

CHAPTER TEN

THE DEVELOPMENT OF THE TRACTATES: ORLAH

I. INTRODUCTION

Lev. 19:23 states: "When you come into the land and plant all kinds of trees for food, then you shall count their fruit as forbidden; three years it shall be forbidden to you, it must not be eaten." To allow observance of this commandment, Tractate Orlah 1) clarifies what are to be classified as fruit trees, 2) defines what produce of such trees comprises their fruit and 3) indicates whether or not an old tree that is uprooted and replanted is deemed a new growth, so as again to be subject to the three-year restriction. Finally, 4) several rules discuss neutralization and the loss of forbidden status of *orlah*-produce.

Yavnean and Ushan deliberations on these topics reflect the legal perspectives already identified in these periods. The few Yavnean rules show concern for the botanical characteristics of the tree and its produce. Since a tree that is uprooted and replanted begins to grow anew, Yavneans deem it again subject to the restriction of *orlah*. This is the case unless a root had remained in the ground during the time that the tree was being transplanted. Yavneans thus disregard the Israelite's perception to be planting the tree as a new growth or simply to be moving an old tree. Ushans, by contrast, do judge matters in light of the intentions of the Israelite who plants a tree. They hold, for instance, that only a tree planted purposely for its fruit is subject to the restriction of *orlah*. If the tree is planted for lumber or as a fence, by contrast, it is not classified as a fruit tree at all. Even in its first years of growth an Israelite may, therefore, eat its produce.

The particular laws given here on the topic of *orlah* are not surprising in light of the other Yavnean and Ushan legislation found in this division. Viewed as a whole, however, the tractate is noteworthy. Concerned with basic matters of definition, the rules on *orlah* just reviewed lack a single, generative, issue such as characterizes other tractates in the Division of Agriculture. Furthermore, these rules on the topic of *orlah* comprise no more than half of the tractate's laws. The rest of the tractate discusses tangentially related matters, concerning the status

of mixtures of forbidden and permitted produce. Yet even this question, of what determines the character of a mixture, is not answered in the materials before us.¹ It therefore is impossible to locate an overriding point of the tractate as a whole. Unlike the other tractates in this division, Tractate Orlah lacks an identifiable problematic or even a single topical theme.²

In Tractate Orlah, the Mishnah's formulators thus address a topic about which they have little of importance to say. This negative conclusion regarding the specific tractate before us is in line with a fact that is clear from the review, found above in Chapter One, of the Division of Agriculture as a whole. The topics considered in this division have been chosen because of their importance within Scripture's tithing law, not because in each case the Mishnah's framers had on hand distinctive or even sustained statements on them. The Mishnah's formulators recognized Lev. 19:23's importance for those individuals who desired to consume their food under divinely mandated conditions of sanctity. The tractate therefore was created. As a result, we have before us a collection of materials that barely may be called a tractate at all. This is, rather, a set of loosely connected chapters on tangentially related topics, only in part discussing the very area of law that, in the first place, called for their compilation.

A. *Orlah before 70*

The one dispute attributed to the Houses makes use of ideas known, in Tractate Terumot, to derive only from the period of Usha. These concern whether or not forbidden produce that leavens or flavors permitted produce renders that permitted produce forbidden for consumption (ii.A.2:4-7). In light of its dependence upon late ideas, the dispute cannot be authentic to the early period. Since this one entry in any case does not concern the particular topic of *orlah*-produce, we can state confidently that the Mishnah's treatment of that topic begins only in Yavnean times.

¹ Note by contrast the theory of mixtures found in Tractates Terumot and Kilaim, which claim that, in most cases, the Israelites' own perceptions of the status or character of the mixture determines how that mixture is treated under the law. See, e.g., *Terumot*, iv.C.7:5-7.

² Essner, p. 105, states, "The tractate has no problematic; no generative principle shapes the way the tractate approaches its subject matter. Indeed, it is difficult to speak of a 'tractate' at all, if by tractate we mean a systematic approach to a single subject."

B. *Orlah in the Time of Yavneh*

The three basic issues discussed at Yavneh determine the direction that deliberation of the topic of *orlah* will have in this tractate as a whole. Yavneans, first, define a new tree, subject to the restrictions of *orlah*, as one that has freshly been planted. If an old tree is uprooted and replanted, it again becomes subject to the restrictions of *orlah*. This is not the case if, while the tree is uprooted, a single root still connects it to the ground. Since this tree can continue to survive without being replanted, it is deemed the same, old tree (i.B.1:4). Even when it is completely replanted, it is not subject to the restrictions that normally apply to a tree in its first three years of growth.

Eliezer and Joshua dispute whether the restrictions of *orlah* apply to all edible products of a tree or only to the primary fruit (i.B.1:7D–I). Eliezer follows the view commonly found in his name. He takes no account of the Israelite's attitude but, instead, deems all of the tree's edible products to be forbidden. Joshua, as expected, takes into account the Israelite's perspective, and he therefore exempts a tree's secondary products from the restrictions of *orlah*. Ushans, as we shall see, accept Joshua's view and develop it to its most striking conclusion (i.C.1:1, 7A–C).

One Yavnean item, unrelated to the specific topic of this tractate, forms the basis for an extended Ushan discussion of mixtures of more than one type of forbidden produce in a large quantity of permitted food. The specific Yavnean issue remains moot at Usha. This concerns whether or not we attribute dough's being leavened to heave-offering, even if unconsecrated leaven may in fact have acted upon the dough (ii.B.2:11–12, 13).

C. *Orlah in the Time of Usha*

While following the same basic theory of what constitutes a new tree as is found at Yavneh, Ushans add their own, distinctive perspective. They define a fruit tree, subject to the restrictions of *orlah*, as a tree that Israelites *purposefully* plant in order to use its fruit. A tree planted for lumber or as a fence is not subject to the restrictions of *orlah*, even if it does, incidentally, produce fruit (i.C.1:1). In such a case Israelites may in fact eat the fruit of that tree during its first three years of growth. In the Ushan view, the tree's classification and status within the law are not determined by botanical genus but by the Israelite's attitude towards it and perception of its primary purpose.

Ushans are clear that, like heave-offering, *orlah*-produce that is mixed with unconsecrated food loses its forbidden status. The mixture as a whole then may be consumed (i.C.1:6). Yet here again the perceptions of the Israelite are central. Meir, for instance, holds that *orlah*-produce already subject to processing by an Israelite no longer is rendered permitted through neutralization (ii.C.3:1–2, 6–8). Having come under the Israelite's careful attention and desires, the produce has intrinsic and irrevocable value. It never may be deemed an insignificant portion of the mixture and, therefore, is not subject to neutralization.

The Ushan discussion of neutralization accounts for the presence here of other materials concerning mixtures of two or more types of forbidden produce and permitted food. As in the Yavnean stratum, the question of the status of the three-part mixture remains moot (ii.C.2:10, 14, ii.D.2:15–16). Ushans clarify only one situation. If heave-offering leaven and unconsecrated leaven, both sufficient to leaven dough, are mixed with unconsecrated dough, that dough's rising is to be attributed to the heave-offering (ii.C.2:8). As a result the dough is forbidden for consumption by non-priests. Ushans dispute whether or not this is the case if it can be proven that the unconsecrated leaven, and not the heave-offering, accounts for the dough's rising (ii.C.2:9). Unaccountably, in these cases the theory that in matters of doubt we avoid an impairment of status (see e.g., *Terumot*, iv.C.7:5–7) is not applied.

II. THE HISTORY OF TRACTATE ORLAH

i. *Trees and Fruit Subject to the Laws of Orlah*

If a tree is uprooted and replanted, it is deemed a new growth, such that its fruit is forbidden under the laws of *orlah*. If the uprooted tree remains attached to the ground by even a single root, it is not deemed a new growth and, therefore, does not revert to the status of *orlah*. This basic theory of what constitutes a new tree is known in Yavnean times, i.B.1:4. Its line of reasoning is developed by Ushans, who determine that shoots, which grow *from* the tree *into* the ground, are not comparable to roots. If an uprooted tree is connected to the ground by a shoot, both the tree and that shoot (which depends upon the tree for sustenance) are considered new growths and subject to the restrictions of *orlah* (i.C.1:5).

Yavneans ask whether or not the restrictions of *orlah* apply to edible portions of the tree (e.g., sap) other than the primary fruit (i.B.1:7D–I). The issue, moot at Yavneh, is resolved by Ushans, who determine that the restrictions of *orlah* apply only to the tree’s primary fruit (i.C.1:7A–C). It is only in respect to that fruit that Israelites classify the tree as a “fruit tree.” Ushans add a further important point to this discussion. They state that the tree’s fruit is forbidden under the restrictions of *orlah* only if, when he planted it, the individual intended the tree for fruit (i.C.1:1, 2). If the tree was planted for lumber or as a fence, its fruit is not forbidden under the laws of *orlah*. In the Ushans’ conception, again, whether or not a tree is deemed a “fruit tree” is determined not by its genus and species but by the perceptions of the individual who plants it.

A. *Before 70*

B. *The Time of Yavneh*

1:4 A tree that is uprooted but a root remains in the ground remains exempt from the restrictions of *orlah*. Simeon b. Gamaliel in the name of Eleazar b. Judah of Bartotha: The root must be as thick as a stretching pin.

Since the tree can continue to survive from the single root, it is not deemed a new growth that would be subject to the restrictions of *orlah* (i.D.1:3). The particular concern expressed here is developed at i.C.1:5, in the name of Meir. This supports placement of the present rule in the Yavnean stratum.

1:7D–I Milk curdled with the sap of an *orlah*-tree is forbidden. So Eliezer. Joshua: It is permitted. If the milk is curdled with the sap of unripe-figs from an *orlah* tree, it is forbidden.

Eliezer and Joshua dispute whether the restriction of *orlah* apply to all edible parts of the tree (Joshua) or to the fruit alone (Eliezer). The dispute is resolved in Ushan times, i.C.1:7A–C, where there is agreement that the laws of *orlah* apply only to the fruit.

C. *The Time of Ushah*

1:1 A tree planted for lumber or as a fence is exempt from the

The individual’s intention to use the tree either for food or for some

restrictions of *orlah*. Yosé: If half of the tree is designated as a fence or for lumber, that half is exempt.

other purpose determines whether or not it is subject to the restrictions of *orlah*. This typically Ushan notion is attested to Ushah by Yosé, here, and by Simeon b. Gamaliel, T. 1:1. Discussion continues in the following item.

1:2 A tree planted for public use is subject to *orlah*. Judah exempts. A tree planted in the public domain, in a boat, or which sprouts by itself, as well as trees planted by gentiles and robbers is subject to the restrictions of *orlah*.

These items are gray areas: they are planted for fruit but not in the normal manner of the land's owner planting the tree for his own use. The anonymous rule holds that it does not matter who plants the tree or who will eat the fruit. So long as the tree will be used for food, the restrictions apply. Judah holds that unless the planter *intends* the tree to produce fruit for his own use, the law does not apply. Developing the idea introduced at M. 1:1 and attested by Judah, this is firmly placed in the Ushan stratum.

1:5 If an old tree is uprooted and a sunken shoot remains, both the tree and the shoot become subject to *orlah*. Grafting does not render that which is grafted subject to *orlah*. Meir: This is the case only if it is grafted to a healthy place on the vine, such that the graft lives off of the vine and not from its own shoots in the ground.

Developments of the principle known from i.B.1:4 and i.D.1:3 are attested to Usha by Meir. The point is that we follow the status of the root. So long as it is viable, a new tree has not been planted. Once the original root breaks off, or if it is not healthy, any shoots or grafts are considered new growths.

1:6 A sapling subject to the restrictions of *orlah* and one subject to the laws of Diverse Kinds that were mixed—one may not pick the fruit. If he did, the forbidden status is

This problem of neutralization is assigned to the Ushan stratum on the basis of the attribution to Yosé. I cannot explain why, in this case, he is unconcerned with the inten-

neutralized in two hundred and one pieces of permitted fruit. Yosé: It is and neutralized even if the individual purposely created the mixture so as to neutralize the forbidden fruit.

tions of the individual who picks and mixes together forbidden and permitted fruit.³

1:7A–C Parts of the tree other than its fruit are not subject to the restrictions of *orlah*, but are forbidden under the laws pertaining to the use of a tree in idol worship. Yosé: The budding berry is included under the laws of *orlah*, because it is a fruit.

The point is cognate to that of i.C.1:1. Only fruit of a tree comes under the laws of *orlah*. This appears to develop the Yavnean dispute found at i.B.1:7D–I. Along with the attribution to Yosé, this gives us firm grounds for placement in the Ushan stratum.

D. *Unassigned*

1:3 An uprooted tree which can live off of the earth surrounding its roots is not again subject to the restrictions of *orlah*. If it cannot live from the earth around its roots, when replanted it is again subject to *orlah*.

An act of planting creates a new tree if, without it, the tree would die. This is the most basic phrasing of the point found both in Yavnean and Ushan times (i.B.1:4, i.C.1:5).

1:8 Defective grapes, grape pips, grape skins and their wine, pomegranate shells and fruit pits are forbidden under the laws of *orlah* but are permitted under the laws of the fourth year. Fallen unripe fruit is forbidden under both restrictions.

These items are parts of fruit. Therefore, even though they are not themselves eaten, they are forbidden under the laws of *orlah*. The prohibition of the fourth year, however, applies only to what actually is food. Of these items, that prohibition can apply only to unripe fruit, which may be edible and can be used to manufacture wine. Developing for ambiguous cases the list

³ *Terumat*, iii.D.5:9, a rule assigned to the Ushan stratum, is clear, by contrast, that an individual's purposeful actions designed to neutralize heave-offering are void and leave the whole mixture in the status of heave-offering.

of items introduced at i.C.1:7A–C, this law can derive from no earlier than Ushan times.

ii. *Mixtures of Permitted and Prohibited Produce*

Forbidden produce imparts its own status to permitted food with which it is mixed, to which it imparts flavor or which it leavens. The issue here, which remains moot at Yavneh and Usha, is what happens when inconsequential amounts of food subject to different restrictions together flavor or leaven permitted food with which they are mixed.⁴ Both Yavneans and Ushans dispute whether two different kinds of forbidden food jointly render forbidden the produce they leaven, or whether, since neither alone could have any effect upon the produce, their joint effect likewise is null. This issue reaches its clearest statement and most protracted discussion—but not its resolution—in Ushan times. Against the anonymous view, Simeon consistently holds that types of produce subject to different prohibitions never join together. So long as a type of forbidden food is not itself sufficient to flavor or leaven permitted produce with which it is mixed, it likewise has no effect in combination with produce subject to a different restriction. Unfortunately this rather interesting debate over the nature of forbidden status is not resolved in the materials before us and does not provide sufficient facts for reconstruction of the ideology that underlies each viewpoint.

A. *Before 70*

<p>2:4–7 Forbidden produce that leavens or flavors permitted produce renders that permitted produce forbidden. The House of Shammai: If it was unclean, it also conveys uncleanness to the produce that it</p>	<p>The Shammaites hold that leavening or flavoring and imparting uncleanness go hand in hand. The House of Hillel deem these different processes to be distinct and unrelated. The rules for the flavoring</p>
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⁴ The Yavnean position here is consistent with that found at *Terumat*, vii.B, which states that heave-offering has no effect upon unconsecrated produce that it flavors. Yavneans here do however assume that heave-offering leaven imparts the status of heave-offering to unconsecrated dough that it causes to rise. Yavneans apparently take seriously the change in the physical appearance of the dough caused by the heave-offering.

flavors. House of Hillel: Unclean-ness is conveyed only if there is an egg's bulk of unclean produce. Dositheus of Kefar Yatmah: I heard a tradition from Shammai the elder that agrees with the Hillelite view. + Long explanation of anonymous rule.

and leavening of permitted food by forbidden food first were worked out in Ushan times, *Terumat*, vii.C.10:1, 3, 8, 11A–D. It therefore is unlikely that the rules and dispute given here go back to the period before 70.⁵ This particular question does not appear elsewhere in the Mishnah.

B. *The Time of Yavneh*

2:11–12 Heave-offering leaven and common leaven together fall into dough. Neither of them alone is sufficient to leaven the dough, but together they do so. Eliezer: The status of the dough is determined by which leaven fell in last. Sages: The dough is not forbidden unless the heave-offering alone is sufficient to leaven it. Yoezer of the Birah reports in the name of Gamaliel the elder: The dough is forbidden only if the heave-offering is sufficient.

An issue reported in the name of pre-Yavnean authorities is still moot at Yavneh. Sages view (= Gamaliel the elder), that forbidden leaven renders dough forbidden only if it causes it to rise, is assumed and developed at Usha, ii.C.2:8, 9. This gives us good reason to assign this to the Yavnean period. There are however no substantive grounds for placing this idea in the period before 70 (see ii.A.2:4–7 and cf., Neusner, *Pharisees*, I, pp. 344–345).

2:13 Vessels that one greased with clean and then unclean oil, or *vice versa*—Eliezer: The status of cleanliness of the vessel is determined on the basis of the oil used first. Sages: Last.

The theoretical issue is the same as in the preceding entry: Is the status of a mixture determined by the element added first or last? Here the argument revolves around the facts of the case, that is, whether the first or the last oil will exude from the leather (T. Ter. 8:15). The similarity of issue and the appearance of Eliezer give us good grounds for placing this at Yavneh.

⁵ See Neusner, *Judaism*, pp. 299–300.

C. *The Time of Usha*

2:1 Heave-offering, heave-offering of the tithe, dough offering and first fruits are neutralized in one hundred and one parts of produce. *Orlah*-produce and Diverse Kinds are neutralized in two hundred and one parts of produce. Simeon and Eliezer dispute whether or not quantities of *orlah* and Diverse Kinds combine to render produce forbidden. Eliezer states that they do only if together they also impart flavor to the mixture Simeon holds that they do not under any circumstance.

2:8 Leaven of common produce and leaven of heave-offering, each sufficient to leaven dough, are mixed with unconsecrated dough. The dough is deemed forbidden, as though it had been leavened by the heave-offering.

2:9 Situation like that of M. 2:8— if the unconsecrated leaven already has leavened the dough when the heave-offering leaven is added, that dough still is rendered forbidden. Simeon: It remains permitted.

2:10 Condiments subject to different prohibitions join to render forbidden the food they flavor. Different condiments subject to

The pericope makes use of the figures for neutralization known already in Yavnean times (*Terumat*, iii.B.4:7) and advances the issue through the dispute between Eliezer and Simeon. Since this is surely the Ushan Simeon b. Yohai, the issue as a whole is placed here in the Ushan stratum. The same position attributed to Simeon here appears in his mouth at ii.C.2:10.

This is a subtle extension of the principle given at ii.A.2:4–7 and i.B.2:11–12. That which is leavened by heave-offering takes on the status of that offering. M. 2:8 is attested to Usha by Simeon, in the rule which follows.

The principle of the preceding is extended even further. Even though the dough was already leavened, the heave-offering is deemed to affect it, such that it takes on a sanctified status. Simeon disagrees, claiming that the heave-offering could have had no effect.

The issue is whether types of produce subject to different sorts of prohibitions combine to render other produce forbidden. Simeon states

a single prohibition likewise render forbidden produce they flavor. Simeon disagrees.

2:14 Leaven of heave-offering and of Diverse Kinds fall into dough Neither alone is sufficient to leaven it, but together they do. The dough is forbidden to non-priests but permitted to priests. Simeon: It is permitted to both.

3:1–2 A garment dyed with dye from *orlah*-fruit is burned. If it is mixed with other garments—Meir: All are burned. Sages: It is neutralized in two hundred and one parts. Same dispute for case of a single forbidden thread woven in a garment.

3:6–8 Same problem as at M. 3:1–2 for case of bunches of fenugreek that are Diverse Kinds. Meir: the mixture is not neutralized because the items, sold by a count, remains discrete. Sages: That theory applies only to six specific items listed by Aqiba (+ Aqiba's list of six and an additional item).

that they do not, comparable to the position in his name at ii.C.2:1.

This is a rephrasing of the issue of ii.C.2:10. The anonymous view holds that the different forbidden things combine and render the dough forbidden to non-priests. From the priest's point of view, the heave-offering-leaven has no effect on the dough. The leaven of Diverse Kinds alone could have had no effect and, as a result, the dough remains permitted to priests. Simeon's view is just as at M. 2:1 and 2:10.

The issue is whether the rule for neutralization (ii.C.2:1) applies only to the *orlah*-fruit itself or also to a product made with that fruit. This secondary problem of neutralization is firmly placed in Ushan times on the basis of its substance and the attribution to Meir.

The issue of the preceding entry is expanded to include the typically Ushan notion, phrased here by Meir, that what the householder perceives as distinct—because he is careful to sell or maintain it in discrete and correctly counted amounts—cannot be neutralized. Sages claim that this is not the theory. Aqiba simply ruled that certain extremely special types of produce never are neutralized from a forbidden status they hold. We have here both the

inception of a rule at Yavneh and its development and re-interpretation at Usha.

D. *Unassigned*

2:2 Heave-offering in a mixture serves to neutralize *orlah*-produce in that same mixture and *orlah*-produce in the mixture serves to neutralize heave-offering + example using figures given at ii.B.2:1.

In making up the quantity of produce in a mixture sufficient to neutralize heave-offering, *orlah* produce counts as unconsecrated food. This problem is derivative of the rules for neutralization given at M. 2:1. It presumably derives from Ushan times, although it may be Yavnean.

2:3 Same point as at M. 2:2—*orlah*-fruit neutralizes Diverse Kinds and *vice versa*.

Considerations for placement of this rule are the same as above.

2:15–16 Same issue as in the preceding entry, but for cases of seasonings that are heave-offering mixed with seasonings that are Diverse Kinds (M. 2:15), and for flesh of Most Holy Things and flesh that is Refuse or Remnant, which are cooked with permitted foods (M. 2:16).

This is Ushan, just like ii.C.2:1, 2:10 and 2:14.

2:17 Flesh of Most Holy Things and flesh of Lesser Holy Things are cooked with ordinary flesh. Even if each alone would have been neutralized, together they render the mixture forbidden to those who are unclean.

Here the two types of prohibition are the same, such that even Simeon will agree that the prohibited meats join together to render the dish forbidden to those who are unclean. Carrying forward the problem of ii.C.2:14 and ii.D.2:15–16, this belongs to the Ushan stratum.

3:3 Garments in which forbidden hair or wool are woven must be burned.

These objects are not subject to neutralization, which accounts for the difference between this rule and

that of ii.C.3:1–2. Developing the theme of that other pericope, this entry too presumably derives from Ushan times.

3:4–5 Food cooked in an oven fired with the shells of *orlah*-fruit must be burned. If the food is mixed with other, permitted, food, its forbidden status is neutralized in two hundred and one parts.

The food takes on the status of the fuel with which it is cooked. Neutralization then applies, as to any other *orlah*-produce. There is no evidence that this secondary issue derives from earlier than Ushan times. It parallels the Ushan rule at *Terumot*, vii.D.10:4, yet gives an opposing ruling. The question of the effect of cooking fuel upon that which it heats apparently remained moot late in the formation of the law.

3:9 Doubts concerning the status of produce: In the land of Israel they are adjudicated stringently. In Syria they are adjudicated leniently. The restrictions of *orlah* apply inside of the land of Israel as *halakah*. The restrictions of Diverse Kinds apply outside of the land of Israel as a rabbinic enactment.

This anonymous rule is unrelated to what has preceded in the tractate, such that there are no grounds for placing it within the unfolding of the Mishnah's law.

III. CONCLUSION

Tractate Orlah, a compendium of materials on several different topics, differs from each of the other tractates in the Division of Agriculture. These other tractates are generated by a single, encompassing question, pertinent to their chosen subject of discourse. As a result, these other tractates appear to be protected essays that make a discernable point about their topic. Tractate Orlah, by contrast, neither makes an identifiable point nor, for that matter, has a single, sustained topic.

Tractate Orlah does however have a unifying theme that deserves

recognition. For in taking up this particular theme, the tractate accords with the norms of Mishnaic inquiry—both in the Division of Agriculture and throughout the Mishnah. Tractate *Orlah* concerns the classification of ambiguous objects, that is, ones that fall between two or more different legal categories. More than anything else, the tractate's materials concern how to determine the status of a thing that is equally like two different classes of objects. The old tree that is uprooted and replanted and products of a tree that may or may not be deemed its fruit are classic examples of objects that elude clear-cut classification. This concern for ambiguous cases is highlighted in the long section of the tractate concerning mixtures.

In consistently turning to such gray areas in the law, Tractate *Orlah* fits firmly within the larger program of inquiry that characterizes the Division of Agriculture and the Mishnah as a whole. As Neusner has shown (*Judaism*, pp. 256–270), Mishnaic discourse in general addresses a narrow range of questions to each of the diverse topics it chooses to discuss. In his words, “The Mishnah presents a homogeneous set of inquiries, consistently asking the same sorts of questions, about gray areas, doubts, excluded middles without regard to the subject matter at hand or the topics of the material under analysis” (p. 256). In this respect, the most untypical tractate in the Division of Agriculture, in terms of its diverse agendum of topics, turns out to be very typical of Mishnah as a whole, in terms of its single theme.

Tractate *Orlah* provides an example either of an unsuccessful Mishnaic tractate or, perhaps, of an unfamiliar theory of the concerns around which a tractate should be organized. The former conclusion seems the more likely. For while the questions asked by the tractate's authorities indeed are predictable, they are adduced without reference to an underlying topical issue that could have produced a legal statement of interest and importance. For unlike in the other tractates in this division, in Tractate *Orlah* the major issues under discussion remain moot throughout the development of the law. This precludes identification of a Mishnaic theory of *orlah* or, for that matter, of mixtures in general.

The apparent reason for this is not far below the surface. The Ushans who are responsible for the vast majority of Tractate *Orlah*'s materials recognized the centrality of Lev. 19:23 for Israelites determined to eat their food according to the standards of holiness established by Scripture. Yet they really had very little interest in the deeper implications of the topic of *orlah* as a concern unto itself. They were, perhaps, con-

strained to talk about this particular agricultural restriction. Doing so without regard to a particular message that might be portrayed through the pertinent legislation led, however, to the anomalous tractate just considered.