



Volume 13. Issue 7

## Safek Leket

*Leket*, refers to the individual stalks that fall during harvest and must be left to the poor.

The first *Mishnah* in the fifth *perek* teaches that if the farmer forms a pile in a region that has not yet been cleared of *leket*, any stalks in contact with the ground must be given to the poor. The *Bartenura* explains that this ruling constitutes a fine placed on the farmer for acting inappropriately by covering the *leket* with his own produce.<sup>1</sup>

The second case raised in our *Mishnah* is where wind blows over the pile of produce mixing it with the *leket* left in the field. The *Mishnah* continues by recording a debate as to how much produce must be removed and given to the poor in place of the *leket*. In this case the *Tosfot Yom Tov* explains that that which is given has the status of *leket* and is therefore exempt from separating *maasrot*. He explains that this is based on the universally except principle we learnt in the previous *Mishnah* (4:11), that *safek leket leket* – when in doubt regarding whether something is *leket* we rule that it is.

The *Tosfot Chadashim* however finds the *Tosfot Yom Tov* difficult. We learn in the next *Mishnah* (5:2) that if a single stalk of *leket* mixes into the owner's pile, then one is removed to replace it. Before giving it to the poor person, a number of other stalks are removed and the owner formulates a stipulation in order to ensure that the *maasrot* have been removed from that stalk prior to giving it to the *ani*. Why is this case different?

The *Tosfot Anshei Shem* differentiates between the two cases. In both cases, that issue that that which is separated might not be *leket* must be resolved. In the next *Mishnah* it is resolved using other stalks within the same stack. In this *Mishnah*, the owner can resolve it by separating the required *maasrot* from the entire mixture from other *tevel* (untithed) produce. What the *Tosfot Yom Tov* is teaching, is that *maasrot* does not need to be separated from the proportion that is estimated to be *leket*. Even though we do not know with certainty how much *leket* is mixed in, we treat that estimated proportion as being definitely *leket*.

The *Tifferet Yisrael* however provides a different explanation. In the next *Mishnah* the amount mixed in is known. The obligation of leaving that stalk originated when it fell and he

now needs to replace it. In this case however, the amount is unknown and it is based on the owner's estimation. This obligation is different and based on the *pasuk* "you shall leave"; he must now give the poor from his own produce. Whatever is separated now becomes *leket* and is therefore exempt from separating *maasrot*.

The answer of the *Tifferet Yisrael* relates to another question: why is *safek leket, leket*? Ordinarily, in a case of doubt relating to financial matters, the burden of proof rest with the one attempting to extract the property. In this case however, we rule in favour of the poor. The *Gemara* (*Chulin* 134a) explains that we learn, "...vindicate the poor and impoverished" (*Tehillim* 82:3). The *Gemara* explains that the *pasuk* cannot be referring to legal disputes since the *Torah* teaches (*Shemot* 33:3) that we should not ever distort judgements, even in their favour. Rather the *pasuk* teaches that, when it comes to *matanot aniyim*, act in *tzedaka* with your property and rule their favour. The *Bartenura* however learns that the source of *safek leket, leket* is from the *pasuk* "you shall leave" mentioned (superfluously) as part of the obligation of leaving *peah*.<sup>2</sup>

How do we understand the impact of the *pasuk*? There are two possible understandings. The first is that when instructed to rule in their favour despite the case being doubtful, the owner must simply give some of his property to the poor. The doubt nevertheless still exists with that which is given. Alternatively, the instruction to give the doubtful *leket* to the poor is part of the obligation of *leket* itself. Consequently, that which is given is *leket* and exempt from *maasrot*. The *Tosfot Anshei Shem* that requires *maasrot* to still be separated must have the first understanding, while the *Tifferet Yisrael* must understand that the *Tosfot Yom Tov* has the latter.<sup>3</sup>

We could suggest that the debate is based on which *pasuk* this law is derived from. Perhaps the *Tosfot Anshei Shem* is based on the *Gemara*. That *pasuk* instructs use to simply to rule in his favour – not that the doubt is resolved. We know however that the *Tifferet Yisrael* learns this law the *pasuk* mentioned as part of the obligation of *leket* ("you shall leave"). Since it is part of the obligation of *leket* it takes the form of *leket*.

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whether declaring one's property in this manner is effective. According to *Beit Hillel* it is ineffective and any property claimed would need to be returned. In this *Mishnah* however, since *Beit Din* declare it ownerless to the poor and they have the power to do so, it would be exempt from *maasrot*.

<sup>2</sup> This source is found in the *Yerushalmi* and also cited by the *Tosfot Yom Tov*.

<sup>3</sup> See the *Yalkut Biurim*, *Chullin* 144a, p 271, that sites the *Shaare Yosher* on one side and the *Chatam Sofer*, *Maharit* and *Torat Zeraim* as being on the other side of this debate.

<sup>1</sup> The fine would apply even if the stack consisted of different produce to the *leket* it covered, demonstrating that the ruling is not based on a doubt regarding which stalks belong to the poor, but rather a fine applied to the owner.

The *Tosfot Yom Tov* cites the *Yerushalmi* that in this case, since the *Chachim* make the bottom layer *hefker* (ownerless), it is exempt from separating *terumot* and *maasrot*. The *Tosfot R' Akiva Eiger* notes that we will learn (6:1) that if one makes his property *hefker* only to the poor, it is debated whether it is exempt from *maasrot*, with *Beit Hillel* arguing it does not. He explains that in this case it is different. In the later *Mishnah* the debate is

**Revision Questions**

פאה גי: ח' – ה: בי

- There are three cases listed in the *Mishnayot* where if a person gives his entire property to someone there is a significant halachic difference if he excluded a small section of his property from the gift. What are these three cases? (גי: ז-ח)
- When is *peah* left connected to the ground for the poor to take and when is the owner required to cut and distribute the produce to the poor? (א: ד)
- What would the law be if in the former case, a majority of the poor requested that the owner distribute the produce (and visa versa)? (ד: א-ב)
- What is the law regarding a poor person who tries to conceal some of the standing *peah* so that he can take it? (ג: ד)
- Are there any restrictions on how the *peah* can be cut by the poor? If so, what are they and why? (ד: ד)
- What are the three times of the day when *peah* is given? (ה: ד)
- Explain the debate between *Rabban Gamliel* and *R' Akiva* regarding why these times were established. (ה: ד)
- What was different about how *Beit Namer* left *peah*? (ה: ד)
- Is a non-Jew who converts to Judaism after harvesting his field obligated to leave *peah*, *leket* or *shichecha*? (ו: ד)
- In what situation would someone who sanctified their field and then redeemed it from *hekdesh* be exempt from leaving *peah*? (ז: ד)
- In what situation would someone who sanctified their fruit and then redeemed it from *hekdesh* be exempt from taking *ma'asrot*? (ח: ד)
- Explain the debate about whether a wealthy person can be *zoche peah* for a poor person. (ט: ד)
- When is one exempt from taking *ma'asrot* from the *leket*, *shichecha* and *peah* of a non-Jew? (ט: ד)
- What is *leket* (be specific)? Explain the debate about *rosh ha'yad* and *rosh ha'magal*. (י: ד)
- Is it *leket* if the owner drops the produce as a result of being pricked by a thorn? (י: ד)
- When does produce found in ant holes belong to the owner? When does it belong to the poor (and how much)? (יא: ד)
- What is the law regarding:
  - A pile of produce placed in a location from which *leket* has not yet been collected? (יא: ה)
  - A case where the wind has scatter the collected produce over an area from which *leket* has not been collected? (יא: ה)
  - A case where one ear of corn which is *leket* gets mixed up in a pile of corn? (יב: ב)
  - When would a single standing ear of corn belong to the owner of the field and when would it belong to the poor? (יב: ב)

**Melbourne, Australia**

**Sunday -Thursday**

10 minutes before *Mincha*  
Mizrachi Shul  
Melbourne, Australia

**Friday & Shabbat**

10 minutes before *Mincha*  
Mizrachi Shul  
Melbourne, Australia

**Efrat, Israel**

*Shiur in English*

**Sunday -Thursday**

Rabbi Mordechai Scharf  
9:00am  
Kollel Magen Avraham  
Reemon Neighbourhood

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[www.shemayisrael.com/mishna/](http://www.shemayisrael.com/mishna/)

*Rabbi E. Kornfeld*  
*Rabbi C. Brown*  
<http://www.dafyomi.co.il/calendars/myomi/myomi-thisweek.htm>

**SHIUR ON KOL HALOSHON**

*Rabbi Moshe Meir Weiss*  
In US dial: 718 906 6400  
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**Next Week's Mishnayot...**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
15 May ז' אייר	16 May ח' אייר	17 May ט' אייר	18 May י' אייר	19 May יא' אייר	20 May יב' אייר	21 May יג' אייר
Peah 5:3-4	Peah 5:5-6	Peah 5:7-8	Peah 6:1-2	Peah 6:3-4	Peah 6:5-6	Peah 6:7-8

