

He abandoned the wall and did not rebuild it – נתיאש הימנה ולא גדרה

Overview

The ברייתא states that if the בעל הכרם abandons the rebuilding of the wall, then the produce acquires the status of כלאים and is אסור. In addition the בעל הכרם is liable for damages. It seems from the ברייתא that both the איסור כלאים and the liability of the בעל הכרם are dependent on the 'נתיאש'. Otherwise if he is still trying to rebuild the wall then it will not become כלאים, and obviously there is no liability. It is not clear why the איסור כלאים depends on the 'נתיאש'. Concerning the חיוב to pay, it is understood that as long as he is trying to repair the damage we cannot hold him responsible; he is doing all he can¹. However concerning the איסור כלאים, that should be independent of his 'נתיאש'. If it was הוסיף מאתיים it should become כלאים, regardless whether he was נתיאש or not. תוספות will clarify this issue.

דוקא נתיאש – It becomes only כלאים **specifically when he abandoned** all efforts to rebuild the wall –

אבל לא נתיאש – **however if he did not give up**

ועוסק כל שעה לגדור – **and he is continually occupied in rebuilding** the wall

אף על פי שהוסיף מאתיים – **even though that a two hundredth was added** to the growth of the produce in the duration –

הוסיף – the produce **is permitted** to be eaten. There is no איסור כלאים even if מאתיים.

מסכת כלאים in משנה – **as we learnt in a משנה** (פרק ה' משנה ו')

הרואה ירק בכרם – **one who sees a vegetable in a vineyard** which is considered כלאים if they are growing close together –

ואמר כשאגיע לשם אלקטנו – **and he said when I will arrive there, I will gather it**²; the דין is that even if it grew –

הוסיף מאתיים מותר – **an additional two hundredth**, by the time he arrived to harvest it, nevertheless **it is permitted**. There is no איסור כלאים. On the other hand, if he said instead –

לכשאחזור אלקטנו – **when I shall return** (from whatever he intended to do then) then **I will gather it**³, then the דין is –

הוסיף מאתיים אסור – **if it added a two hundredth** during this interlude the produce **is prohibited**. It has the status of כלאים. This concludes the quote from the כלאים in משנה.

¹ See previous תוספות ד"ה אומר, footnote # 6, that גרמי is only חייב במזיד.

² This expression indicates that he is pursuing to rid his field from כלאים as soon as possible.

³ This indicates that he is not in a special hurry to eradicate כלאים from his field.

it is apparent that when he is pursuing to gather the vegetable (as soon as possible) – אלמא כשהוא מחזר אחר לקיטתו
even if מאתיים was added during his pursuit of harvesting it, it is nevertheless permitted. – אפילו הוסיף מאתיים מותר

The question is, what difference is there whether he is pursuing to rid his vineyard of כלאים or not. Seemingly it should depend only on whether it was הוסיף מאתיים or not. תוספות explains:

the reason for this דין may be explained as follows: **והטעם יש לפרש**

for it is written in the תורה **משום דכתיב (דברים כב)**

do not plant (in) your vineyard כלאים. This teaches us that the איסור of כלאים needs to be – **לא תזרע כרמך כלאים**

similar to planting. There is an איסור כלאים even when one does not actually plant them together. If they happen to be growing together, even without any conscious effort to plant them, it is still prohibited to maintain כלאים. Nonetheless this prohibition against maintaining כלאים applies only when it is similar to planting. This similarity consists that just like by planting it is obvious – **דומיא דזריעה**

that he is pleased with his planting כלאים, for otherwise he would not plant the כלאים. Similarly when כלאים is growing in one's field it becomes prohibited only when there is a certain satisfaction that it is growing. Therefore in the case in מס' כלאים, when he is pursuing to gather the vegetable as soon as possible it does not become איסור. It is apparent that he is not satisfied with the כלאים growth. Therefore it is irrelevant how much it grew in the meantime, since he is not satisfied. However when he is not pursuing to gather the ירק immediately, but states rather that he will do it when he gets around to it, this demonstrates that there is a certain satisfaction with the כלאים growth (for otherwise he would uproot it as soon as possible), therefore if הוסיף מאתיים it is כלאים. The same applies to the rebuilding of the wall. As long as he is involved in building the wall, he is demonstrating that he is not satisfied with the כלאים situation. It is only when he is מייאש from building the wall that it becomes איסור. He is demonstrating that he is not bothered (and in fact satisfied) by the כלאים growth.

Summary

The פסוק states **לא תזרע כרמך כלאים**. We derive from this that the איסור כלאים is only when one is pleased with the כלאים growth; as is the case when one plants כלאים. Where one demonstrates that he is not satisfied with the כלאים growth, it is not כלאים. This explains why as long as the בעל הכרם is involved in repairing the wall there is no איסור כלאים. Similarly when one is going directly to uproot כלאים, it does not become כלאים, regardless how much it grew in the duration.

Thinking it over

Seemingly even if the בעל הכרם was נתיאש it should not become כלאים, since the בעל התבואה is not happy with the situation.