

HALOCHOSCOPE

This week's question:

Produce grown and processed in *Eretz Yisroel* is *tevel*, requires tithing. If one is unsure whether the producer fulfilled his obligation to tithe, the purchaser must tithe it. A non-Jewish store owner has such produce. May a Jew separate *terumos* and *maasros* from the entire batch, if the owner gives him permission to do so?

The issues:

- A) *Tevel*, *demye* and the separation of the *matanos*, tithes
- B) The nature of a non-Jew's *hafrasha*, separation
- C) *Shlichus*, acting as an agent, of a non-Jew, or of a potential buyer

A) *Tevel*, *demye*, *matanos*

Before tithing, Israeli produce has a *halachic* status of *tevel*. Some consider this a mixture; it is part *chulin*, fully tithed permissible produce, and part tithes. Most consider it in a status of its own, that changes as the tithes are removed. The relevance of this status is seen when discussion turns to the penalty for eating it, or mixtures are made.

Before the produce has grown to a usable stage, it is not considered *tevel*. When it is ready to be picked and eaten, it has reached an acceptable stage of growth. Each item varies in this respect. At this early stage, it may be picked and eaten as a snack without tithing. It may not be eaten as a proper meal. There are various ways it can be considered formal eating, such as picking more than one at the same time, cooking, salting, purchasing etc. When the regular harvest production is complete, snacking is forbidden before tithing. For wheat, this is when it is ready to be milled – it has been gathered, threshed, and patted down in its silo. Another condition is bringing it into the house. One could avoid this stage to permit snacking and feeding it to animals.

Collectively, tithes are called *maasros*. Individually, they have their own names. *Terumah gedolah* is the first separation, about one fiftieth, or two percent, given to the *kohain*. This measure is Rabbinical, for the average donor. Scripturally, there is no fixed amount. True *kohanim*, in a high level of purity, eat or drink *terumah*. If defiled, it is burned. If its purity is undetermined, it is not burned, but may not be eaten or disposed of in the normal manner. It is left to respectfully decompose by itself.

Maaser rishon, a tenth of the remainder, is given to a *levi*. It has no sanctity in its own right, but belongs to the Levite tribe. However, a part of it is sacred, *terumas maaser*, a tenth of this tenth, that is separated and given by the *levi* to a *kohain*. The *maaser rishon* is, therefore, *tevel* for this tithe until it is separated.

The last tithe, a tenth of the remainder, varies by year of the agricultural cycle. In the first, second, fourth and fifth years it is *maaser shaini*, a tithe that has sanctity and belongs to the owner to be eaten in *Yerushalayim*. Alternatively, he may redeem it by transferring its sanctity to money, taken and spent on food in *Yerushalayim*. One redeeming

his own produce adds a fourth of its value. If redeemed for a nominal *perutah*, the smallest coin of value, it also loses its sanctity. In the third and sixth years, *maaser ani*, a tithe is separated and is given to the poor. The seventh year is *shvi'is*, or *shmita*, during which one may not cultivate crops, and no tithes are separated.

Nowadays, all are presumed *tamei*, defiled by direct or indirect contact with spiritual contaminants. It is impossible to properly separate *maasros* to be given to a *kohain*, who is also presumed *tamei*. Furthermore, we no longer have reliable incontrovertible evidence of the lineage of *kohanim* and *leviyim*. [The gene does not rule out questionable marriages.] For *aliyos* in *shul* or for *pidyon haben*, redemption of the first-born, claims of lineage based on tradition are accepted. For tithes, this is insufficient. The penalties on the non-entitled are too serious. The food is forbidden to eat until the tithes are separated. *Terumah* is left to decompose. *Maaser rishon* has its *terumas maaser* separated, which is left to decompose. The remainder of the *maaser* is kept by the owner of the produce, unless a *levi* can prove his entitlement to it! *Maaser shaini* is redeemed for a nominal amount. [The piece of produce must be worth a *perutah*. If it is worth less, it may only be redeemed onto a coin that is worth more than a *perutah* that has already had one *perutah*'s worth redeemed onto it, called a *perutah chamurah*. The remaining space can be used for smaller-than-*perutah* tithes.] Afterwards, the coin can be tossed into the sea.

The poskim debate whether tithes apply Scripturally to all produce. The majority apply it Scripturally to wine, olive oil (and their fruits) and *dagan*. The Talmud debates whether *dagan* includes the five bread grains or also other grains grown and harvested in the same way. Some add the rest of the seven special species of *Eretz Yisroel*. A minority apply Scriptural tithes to all fruits and vegetables. There are two conditions: it must be eaten by normal people, and must be *nishmar*, owned. Some say this means it was owned for its entire time of growth. Others apply this to common practice – if the prevailing practice is to cultivate and harvest it, it must be tithed. If not, wild produce is not tithed.

The Talmud debates whether tithes apply Scripturally nowadays. That is, for tithes to apply Scripturally, all the Jews must reside in Israel. In the majority view, nowadays, tithes apply Rabbinically. Additional areas surrounding Israel were obligated Rabbinically. Produce of a gentile has its own rules. If the entire production is processed in his possession, the produce is exempt. If part is done after a Jew buys it or before the gentile gets it, in the Scriptural areas it is treated more stringently than in other areas. Produce taken out of Israel before the full effect of the obligation [see above], does not become obligated. In practice this is hard to determine. Some maintain that even produce packaged in the fields is brought into storage before shipment. Once it becomes formal *tevel*, it does not lose this status until the tithes are separated.

In the days of the second *Bais Hamikdash*, it was determined that Jews could be divided in two groups. *Chavairim* are meticulous in their observance of *maasros*. *Amei ha'arets*, the ignorant, are lax and sometimes negligent. One could rely on them most of the time, enough for Scriptural rulings. Since they are suspect part of the time, their produce is considered Rabbinically doubtful. A decree was instituted on all of their produce called *demye*, literally “what is this?” Unless one can verify the status of the vendor and the origin of the crop, it is *demye*. No-one is negligent about *terumah gedolah*. Sincere fear of the consequences of eating it or of eating *tevel* before it is separated prompts ev-

everyone to separate it. Ignorance leads a minority to neglect *maaser rishon*, including *terumas maaser*, and *maaser shaini*, part of the time. Therefore, produce purchased must be tithed. Due to the doubts surrounding it, the tithed removed have many leniencies.

Nowadays, due to a higher level of ignorance, combined with a lower level of general observance, much of the produce is worse than *demye*. It is considered *safeik tevel*. Exporters often come under a Rabbinical supervision. Nonetheless, insufficient supervision, low standards, lenient rulings, commercial pressures and machinations of dealers, can cast a supervision into doubt. Thus, though riddled with non-Scriptural obligations and doubts about applicability, Israeli produce is considered obligated and untithed, unless it comes with a reliable supervision. Tithing must be done by the consumer or a religious retailer, under most circumstances, with no *brocha*. The procedure can be found in many *sidurim*. [See Mishnayos Zeraim, esp. Demye. Tur, Sh Ar YD 331, commentaries.]

B) A non-Jew's separation

In our case, the merchant selling the Israeli produce is not Jewish. Assuming that the produce requires a tithe to be separated from it, the Jewish consumer must perform this separation. The act of separating creates a *halachic* effect, sanctifying the part separated. This effectuation, or *chalos din*, must be effected by one qualified to do so. Generally, this would be someone obligated to do so. The obligant in these situations must also be the owner of the produce. He may delegate an agent in his stead. The agent's act is attributed to the owner himself. Anyone else cannot act independently to separate the *maasros*. A gentile cannot be obligated, since this is not one of his *mitzvos*. He is not forbidden to eat *tevel* or *terumah* by himself. [It is forbidden for a Jew to give it to him.] If he nonetheless decided to tithe, would the tithe take effect? Our question could apply to two distinct situations. The obligation on gentile's produce, if any, might be on a lower level than that of a Jew. On his own produce, the gentile might qualify to tithe. The produce might have reached the level of obligation of a Jew's produce, such as in our case. It was truly obligated. Could a gentile tithing work for such produce?

The Talmud debates whether crops grown on a gentile's property in Israel has the sanctity to obligate *maasros*. According to the lenient view, if the crops grew to a third of their growth in the possession of the gentile, they are exempt. If they were in a Jew's possession at this point, the gentile who owned the field as it matured does not remove the obligation. The Talmud also debates a gentile separating *terumah* of his own. Some say this refers to crops grown entirely on the gentile's property, and follows the view that a gentile's property retains its sanctity. This could mean that the obligation on these crops is the same as that of a Jew, and that the gentile's tithing is effective. Others maintain that this could refer to crops that reached a third of their growth in Jewish hands, but were transferred to gentile hands. These crops are fully obligated. Evidently, the gentile is able to effect the tithe. A third view maintains that this is only considered *terumah* Rabbini-cally. A Jew might try to dodge *terumah* by 'transferring' his crop to a gentile. By decreeing a tithe on a gentile's crop, the Rabbis ensured that no-one would bother trying this. According to this view, Scripturally, a gentile cannot effect the *chalos*, because he does not have the *mitzvah*. This seems to be the accepted view. There are many possibilities and combinations of ownership by a Jew and a gentile, with varying applications of the tithing requirement, beyond the scope of this discussion. [See e.g. Demye 5:9 Terumos

1:2 3:9 Gitin 23b 47a etc. Kidushin 41b Bava Metzia 88a-b Menachos 66b-67a Bechoros 11a-b, Poskim. Tur Sh Ar YD 331:3-11 30 44, commentaries. Ar Hash Heasid 55.]

C) *Shliach or zocheh*

The produce does require *maasros*. If the gentile's separation would not work, could a Jew do it for him? This is problematic for a number of reasons. If indeed the Jew would act as an agent of the gentile, he could not do more than the one appointing him. In addition, it is rare to find a situation where a Jew can act as an agent for a gentile. Another issue also arises. Only the particular batch can be fixed this way. If one buys produce of the same species from different batches, he does not know whether they originated in the same crop. If they are from different producers, one might have been tithed already, while the other still requires tithing. One could not separate from a mixture of the two.

More importantly, the reason the helpful Jew wants to separate the *maasros* is to save future Jewish buyers from eating *tevel* or *demye*. The actual obligation falls on the Jewish buyer. Since there is no obligation on the gentile seller, he cannot discharge the obligation of his buyers. The Jew who wants to help the vendor would have to act as an agent of the future Jewish buyers. Can he act as their agent without their knowledge? The Talmud maintains that this depends on whether the owner of the produce agrees to the separation, even after the fact. That discussion centers on whether the self-appointed agent separated produce that the owner was unaware of, and did not approve. He would be losing money. One may sometimes act as an agent for the benefit of someone else, where he would not lose. For example, there is a reference to one person separating *terumah* from his own crop to exempt his fellow's crop as well. However, in our case, even if the helpful Jew purchases some of the produce, he cannot separate on behalf of the future buyers. Since they do not yet own the produce, they cannot separate their own *maasros* from it. One cannot act as their agent either. [See e.g. Demye 5:11 Terumos 1:1 3:3-4 4:4 etc. Nedarim 36b Baba Metzia 22a, Poskim. Tur Sh Ar YD 331:30-31 35-42 60, commentaries. Ar Hash He'asid 63.]

Theoretically, one could acquire the entire stock from the gentile owner. This could be done by *kinyan sudar*, a formal transaction accomplished by the Jew's handing over, for example, a cap, in exchange. Assuming this *kinyan* works to acquire from a gentile, the produce now belongs to the Jew, and he may tithe it. However, the problem remains that one may not mix different batches of produce. Some might have been tithed before.

In conclusion, one cannot rectify this situation by voluntarily separating *maasros*, whether on behalf of the gentile current owner, or on behalf of future Jewish buyers.

On the Parsha ... Vayeshalach ... Moshe sent away his father-in-law, and he went on to his homeland ... [18:27]. The Torah could have written that Yisro left. Why does it say that Moshe sent him away? Yisro went home to convert his family members. [*Rashi*] The Torah wishes to attribute the merit of these converts to Moshe. Therefore, it tells us that Yisro went as a *shliach* of Moshe. [*Sifse Chachamim*] Perhaps, a second lesson is that now that Yisro had converted himself, he was qualified to act as a *shliach* of Moshe.

 **Sponsored by Joshua Sandler in honor of his brother Mark, on his birthday, Shabbos Yisro.**

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