



Kohen Sharecropper

The *Mishnah* (6:3) records a debate regarding a *kohen* or *levi* who agrees to work as an *aris* (sharecropper) in the field of an *Yisrael*. The *Chachamim* maintain just as the owner and *aris* share in the produce, they also share in the *terumot* and *maaserot*. This means that despite the fact the sharecropper is a *kohen* he cannot assume to retain all the *terumah* from the yield. *R' Eliezer* however disagrees in this context, since it is understood that the *kohen* will take all the *terumah*. We shall try to understand this debate.

The *Yerushalmi* elaborates on this debate. The *Chachamim* challenge *R' Eliezer* asking with what manner of acquisition was the *terumah* acquired. *R' Eliezer* counters that the *Chachamim* agree that if they stipulated explicitly from the outset that the *kohen* could retain the *terumah*, then the stipulation works. Consequently, the question applies equally to the *Chachamim* – what is the method of acquisition through which the *kohen* acquires all the *terumah*. The answer is that if one stipulated that the *kohen* can retain the *terumah* it is considered as if the owner said, pluck some of the produce in order to acquire the *terumah*. In other words, a *kinyan chazaka*, an act that demonstrates one's ownership, is being employed to acquire that *terumah* produce, which is effective for that produce despite being uncut. What then is the basis of the debate? *R' Eliezer* understands that the stipulation is assumed, and that condition, as we have explained, is assumed to function by way of a *chazaka*. The *Chachamim* however understand that one assumption, but not two, can be made. Consequently, the *kohen* sharecropper would only acquire the produce if the agreement was made explicitly. The above is how *R' Chaim* explains the *Yerushalmi*.

The *Rambam* (*Maaser* 6:17) rules like the *Chachamim* but does not add that if a condition was made explicitly it works. *R' Chaim* (*Derech Emunah* 6:161) however adds that the stipulation would work according to the *Chachamim*. He adds, citing the *Chazon Ish* that if however, the *kohen* made this condition but also reduced his rate compared to the standard rate of *arisut*, then it would be forbidden. It would

be considered equivalent to the case of *mesayeh be'beit hagrahot*. In other words, it would be forbidden since it would be considered as if the *kohen* is working for the *terumah* and not receiving it as a gift.

The *Tosfot Anshei Shem* however question how the stipulation would work. The *maaserot* are a *davar shlo ba le'lolam* – they do not yet exist. He cites the *Yerushalmi* that one cannot sell the *maaserot* that his field will produce for this reason. He suggests that perhaps the response the *Chachamim* provide in the *Yerushalmi*, should be understood as the *Chachamim* arguing based on the *R' Eliezer* position that such a condition would work. In truth however, according to the *Chachamim* it would not.

The *Mahara Fulda* however understands the flow of the *Yerushalmi* differently. It is *R' Eliezer* that suggests that the condition works, to acquire the *maaserot* based on the *chazakah*. The *Chachamim* however disagree, since one cannot acquire that which is not yet in this world. The condition works only if they stipulate that the *aris* was acquiring part of the land itself – which is present. Since the stipulation is exceptional - it is to acquire part of the land itself and not just part of what will grow - the *Chachamim* argue that it cannot be assumed and must be made explicitly. (See also the *Mishnah Rishona*.)

Perhaps this then is why the *Rambam* omitted the stipulation. As explained, the *Chachamim* would disagree with *R' Eliezer* that a regular stipulation to acquire the *maaserot* would not work. Under normal work relations between a *kohen aris* and an *yisrael*, where the *aris* simply stipulates to receive a share of the yield, an additional clause would not allow the *kohen* to retain the *maaserot*. It is only in an exceptional circumstance, where the owner would agree to transfer ownership of a portion of the land so that the *kohen* can have the *maaserot*, would such a condition work. Since this is not normal *arisut*, the *Rambam* does not raise this possibility in that *halacha*.

Revision Questions

דמאי ח' ט' – ו' י"א

- Can one tithe from produce belonging to a non-Jew for produce belong to a Jew? Belong to *Kuti* for a Jew? (ה' ט') (ה' ט')
- What is the status of produce that has grown in a pot that has a hole in the bottom (*atzitz nakuv*)? (י' ט')
- What is the law if someone tithes: (ה' י"א)
 - From demai for other demai produce?
 - From demai for tevel produce?
 - From tevel for demai produce?
- What is an *aris*? What is a *choker*? (ה' י"א)
- What must an *aris* and *choker* do before giving the produce to the owner of the field? (ה' י"א)
- What is the difference in the responsibilities of a *choker* in the field belonging to an *Yisrael* and a *Nochri*? (ה' י"ב)
- Explain the debate regarding a *kohen* or *levi* who is an *aris*? (ה' י"ג)
- What is the law regarding *ma'aser sheni* from produce collected by an *aris* who lives outside Jerusalem from a field belonging to a *Yerushalmi*? (ה' י"ד)
- What is the law regarding the *ma'asrot* from produce collected by an *aris Yisrael* from a field belonging to a *kohen* or *levi*? (ה' י"ד)
- Does the previous law differ when the *aris* is collecting olives and making oil? (ה' י"ה)
- Explain the debate between *Beit Shammai* and *Beit Hillel* regarding the restriction on the sale of olives. (ה' י"ו)
- What must one do when sharing a wine press with someone who is not believed with respect to separating *ma'asrot*? (ה' י"ז)
- In what situation is one allowed to join in partnership or joint-*arisut* with someone who is not believed with respect to separating *ma'asrot*? (ה' י"ח)
- Does the previous law differ if the two parties inherited a property? (ה' י"ט)
- How should a *ger* and *goi* divide the inherited possessions? (ה' י"ט)
- If an *am ha'aretz* selling fruit in *Surya* admits that the fruit is from Israel yet claim that tithes have been taken, is he believed? Why? (ה' י"א)

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
20 March י"ז אדר	21 March י"ח אדר	22 March י"ט אדר	23 March כ' אדר	24 March כ"א אדר	25 March כ"ב אדר	26 March כ"ג אדר
Damai 6:12-7:1	Damai 7:2-3	Damai 7:4-5	Damai 7:6-7	Damai 7:8 - Kilayim 1:1	Kilayim 1:2-3	Kilayim 1:4-5

