the daughters of Putiel; and she bore him Pinehas" (Exodus 6:25). What, is it not that Pinehas came from the family of Yitro, who was also called Putiel because he fattened [*pittem*] calves for idol worship? They answer: No; he was descended from Joseph, who mocked [*pitpet*] his desire by resisting the advances of Potiphar's wife.

The Gemara asks: But is it not the case that, according to an oral tradition, the tribes were denigrating Pinehas after he killed Zimri, saying: Did you see this son of Puti, the son whose mother's father fattened cows for idol worship? Should this man kill a prince of Israel? Evidently, his grandfather Puti was Yitro, not Joseph. The Gemara answers: Rather, Pinehas was descended from both Joseph and Yitro. If his mother's father descended from Joseph, his mother's mother descended from Yitro. And if his mother's mother descended from Joseph, his mother's father descended from Yitro. The Gemara confirms this resolution: The language is also precise, as it is written: Elazar took a wife "from the daughters of Putiel," which implies that she came from two daughters of men named Putiel. The Gemara concludes: You may learn from the verse that this is so.

**MISHNA** The mishna continues its discussion of the speech given before battle. "And the officers shall speak to the people, saying: What man is there that has built a new house, and has not dedicated it? Let him go and return to his house, lest he die in the battle, and another man dedicate it" (Deuteronomy 20:5). He is sent home if he is one who builds<sup>H</sup> a storehouse for straw, a barn for cattle, a shed for wood, or a warehouse. Similarly, it applies if he is one who builds, or if he is one who purchases, or if he is one who inherits, or if he is one to whom it is given as a gift. In all these instances, the man returns from the war encampment.

The next verse states: "And what man is there that has planted a vineyard, and has not used the fruit thereof? Let him go and return unto his house, lest he die in the battle and another man use the fruit thereof" (Deuteronomy 20:6). He is sent home if he is one who plants<sup>H</sup> a whole vineyard of many vines, or if he is one who plants as few as five fruit trees of another variety, and even if these five are from the five species. The produce need not be all of one species. The same applies if he is one who plants, or if he is one who layers the vine, bending a branch into the ground so that it may take root and grow as a new vine, or if he is one who grafts different trees onto one another. And it applies if he is one who purchases a vineyard, or if he is one who inherits a vineyard, or if he is one to whom the vineyard is given as a gift.

The next verse states: "And what man is there that has betrothed a wife, and has not taken her? Let him go and return to his house, lest he die in the battle, and another man take her" (Deuteronomy 20:7). He is sent home if he is one who betroths<sup>H</sup> a virgin, or if he is one who betroths a widow. This applies even if his *yevama*, his late brother's wife, is a widow waiting for him as her *yavam* to perform levirate marriage; and even if he heard that his brother died in the war and the widow begins to wait for him only then, he returns and goes home. Each of these men, although they are exempt, still hear the address of the priest and the regulations of war at the local camp, and thereafter they return to their respective homes. However, they still support the war effort, and they provide water and food for the soldiers and repair the roads.

**Gateway** – **בית שער**: The gateway mentioned here is a small structure built at the entryway of a courtyard. It is meant to delay people, so that they cannot enter suddenly and directly into the courtyard. Normally, it is a very small open structure whose back wall is the gate to the courtyard. If there was a guard, he would occasionally sit in the gateway. Nevertheless, it cannot be properly defined as a living space in any way because it is so small and open on one side.

**Balcony** [*mirpeset*] – **מִרְפֶּסֶת**: The Hebrew root of this word is *reish, peh, samekh*, which means tread or trample. The term indicates a wooden board or a stone structure built as an extension at the top of a staircase to provide access to apartments located on the upper floor of a house. As such, the balcony serves as a type of open hallway alongside the house.

Some passageways of this type are roofed, and they generally have some sort of wall to prevent people from falling. Nevertheless, even when the passage is largely enclosed, it is built to be a passageway and is not truly habitable.

## LANGUAGE

**Veranda** [*akhsadra*] – **אֶכְסַדְרָה**: From the Greek ἐξέδρα, *exedra*, denoting a roofed entrance in front of a home.



Veranda in front of an ancient Greek house in Delos, Greece

## NOTES

**A widow betrothed to a High Priest** – **אֶלְמִנָּה לְכַהֵן גָּדוֹל**: Some see this as proof that the priests were also commanded to participate in wars, although they do not have their own territory in Eretz Yisrael. However, some contend that the priests are merely permitted to volunteer, but they are not obligated to fight (*Birkei Yosef; Minh'a Hareva*).

And these are the men who do not return to their homes: **One who builds a gateway**,<sup>b</sup> or **an enclosed veranda** [*akhsadra*],<sup>c</sup> or **a balcony**,<sup>b</sup> or **one who plants no more than four fruit trees** or even five or more **non-fruit bearing trees**; or **one who remarries his divorced wife**.<sup>d</sup> Nor is there an exemption for one who has betrothed a woman whom he is not permitted to marry: With regard to a **widow betrothed to a High Priest**<sup>e</sup> (see Leviticus 21:7); **a divorcée** or a **yevama who performed halitza** [*halutza*], in lieu of entering into a levirate marriage, **betrothed to a common priest** (see Leviticus 21:13–15); **a mamzeret** or a **Gibeonite woman betrothed to an Israelite**; or **an Israelite woman betrothed to a mamzer** or a **Gibeonite** (see Deuteronomy 23:3); such a man **does not return to his home**. **Rabbi Yehuda says: Even one who rebuilds a house as it stood originally would not return**. **Rabbi Eliezer says: Even one who builds a new brick house in the Sharon would not return** because these houses are not stable and are expected to collapse periodically.

**These are the men who do not even move from their places**<sup>h</sup> because they do not even report to the camp: **One who built a house and dedicated it within the year**; **one who planted a vineyard and used its fruit for less than a year**; **one who marries his betrothed** and **one who marries his yevama**, his brother's widow who must enter into a levirate marriage or perform *halitza*, as it is stated: “When a man takes a new wife, he shall not go out with the army... **he shall be free for his house one year**, and shall cheer his wife whom he has taken” (Deuteronomy 24:5). The mishna interprets the verse as follows: “**For his house**”; this means **his house** that he built. “**He shall be**”; this term includes **his vineyard**. “**And shall cheer his wife**”; this is **his wife**. “**Whom he has taken**”; this phrase comes to include **his yevama**, who is considered his wife with respect to this *halakha* although he has not yet married her. Those who are exempt for these reasons **do not even provide water and food to the soldiers, and they do not repair the roads**.

**GEMARA** The Sages taught: “**And the officers shall speak**... What man is there that has built a new house, and has not dedicated it? Let him go and return to his house, lest he die in the battle, and another man dedicate it” (Deuteronomy 20:5). One might have thought that they say **their own words** and that the priest does not issue these proclamations. However, **when it says: “And the officers shall speak further”** (Deuteronomy 20:8), **their own words are mentioned** only in this latter verse. Evidently, then, the priest is the speaker in the earlier verse. **How then do I realize the meaning of: “And the officers shall speak”** in the first verse? **The verse is speaking of the words of the priest anointed for war**. **How so? The priest speaks**<sup>h</sup> in an undertone, **and an officer calls out the priest's words** so that they are audible to the assembled.

## HALAKHA

**One who remarries his divorced wife** – **הַמְתַּחֵיר אֶת גְּרוּשְׁתּוֹ**: If one remarried his ex-wife or married a woman who is forbidden to him, e.g., a High Priest who married a widow or an Israelite who married a *mamzeret*, he does not return home from the ranks (Rambam *Sefer Shofetim, Hilkhot Melakhim UMilhemoteihem* 7:8).

**These are the men who do not even move from their places** – **אֵלֵי שְׂאִין וְזֵיִן מִמְקוֹמָן**: The following people do not go out to war at all and are not charged with any war-related tasks: One who built a house and dedicated it; one who married his betrothed; one who performed a levirate marriage; and one who redeemed the fruits of his vineyard. These people do not go out to war until one year after the enumerated events. Furthermore, not only do they not go out to war, but they also are not responsible for providing food and water to the soldiers, they do not guard the

walls, and they do not contribute to the fortification of the city or to the military provisions (Rambam *Sefer Shofetim, Hilkhot Melakhim UMilhemoteihem* 7:10–11).

**The priest speaks** – **כַּהֵן מְדַבֵּר**: The priest who has been anointed for war says, in Hebrew: “Hear Israel... let not your heart faint... to save you,” and another priest calls out his address to all the assembled. Then the priest anointed for war says: “What man is there that has built a new house, and has not dedicated it? Let him go and return to his house, lest he die in the battle, and another man dedicate it,” and an officer calls out his statement to all the assembled. Thereafter, an officer arises and says: “What man is there that is fearful and fainthearted” and another officer calls out his words to all the assembled (Rambam *Sefer Shofetim, Hilkhot Melakhim UMilhemoteihem* 7:3).



What man is there that has built, etc. – מי האיש אשר בנה – זכר: The commentaries discuss precisely which term in the verse serves to include even one who has acquired a house through means other than building it himself. Rashi explains that the inclusion here is learned from the words “what man.” The Rashash contends that the principle is learned from the term “that has.” He adds that the word “house” has also been used elsewhere as an inclusive term. In the *Sifrei*, this derivation serves as the basis for the obligation to build a parapet even upon the roof of a structure that is not a domicile.

#### HALAKHA

Excludes a robber – פָּרַט לְגִזְלוֹן: One who has a new house or a vineyard returns home from the military ranks, whether he built it for himself or received it from someone else. However, one who stole either of these assets does not return (Rambam *Sefer Shofetim*, *Hilkhot Melakhim UMilhemoteihem* 7:5–6).

תָּמַן חֵדָּא: כִּהֵן מְדַבֵּר וְשׁוֹטֵר מִשְׁמִיעַ.  
וְתִנְיָא אִידָךְ: כִּהֵן מְדַבֵּר וְכִהֵן מִשְׁמִיעַ.  
וְתִנְיָא אִידָךְ: שׁוֹטֵר מְדַבֵּר וְשׁוֹטֵר מִשְׁמִיעַ!  
אָמַר אַבְיִי: הָא בִּיצֵד? מִ“וּנְגַשׁ” וְעַד  
“וְדַבְּרוּ” – כִּהֵן מְדַבֵּר וְכִהֵן מִשְׁמִיעַ;  
מִ“וְדַבְּרוּ” עַד “וְיִסְפוּ” – כִּהֵן מְדַבֵּר וְשׁוֹטֵר  
מִשְׁמִיעַ. מִ“וְיִסְפוּ” וְאִילָךְ – שׁוֹטֵר מְדַבֵּר  
וְשׁוֹטֵר מִשְׁמִיעַ.

“מי האיש אשר בנה בית חדש” כו. תנו רבנן: “אשר בנה” – אין לי אלא אשר בנה. לקח וירש וניתן לו במתנה מנין? תלמוד לומר: “מי האיש אשר בנה”.

“בית” – אין לי אלא בית. מנין לרבות בית התבן ובית הבקר ובית העצים ובית האוצרות? תלמוד לומר: “אשר בנה”, מכל מקום. יכול שאני מרבה אף הבונה בית שער אכסדרה ומרפסת? תלמוד לומר: “בית”. מה בית הראוי לדירה, אף כל הראוי לדירה.

רבי אליעזר בן יעקב אומר: “בית” כמשמעו. “לא חנוך”, “ולא חנכו” – פרט לגזולן. לימא: דלא כרבי יוסי הגלילי, דאי רבי יוסי הגלילי, הא אמר: “ורוך הלבב” – זה המתירא

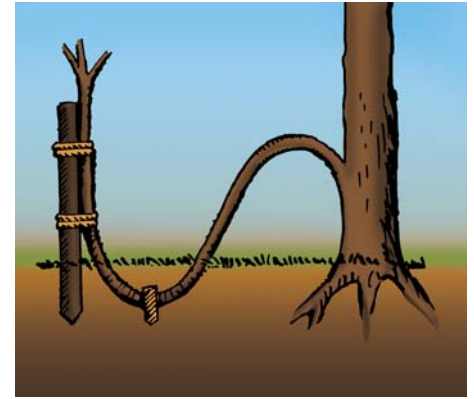
It is taught in one *baraita*: A priest speaks, and an officer calls out his words; and it is taught in another *baraita*: A priest speaks and a priest calls out. And it is taught in yet another *baraita*: An officer speaks and an officer calls out. Abaye said: How can these texts be reconciled? From the words: “That the priest shall approach” (Deuteronomy 20:2), until the words: “And the officers shall speak” (Deuteronomy 20:5), which consist of words of encouragement and inspiration, a priest speaks and another priest calls out. From the words “and the officers shall speak” until the words: “And the officers shall speak further” (Deuteronomy 20:8), which list various people who are to return home from the battle front because of happy occasions, a priest speaks and an officer calls out. From the words “and the officers shall speak further” and on, which address those who are fearful and fainthearted, an officer speaks and another officer calls out.

§ The mishna teaches that the officers announce: “What man is there that has built<sup>n</sup> a new house, and has not dedicated it? Let him go and return to his house, lest he die in the battle, and another man dedicate it” (Deuteronomy 20:5). The Sages taught: From the phrase “That has built,” I have derived only that this applies to one who has literally built a house. From where do I derive that it includes one who purchased, or inherited, or has been given a house as a gift? The verse states broadly: “What man is there that has built.” By not merely stating: One that has built, but using the expanded “what man is there that has built,” the verse includes any of these circumstances.

From the term “a house” I have derived only a house in which people live. From where is it derived that the exemption is understood to also include one who builds a storehouse for straw, a barn for cattle, a shed for wood, or a warehouse? The verse states: “That has built,” which includes whatever one built, in any case. One might have thought that I should include even one who builds a gateway, or an enclosed veranda, or a balcony; however, the verse states: “A house,” which teaches that just as a house is, by definition, a structure that is fit for living, so too, this *halakha* applies to every structure that is potentially fit for living, although in practice it may be used for another purpose.

Rabbi Eliezer ben Ya’akov says: The word “house” is to be understood to mean, as it indicates, a building meant for human residence. With regard to the house for which a man may be sent back from the camp, since the verse does not state merely: “And has not dedicated,” but rather: “And has not dedicated it,” specifying the particular house to which the man is connected, the verse therefore excludes a robber<sup>n</sup> who does not own his house. The Gemara asks: Shall we say that this opinion is not in accordance with the opinion of Rabbi Yosei HaGelili? As, if it were in accordance with the opinion of Rabbi Yosei HaGelili, didn’t he say: When the verse singles out the “fearful and fainthearted” (Deuteronomy 20:8), this is referring to one who is afraid

**Layering** – **הַרְבָּקָה**: This refers to an agricultural process, particularly common in grapevines, in which a growing tree branch is inserted into the ground in such a way that it will take root. After it takes root, the branch is severed from its tree. This is similar to the method of planting a shoot, but with the added advantage that it also receives nourishment from the original tree for a period of time.



Layering

**Grafting** – **הַרְבָּקָה**: Grafting is a method for maintaining and improving trees that dates back to antiquity. While the methods of grafting have been enhanced over time, the essential principles have not changed. Grafting consists of inserting a branch from one tree into a slit made in another tree for this purpose, although the precise techniques of connecting branch to tree vary among the different species of trees. It appears from the Talmud that grafting grapevines was particularly common at that time.

In talmudic times it was also common to graft trees while the branch remained connected to the original tree. This ensured that the grafted branches would not dry out in the event that the grafting did not succeed. The Gemara refers to this method as: A young tree that was entangled with an old tree.

#### HALAKHA

**Permitted grafting** – **בְּהֶרְבַּת הַיֵּתֵר** – If one grafts or layers a tree in such a way that it is subject to the prohibition of *orla*, he returns home from war (Rambam *Sefer Shofetim, Hilkhot Melakhim UMilhemoteihem* 7:6).

The Gemara answers: Even if you say that this ruling is in accordance with the opinion of Rabbi Yosei HaGelili, Rabbi Eliezer ben Ya'akov still needs to exclude one in possession of a stolen house, as in a case where one repented and gave money to the owners of the house that he stole. Although in such a case he is not considered a criminal, the house was originally stolen, and therefore he must remain among the military ranks. The Gemara challenges this: If so, i.e., he repaid the owners, he is now a legal purchaser of the house and he should return from the military ranks. The Gemara answers: Since initially it entered his possession with the status of stolen property,<sup>N</sup> he does not return.

**S** The Gemara continues its discussion of those who return from the ranks. “And what man is there that has planted a vineyard, and has not used the fruit thereof” (Deuteronomy 20:6). The Sages taught: From the phrase “that has planted,” I have derived only that it applies to one who actually planted a vineyard. From where is it derived that the military exemption likewise includes one who purchased it, one who inherited it, and one to whom it was given as a gift? The verse states: “And what man is there that has planted.” By not merely stating: One that has planted, but using the expanded “what man is there that has planted,” the verse includes any of these circumstances.

From the specific term “vineyard,” I have derived only a vineyard; from where do I derive that it comes to include five fruit trees even from other species? The verse states: “That has planted,” to include different types of trees. Might I include even one who plants only four fruit trees and one who plants five or more non-fruit bearing trees? The verse states: “Vineyard.” The term excludes a quantity of trees that is too few to qualify as a vineyard, as well as trees that do not yield fruit at all.

Rabbi Eliezer ben Ya'akov says: The word “vineyard” is to be understood as it indicates, and it is referring only to a grape vineyard. And since the verse does not state merely: “And has not used the fruit,” but rather: “And has not used the fruit thereof,” it excludes one who layers<sup>B</sup> the vine or branch and one who grafts<sup>BN</sup> different trees onto one another. The Gemara asks: But didn't we learn in the mishna: He is released if he is one who plants, or if he is one who layers, or if he is one who grafts trees? Rabbi Zeira said that Rav Hisda said: This is not difficult. Here, in the case where one does not return from the ranks, the man has performed forbidden grafting;<sup>N</sup> there, in the case where one does return from the ranks, he has performed permitted grafting.<sup>H</sup>

#### NOTES

It entered his possession with the status of stolen property – **בְּתוֹרַת גְּזֵילָה אֲתָא לְיָדֶיהָ**: The Torah dictates that it is inappropriate to formally dedicate an item that has entered one's possession through a sin, as this cannot be classified as an unadulterated mitzva. Therefore, although one may now have full ownership of the property in question, he does not return from the military ranks for such a house (*Minḥa Hareva*).

**One who layers and one who grafts** – **לְמַבְרִיךְ וּלְמַרְכִּיב**: The majority of the discussion here revolves around grafting. Evidently, the Gemara does not dwell on the issue of layering because it has been established that as long as the layered branch is still being nourished by its tree it is not considered to be its own tree, and the years of *orla* are counted only from the point that this nourishment ceases (Meiri).

Rav Nahman bar Yitzḥak's statement that follows can be understood to be an example of a case of forbidden layering.

**Forbidden grafting** [*harkavat issur*] – **בְּהֶרְבַּת אִיסוּר** – The early commentaries ask why the Gemara does not once again contend with the opinion of Rabbi Yosei HaGelili in this context. Rabbi Yosei HaGelili maintains that an individual may be released from the ranks because of the sins he has committed. If so, that should be the *halakha* in the case of one who has grafted trees in a forbidden manner, and he should be sent back for this reason.

According to one answer, one would not return from the ranks due to the sin of grafting. Although one in possession of stolen property would be sent back, the reason is because the thief has an obligation to rectify the sin by returning the stolen property. The same is true of all similar offenses. However, that is not true of forbidden grafting, for which one is not required to destroy the grafted tree, nor is he prohibited from deriving benefit from its fruit (*Tosefot HaRosh*).

An alternative opinion is suggested by the Maharsha. He posits that this may be a case in which the owner of the vineyard does not perform the sin himself; rather, a sharecropper or someone else executes the actual forbidden grafting. In such a case, the owner would not be sent back for his sin.

Some commentaries maintain that the Rambam understands the Gemara very differently, such that it obviates any connection to Rabbi Yosei HaGelili's opinion. Accordingly, the term *harkavat issur* does not mean forbidden grafting, but rather: Grafting subject to the prohibition of *orla*. Instead of understanding that this type of grafting is insufficient to allow one to return from the military ranks, the Rambam says that this is the only manner of grafting for which a man does return. For the other type of grafting, which is called permitted grafting, insofar as it has no restrictions of *orla*, there is no particular reason for its owner to leave the military ranks (*Kesef Mishne*).

A young tree that was entangled with an old tree – **לְלֵדָה שְׁסִיבְכָה בְּקִינָה** – Rashi explains that this refers to removing a branch from a young tree and inserting it into an old tree. However, others maintain that the Gemara is talking about inserting the end of a branch into an old tree while it is still connected to the young tree. According to this opinion, the *halakha* of a detached branch is understood by way of an *a fortiori* inference: If a branch still attached to a young tree assumes the status of the old tree to which it is affixed, certainly a branch that is first detached assumes that status (*Tosefot HaRash*).

## BACKGROUND

**Orla** – **עֵרְלָה**: It is prohibited to eat or derive benefit from fruit that grows during the first three years after a tree has been planted (see Leviticus 19:23). This prohibition applies only to the fruit and not to the other parts of the tree. In addition, the prohibition does not apply to trees planted for a purpose other than to use their fruit, e.g., trees planted to serve as a property fence or as a wind buffer.

הָאֵי הִרְכַּבְתָּ הֵיכֵי דְמִי? אֵילִמָּא יִלְדָּה בְּיִלְדָּה, תִּיפּוּק לֵיהּ דְּבַעֵי מִיְהֵדֵר מִשּׁוּם יִלְדָּה רַאשׁוֹנָה! אֵלָּא יִלְדָּה בְּזִקְיָנָה? וְהָאָמַר רַבִּי אֲבָהוּ: יִלְדָּה שְׁסִיבְכָה בְּקִינָה – בְּטַלְהָ יִלְדָּה בְּקִינָה וְאִין בְּהָ דִין עֵרְלָה!

אָמַר רַבִּי יִרְמְיָהּ: לְעוֹלָם יִלְדָּה בְּיִלְדָּה, וּבְגוֹן דְּנִטְעָה לְהֵךְ קְמִייתָא לְסִיג וּלְקוֹרוֹת, דְּתַנּוּ: הַנּוֹטֵעַ לְסִיג וּלְקוֹרוֹת – פְּטוּר מִן הָעֵרְלָה.

וּמֵאֵי שָׁנָא יִלְדָּה בְּזִקְיָנָה דְּבִטְלָה, וּמֵאֵי שָׁנָא יִלְדָּה בְּיִלְדָּה דְּלֵא בְּטַלְהָ?

הֲתָם אֵי מִימְלִיךְ עֲלֵהּ לֵאוּ בֵּת מִיְהֵדֵר הִיא, הֲכָא אֵי מִימְלִיךְ עֲלֵהּ בֵּת מִיְהֵדֵר הִיא. [דְּהָא מַעֲיָקְרָא לְפִירֵי קִינָמָא]. מִיְדֵי דְהוּה אֲעָלוּ מֵאֵילֵיהּ, דְּתַנּוּ: עָלוּ מֵאֵילֵיהּ – חֲזִיבִין בְּעֵרְלָה.

וְלוֹקְמָה בְּכֶרֶם שֶׁל שְׁנֵי שׁוֹתֶפִיין, דְּהָאֵי הָדָר אֲדִינְיָה, וְהָאֵי הָדָר אֲדִינְיָה! אָמַר רַב פַּפְּא, זֵאת אוֹמְרֵת: כֶּרֶם שֶׁל שְׁנֵי שׁוֹתֶפִיין – אִין חוֹזְרִין עָלָיו מֵעֵרְכֵי הַמְלֻחָמָה.

The Gemara asks: With regard to this permitted grafting, what are the circumstances? If we say that it is a young tree grafted together with another young tree, then let him derive the *halakha* that one must return from the ranks due to the first young tree. One should be exempt because of his first tree, which is young, and the grafted tree is irrelevant. Rather, it is a case in which a young tree is grafted with an old tree. The Gemara objects: **But didn't Rabbi Abbahu say:** With regard to a young tree that was entangled, i.e., grafted, with an old tree,<sup>NH</sup> the young one is negated by the old one, and the law of *orla*<sup>B</sup> does not apply to it. Therefore, the grafted tree should likewise lose its status as a young tree, and one in this situation should not return from the ranks.

**Rabbi Yirmeya said:** Actually, one returns home if he grafts a young tree with another young tree, and it is a case in which he planted this first one for a fence or for beams, so that he is exempt from battle only because of the second tree, which he grafts for fruit. **As we learned** in a mishna (*Orla* 1:1): In a case of one who plants a tree for a fence or to yield wood for beams,<sup>H</sup> the tree is exempt from the *halakhot* of *orla*.

The Gemara asks: **And what is different** about the case of a young tree paired with an old tree such that the young tree is negated, and what is different about the case of a young tree being planted for fruit paired with a young tree planted for wood such that the fruit tree is not negated?

The Gemara answers: **There**, in the case of an older tree, if one changes his mind about it and wants it to be a young tree obligated in *orla*, it cannot return to its previous state, as he has grafted it. Therefore, it is exempt from the *halakhot* of *orla*. **Here**, when a tree is planted for wood, if he changes his mind and decides to grow it for fruit, it can return to its default state of being planted for fruit, because initially it stands to be used for fruit. Therefore, it is not exempt from the *halakhot* of *orla*. This ruling is just as it is concerning trees that grew by themselves,<sup>H</sup> which are subject to *orla* although they were not consciously planted for their fruit. **As we learned** in a mishna (*Orla* 1:2): Fruit trees that grew by themselves are obligated in *orla* although the landowner did not plant them himself.

The Gemara asks: Why is there a need to establish the mishna as discussing a case where one planted the first tree for a fence or for beams? **But let the mishna be established** as referring to a vineyard belonging to two partners,<sup>H</sup> where the two trees involved in the grafting were co-owned by partners, and both trees were young. **As in this case this one man returns due to his tree and that other man returns due to his tree.** **Rav Pappa says:** Since the Gemara avoids the scenario of the vineyard belonging to partners in favor of discussing a case where one planted the first tree for a fence or for beams, that is to say if there is a vineyard belonging to two partners, evidently they do not return for the vineyard from the ranks of soldiers waging war.

## HALAKHA

**A young tree that was entangled with an old tree** – **לְלֵדָה שְׁסִיבְכָה בְּקִינָה**: When the branch of a young tree, which is subject to *orla*, is grafted to a tree that has completed its period of *orla*, the branch assumes the status of the older tree. In such a case, the branch's owner does not return from the ranks on account of the tree. However, if there were fruits on the young branch, those fruits are considered *orla* and remain forbidden, even if they grow significantly larger after the branch is grafted (Rambam *Sefer Zera'im*, *Hilkhot Ma'aser Sheni* 10:16; *Shulhan Arukh*, *Yoreh De'a* 294:22).

**One who plants a tree for a fence or for beams** – **הַנּוֹטֵעַ לְסִיג וּלְקוֹרוֹת**: If one plants a fruit tree intending to use it as a

boundary around his field or to use its wood for building or for firewood, the tree is not subject to the prohibition of *orla*. This is the case provided that it is evident from its location or the way the tree is maintained that it is not being grown for fruit. If the owner eventually decides to use the tree for its fruit, he counts the years of *orla* retroactively from the time of planting (Rambam *Sefer Zera'im*, *Hilkhot Ma'aser Sheni* 10:2; *Shulhan Arukh*, *Yoreh De'a* 294:23).

**Trees that grew by themselves** – **עָלוּ מֵאֵילֵיהּ**: A tree that emerges by itself on private property is subject to the *halakhot* of *orla* (Rambam *Sefer Zera'im*, *Hilkhot Ma'aser Sheni* 10:5; *Shulhan Arukh*, *Yoreh De'a* 294:27).

**A vineyard belonging to two partners** – **כֶּרֶם שֶׁל שְׁנֵי שׁוֹתֶפִיין**: If a vineyard is jointly owned, its owners do not return from the ranks for their vineyard. There is a dispute with regard to a home that is jointly owned. According to one opinion, since each owner presumably has his own private space in the house, each partner is considered a sole owner of a domicile (*Kesef Mishne*). However, it appears from the Jerusalem Talmud that joint owners of a home have the same status as joint owners of a vineyard (Rambam *Sefer Shofetim*, *Hilkhot Melakhim UMilhemoteihem* 7:6 and *Lehem Mishne* there).



**הַמִּשָּׁה אֶחָד** – If there are five brothers and one of them dies – **הַמִּשָּׁה אֶחָד מֵהֵן**: If five brothers go to war, and one dies without leaving any children, all of the brothers return home. They all have the responsibility to perform levirate marriage or *halitza* for the widow (Rambam *Sefer Shofetim, Hilkhot Melakhim UMilhemoteihem* 7:7).

**One layers a tree and grafts it with a vegetable plant – הַמְבַרֵךְ אֵילָן בִּירֵק**: If one grafts a tree with a vegetable plant, or a vegetable plant with a tree, he is liable to receive lashes (Rambam *Sefer Zera'im, Hilkhot Kilayim* 1:5; *Shulhan Arukh, Yoreh De'a* 295:1).

**יְלֻדָּה** – A young grapevine less than one handbreadth tall – **פְּחוּתָהּ מִטֶּפַח**: If a tree is less than one handbreadth tall, even if it has been growing for many years, by rabbinic law the prohibition of *orla* still applies to it. This is only in the case of a single, isolated tree or a small vineyard of no more than two grapevines opposite two grapevines and one more vine growing between them. However, if there is an entire vineyard of such trees, they are exempt from *orla* after three years, because it is widely known that it is an older vineyard (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 10:19; *Shulhan Arukh, Yoreh De'a* 294:21).

The Gemara asks: **And in what way is the case of partners different from the following case:** If there are **five brothers and one of them dies<sup>H</sup> in the war**, the *halakha* is that they all return. Just as each brother returns because of his shared responsibility to perform levirate marriage or *halitza* for the widow, each partner should return for his share in the young tree that was grafted. The Gemara answers: **There, each and every one is considered one who must return for his wife**, as any of them could readily marry her. However, **here, each and every one is not considered one who must return for his vineyard** because it does not belong exclusively to either of them.

**Rav Nahman bar Yitzhak said:** In accordance with the *baraita* mentioned above, one does not normally return for a grafted or layered tree. However, the mishna states that one does return for a grafted or layered tree in a case where **one layers a tree and grafts it with a vegetable plant.<sup>H</sup>** And that ruling is in accordance with this *tanna*, Rabbi Yehuda ben Gamda, as cited in a *baraita*. **As it is taught in a baraita (Tosefta, Kilayim 1:12):** With regard to **one who layers a tree and grafts it with a vegetable plant**, the *tanna'im* engaged in a dispute concerning whether this kind of breeding is permitted. **Rabban Shimon ben Gamliel, speaking in the name of Rabbi Yehuda ben Gamda of the village of Akko, permits one to do so, and the Rabbis prohibit it.** Therefore, one would return from the ranks for a tree grafted to a vegetable plant, in accordance with the opinion of Rabbi Yehuda ben Gamda, although he would not return for the vegetable itself.

The Gemara offers another alternative resolution to the contradiction over whether one returns for a grafted tree. **When Rav Dimi came from Eretz Yisrael, he said that Rabbi Yoḥanan said:** In accordance with **whose opinion is this** statement, which says that one does not return for a grafted tree? **It is the opinion of Rabbi Eliezer ben Ya'akov.** He explains: **Didn't Rabbi Eliezer ben Ya'akov say there** in the *baraita* cited earlier: The word **vineyard** is to be understood as **it indicates**, i.e., that the exemption is only for a grape vineyard? **Here too**, the word **planted** is to be understood as **it indicates**; with regard to one who **plants**, yes, he does return, but **one who grafts or layers** a tree does not return.

§ After citing Rabbi Yoḥanan's interpretation of the opinion of Rabbi Eliezer ben Ya'akov, the Gemara cites a string of other rulings that Rabbi Yoḥanan said in the name of Rabbi Eliezer ben Ya'akov. **When Rav Dimi came from Eretz Yisrael, he said that Rabbi Yoḥanan said in the name of Rabbi Eliezer ben Ya'akov:** The Sages decreed that if there is a **young grapevine less than one handbreadth tall,<sup>HB</sup> it is obligated in orla all its years**, even after the three years mandated by the Torah, **because it appears like a vine of one year.** The Sages were concerned that if they permitted one to eat from such a vine, people would also eat true *orla*. **And this prohibition applies** to a very small section of **two grapevines opposite two grapevines and one** more vine **emerging** and growing between them, in the formation of a **tail**. **But if the entire vineyard grows so short, it generates publicity**, and people know that the vines are old enough to no longer be subject to *orla*.

BACKGROUND

is discussing a grapevine that, by itself or through training, has an extremely short trunk of less than a handbreadth. The leaves and clusters grow on vines stemming from this trunk, and these vines are cut and trained annually.

ומאי שנא מחמשה אחין ומית אֶחָד מהן במלחמה דכולן חוזרין? התם כל חד וחד קרינא ביה "אשתו", הָכָא כָּל חד וחד לֹא קרינא ביה "בְּרֵמו".

רב נחמן בר יצחק אמר: במברך אילן בירק. והאי תנא הוא, דתנא: המברך אילן בירק – רבן שמעון בן גמליאל מתיר משום רבי יהודה בן גמדיא איש כפר עכו, והכמים אוסרין.

בי אַתָּא רב דימי אָמר רבי יוחנן: הָא מני רבי אליעזר בן יעקב היא. לֹא אָמר רבי אליעזר בן יעקב התם "בְּרֵם" כְּמִשְׁמָעוֹ? הָכָא נמי "נָטַע" כְּמִשְׁמָעוֹ, נָטַע – אֵין, מְבַרֵךְ וּמְרַגֵּב – לֹא.

בי אַתָּא רב דימי אָמר רבי יוחנן משום רבי אליעזר בן יעקב: יְלֻדָּה פְּחוּתָהּ מִטֶּפַח – תְּיִיבַת בְּעֵרְלָהּ כָּל שְׁנוֹתֶיהָ, דְּמִתְחַזֵּיא כְּבַת שְׂתָא. וְהֵי מִילֵי שְׂתִים כְּנֻגְדֵי שְׂתִים וְאַחַת יוֹצֵאָהּ זָנָב, אֲבָל כּוֹלֶיהָ בְּרֵם – קָלָא אֵית לֵיהּ.

A young grapevine less than one handbreadth tall – **יְלֻדָּה פְּחוּתָהּ מִטֶּפַח**: This does not mean that the entire grapevine is shorter than one handbreadth, because such a grapevine, let alone a complete vineyard, cannot survive. The Gemara here

A corpse occupies four cubits, etc. – **מת תופס ארבע** – **אמות וכו'**: One may not recite *Shema* or other sacred matters within four cubits of a corpse. Even if one already recited *Shema* in the vicinity of a corpse, he did not fulfill the mitzva and must recite it again properly. However, with regard to prayers and blessings, the halakhic authorities hold in accordance with the Ra'avad and maintain that whatever was recited need not be repeated (Rambam *Sefer Ahava, Hilkhot Keriat Shema* 3:2; *Shulhan Arukh, Orah Hayyim* 71:7).

A stepdaughter who grows up among the brothers – **חורגתא הגדילה בין האחים**: One may marry the daughter of his stepmother, even if the daughter grew up with him and his siblings; it is not necessary to be concerned for appearances, as it is widely known that they are not siblings (*Shulhan Arukh, Even HaEzer* 15:1).

Gleanings, forgotten sheaves, or produce in the corner, etc. – **לקט שכחה ופאה וכו'**: Gleanings, forgotten sheaves, and produce in the corner of the field are exempt from tithes and Temple contributions, even if they were bundled together in a heap. If one brings them into a threshing floor, he must separate tithes and contributions as one does for any other crop. However, if the threshing floor is in the city, this produce is exempt (Rambam *Sefer Zera'im, Hilkhot Terumot* 2:9).

A young vine less than one handbreadth, etc. – **ילדה** – **הפחותה מטפח וכו'**: If a grapevine is shorter than one handbreadth, it does not render seeds that are planted near it forbidden due to the prohibition of diverse kinds. This is true for an individual, isolated vine and even for a group of five vines that are growing together like a vineyard. But in the case of a large vineyard that is comprised of vines shorter than a handbreadth, such vines do render the seeds grown near them forbidden (Rambam *Sefer Zera'im, Hilkhot Kilayim* 6:4; *Shulhan Arukh, Yoreh De'a* 296:22).

**כי אתא רב דימי אמר רבי יוחנן משום רבי אליעזר בן יעקב: מת תופס ארבע אמות לקריאת שמע, דכתיב: "לעג לרש חרף עשהו".**

**אמר רבי יצחק אמר רבי יוחנן משום רבי אליעזר בן יעקב: חורגתא הגדילה בין האחים – אסורה לינשא לאחין, דמתחזיא כי אחתייהו. ולא היא. קלא אית ליה למילתא.**

**ואמר רבי יצחק אמר רבי יוחנן משום רבי אליעזר בן יעקב: לקט שכחה ופאה שעשאון בגורן – הוקבעו למעשר. אמר עולא: לא אמרן אלא בשדה. אבל בעיר – קלא אית ליה למילתא.**

**ואמר רבי יצחק אמר רבי יוחנן משום רבי אליעזר בן יעקב: ילדה הפחותה מטפח – אינה מקדשת את הזרעים. והני מילי שתים כנגד שתים ואחת יוצאה זנב, אבל כולי פרס – מקדיש.**

**ואמר רבי יצחק אמר רבי יוחנן משום רבי אליעזר בן יעקב:**

When Rav Dimi came from Eretz Yisrael, he said that Rabbi Yoḥanan said in the name of Rabbi Eliezer ben Ya'akov: A corpse occupies four cubits<sup>h</sup> with regard to the exemption from the recitation of *Shema*, so that it is prohibited to recite *Shema* within this space, as it is written in the verse: “Whoever mocks the poor blasphemes his Maker” (Proverbs 17:5). Because the deceased cannot perform mitzvot, one who performs a mitzva in front of them is considered to be mocking them.

Rabbi Yitzḥak says that Rabbi Yoḥanan says in the name of Rabbi Eliezer ben Ya'akov: With regard to a man's stepdaughter who grows up among the brothers<sup>h</sup> from a different marriage, she is eligible to be married to them in principle, because they are not actually her siblings. Nevertheless, she is prohibited to be married to the brothers, because she appears as though she is their sister. The Gemara comments: And that is not so; such a marriage is not prohibited because the matter generates publicity, and the public knows that they are not truly related.

And Rabbi Yitzḥak says that Rabbi Yoḥanan says in the name of Rabbi Eliezer ben Ya'akov: With regard to gleanings (Leviticus 19:9, 23:22), forgotten sheaves (Deuteronomy 24:19), or produce in the corner<sup>h</sup> of the field which is given to the poor [*pe'a*] (Leviticus 19:9, 23:22), three obligatory agricultural gifts that must be given to the poor, if one gathered them into the threshing floor, the produce was thereby rendered obligated for tithes. Although one does not take tithes from produce for the poor, onlookers are likely to presume that this is his own produce. Ulla said: We stated this *halakha* only when the granary is in the field, but in the city, the matter generates publicity. People see that the produce was gathered in small quantities from different places, and they know that this produce is for the poor. In that case, one need not separate tithes.

And Rabbi Yitzḥak says that Rabbi Yoḥanan says in the name of Rabbi Eliezer ben Ya'akov: If there is a young grapevine less than one handbreadth<sup>h</sup> tall, it does not render the seeds that are planted next to it forbidden.<sup>n</sup> Normally, diverse kinds of produce may not be planted in close proximity, but this vine is too small to qualify as a prohibited vineyard. The Gemara limits the scope of this statement: And this statement applies to a very small section of two grapevines opposite two grapevines and one more vine emerging and growing between them, in formation of a tail. But if the entire vineyard grows so short, a vine of this size does render the other seeds planted at its side forbidden.

And Rabbi Yitzḥak says that Rabbi Yoḥanan says in the name of Rabbi Eliezer ben Ya'akov:

#### NOTES

**אינה מקדשת את הזרעים**: A number of commentaries address a basic question relating to the Gemara's discussion: If this kind of growth is considered a proper grapevine, why doesn't it qualify as a forbidden growth among diverse kinds? Conversely, if it is not considered a proper vine, why should there be a prohibition of diverse kinds if this kind of vine fills the whole vineyard?

Rashi explains that this Gemara presumes that by Torah law, only hemp and arum seeds are subject to the prohibition of diverse kinds. Other seeds are prohibited only by rabbinic law (see *Menahot* 15b). Therefore, the Sages dictated the terms of the ban and applied it in the case of short vines, only where the short vines populate a complete vineyard.

The Rambam does not differentiate between different species of seeds, and he understands this *halakha* in another manner. According to one explanation, the Rambam holds that the parameters of this prohibition are *halakhot* transmitted to Moses at Sinai, which follow their own regulations. The Radbaz suggests two other possible explanations. First, a group of five vines does not qualify as a vineyard by Torah law; and when the Sages determined that such a group should be treated like a vineyard, they did not apply this categorization to a vineyard of exceedingly short vines. Alternatively, vines this short may not constitute a proper vineyard by Torah law, but the Sages decreed that they must be treated as a vineyard with respect to the prohibition of diverse kinds when a whole vineyard grows in this manner.