



Volume 1. Issue 10.

Selling Trumat Ma'aser

According to the *Gemarah* in *Sotah* (48a), *Yochanan Kohen Gadol* saw that although all of the farmers were adhering to the laws of *terumah gedolah* (1/50th of the total produce that went to the *Kohanim*), only some were adhering completely to all of the laws relating to *trumat* and *ma'asrot*. He therefore declared that all produce sold by unlearned farmers (*amei ha'aretz*) be known as *demai* and decreed that anyone who buys *demai* must give *trumat* and *ma'asrot* in case these laws were not followed.

However, due to the fact that this was a stringency, as a large number of *amei ha'aretz* did follow the laws correctly, *Yochanan Kohen Gadol* instituted the following amendment to the laws. In order to minimise the economic impact of his decree on the buyer, only *trumat ma'aser* (1/10th of *ma'aser rishon* which was given by the *Levi* to the *Kohen*) and *ma'aser Sheni* (which is eaten by the buyer in *Yerushalaim*) were taken from the *demai*. The rest of *ma'aser rishon* and all of *ma'aser ani* were not taken due to the principle in monetary law, "the burden of proof rests on the plaintiff". Therefore the *Leviim* and the poor must be able to prove that the *am ha'aretz* did not correctly tithe the produce – a task that is almost impossible.

Why doesn't this principle - "the burden of proof rests on the plaintiff" - also apply to the *trumat ma'aser* that was given to the *Kohanim*?

Ma'aser rishon and *ma'aser ani* are not intrinsically forbidden to non-*Leviim*. However, the owner of the produce may not eat them because this would constitute theft as the Torah awarded them to the *Leviim* and the poor as it says in *Devarim* (26:13) "and I have also given it [the *ma'aser*] to the *Levi* and to the stranger, the orphan and the widow". As such, the questionable status of *ma'aser rishon* and *ma'aser*

ani of *demai* is defined by the principles of monetary law and as stated above, "the burden of proof rests on the plaintiff".

Trumat ma'aser, however, is forbidden to all except a *Kohen*. Therefore, the status of *trumat ma'aser* separated from *demai* is defined by the principles of prohibitory law. Accordingly, as *Rashi* states, it is forbidden to the buyer unless he can prove that the grower already separated *trumat ma'aser*.

However, the law of *trumat ma'aser* actually contains elements of monetary law as well as prohibitory law. Although the fact that a non-*Kohen* is forbidden to eat *trumat ma'aser* is a matter of prohibitory law, it is given to the *Kohen* free of charge because the Torah awarded it to the *Kohanim* – a matter of monetary law. This being the case, why must the buyer give the *trumat ma'aser* to the *Kohen* in the case of *demai*? Although the buyer may not eat the *trumat ma'aser* himself, since the *Kohen* cannot prove that the *am ha'aretz* did not tithe the produce, it remains in the possession of the buyer. He could then conceivably sell it to the *Kohen* that was the "highest bidder". Why must it be given to the *Kohen* free of charge?

Rashi explains that *Yochanan Kohen Gadol* was concerned that if the buyer retained the *trumat ma'aser* while waiting for a buyer, he would come to eat it. This view is further emphasised in *Tosfot* in *Yoma* (9a) who says that the *trumat ma'aser* is only a small portion and it may only be bought by a limited number of people (*Kohanim*) and would therefore take a long time to sell if it would be sold at all. Since the penalty for eating *trumat ma'aser* is Heavenly decreed death, there is good cause to be stringent. It is for this reason that the *trumat ma'aser* must be removed as quickly as possible from the buyer's possession and may not be sold.

Ben-Zion Hain

Revision Questions

פאה ח' בי – ח' ט'

- When does one believe a poor person (*am ha'aretz*) who claims the produces he is selling is *leket, peah, shichecha, ma'aser ani*? Why is this important? (ח' בי)
- Does one believe a *levi* who claims he is selling *ma'aser rishon*? (ח' בי)
- With respect to the first question – does it make a difference what he is trying to sell? (ח' ג')
- With respect to vegetables – when do we believe the poor person? (ח' ד')
- When distributing *ma'aser ani* to the poor directly from the threshing floor, what is the minimum quantity that one must give each poor person? (give the general rule) (ח' ה')
- What should one do if he does not have that amount to give to everyone? (ח' ו')
- What does the *gabbai tz'daka* provide for a poor person: (ח' ז')
 - Travelling through the city?
 - Staying overnight?
 - Staying for over Shabbat?
- What is the financial status of one who can take from the *tamchui? Kuppah*? (ח' ח')
- What is the financial status of one who can take the *matanot ani'im*? How do pledges, *ketubah* and property enter into the calculations? (ח' ט')
- Regarding the previous question, does it make a difference if someone had less than that amount but was trading and supporting himself on that sum of money? (ח' ט')
- What does the *Mishnah* say about one who:
 - Takes the *tz'dakah* when he does not need to?
 - Does not take *tz'dakah* when he needs to?
 - Judges truthfully?
 - Accepts bribes?
 - Pretends to be disabled?

דמאי א' – ב' בי'

- What foods were the *Chachamim* lenient towards with respect to *demai*? (א' א')
- How is *ma'aser sheni* separated from *demai* different from regular *ma'aser sheni*? (א' ב')
- If someone purchases produce from an *am ha'aretz* for particular uses they may not be treated as *demai* – what are they? (א' ג')
- What other things purchased from an *am ha'aretz* are not considered *demai*? (א' ג')
- What may *demai* be used for that *tevel* may not? (א' ד')
- What other laws are more lenient in *demai* than *tevel*? (א' ד')
- What foods does *demai* apply to beyond *ch'ziv*? (א' ב')
- What does an *am ha'aretz* need to do to become *ne'eman*? (ב' ב')

Local Shiurim

Sunday -Thursday

Between mincha & ma'ariv

Mizrachi Shul

David Bankier

9:50pm (after ma'ariv)

Beit Midrash -

Naftali Herc

Yehuda Gottlieb

Friday & Shabbat

10 minutes before mincha

Mizrachi Shul

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
12 th Dec. כ"ט כסלו ה' דחנוכה Demai 2: 3-4	13 th Dec. א' טבת ו' דחנוכה Demai 2:5-3:1	14 th Dec. ב' טבת ז' דחנוכה Demai 3: 2-3	15 th Dec. ג' טבת ח' דחנוכה Demai 3: 4-5	16 th Dec. ד' טבת Demai 3:6-4:1	17 th Dec. ה' טבת Demai 4: 2-3	18 th Dec. ו' טבת Demai 4: 4-5

