



Mishnah's Theology of Tithing

A Study of Tractate Maaserot

MARTIN S. JAFFEE

Mishnah's Theology of Tithing

**BROWN UNIVERSITY
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by Martin S. Jaffee

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TITHING:
A Study of Tractate
Maaserot**

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Scholars Press

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for Cher,
after five years

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honor of Maurice Glicksman.

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PUBLISHERS' PREFACE

Brown Judaic Studies has been publishing scholarly books in all areas of Judaic studies for forty years. Our books, many of which contain groundbreaking scholarship, were typically printed in small runs and are not easily accessible outside of major research libraries. We are delighted that with the support of a grant from the National Endowment for the Humanities/Andrew W. Mellon Foundation Humanities Open Book Program, we are now able to make available, in digital, open-access, format, fifty titles from our backlist.

Martin S. Jaffee's, *Mishnah's Theology of Tithing: A Study of Tractate Maaserot* (1980) is one of a series of works by Jacob Neusner's students that seek to find a "theology" in the Mishnah. Jaffee is especially interested in showing the interaction between the form and content of the tractate.

This edition incorporates typographical corrections of the original text.

Michael L. Satlow
Managing Editor
October, 2019

PREFACE

This study is a translation and exegesis of Mishnah's Tractate Maaserot (Tithes) and its corresponding tractate of Tosefta. The goal of the study is to understand the laws of Maaserot (hereafter, M.) as the tractate's creator(s) intended them to be understood. I claim, then, to explain the meaning these laws conveyed to those who, toward the end of the second century A.D., edited them into a tractate on the subject of tithes. Consequently, the study makes no effort to establish the meaning of the laws outside the context provided by M. itself, e.g., prior to their formulation for use in M., or afterward, in the subsequent history of Jewish legal reflection. The reason for limiting the exegetical focus in this way flows from the kind of information I seek from M. The tractate, as part of Mishnah, is important evidence for the concerns which engage Rabbinic Judaism at a point quite early in its history. By offering an account of M.'s original meaning, I thereby contribute to the larger task of describing and interpreting Mishnah, and, ultimately, that form of Judaic religion which it so richly represents.

Both the translation of M. and its exegesis are carefully designed to serve the specific task of understanding defined above. They are intended, that is, to restrict the range of meaning to that which can plausibly be ascribed to the editor(s) of the tractate. Thus the translation is as literal as readable English will allow, and closely replicates the formal and syntactical traits of the Hebrew. This method of translation prevents both translator and reader from ignoring the critical, and often intentional, ambiguities and difficulties of the text. At the same time, it sensitizes the diligent reader to M.'s disciplined mode of expression and, therefore, enables the reader to permit the text itself to define the limits of its own interpretation. My own judgment regarding the text's meaning is offered in the exegesis, which follows each discrete pericope of M. This exegesis emerges, first of all, from careful analysis of those literary traits highlighted by the translation. I attempt to show how the literary form in which M.'s laws are cast yields sure access to the meaning they are intended to convey. While the exegesis begins in literary analysis, however, it moves rapidly to two further levels of analysis and explanation. The first is an account of each pericope's clear sense, as this can be discerned by analysis of literary form

and conceptual content. The second is an identification of the unarticulated assumptions of each pericope as well as a description of the logical structure of ideas within which the law of each pericope may be located. This analysis of the sense of each pericope, placed within the context of its legal assumptions and logic, is what I identify as the original meaning of a given law.

Once the pericopae are fully explained and viewed in their redacted sequence, it becomes possible to identify and explain the larger problematic of the tractate as a whole. By "problematic" I simply mean the underlying issue or preoccupation which generates reflection on the subject of tithes and shapes M.'s particular exploration of that subject. Identification of this problematic is the "pay off" for the historian of early Rabbinic Judaism, for it leads the student into the motives and concerns which generate the peculiar project of law found in Mishnah. These motives, I argue, are distinctly theological. I offer detailed discussion of M.'s problematic in the Introduction, which serves as well to orient the reader within the tractate's factual data and range of issues. The Introduction contains as well an extensive discussion of the theoretical issues which determine the methods of translation and exegesis I employ. In addition, the reader will find a guide to the technical apparatus used in the translation and an explanation of the kinds of issues which I consistently raise in my exegesis. This guide explains how to make best use of the translation and exegesis, and should enable the reader to criticize my own exegetical work from an independent perspective.

While M. is the primary focus of this study, I have seen fit to translate and discuss all of Tosefta Maaserot (hereafter, T.) as well. T. is an early and most important commentary to M., and the only commentary which attempts to employ M.'s own formal and conceptual framework for exegetical purposes. As such it is unlike any commentary to M. I therefore present T.'s pericopae after the pericopae of M. which they are intended to serve. While this mode of presentation at times disrupts the redacted order of T., and often disrupts the flow of ideas presented in M., the system best highlights the exegetical utility of T. for the study of M. My comments to T. are generally brief, intended simply to describe the point T. wishes to make about M. Since my discussions of M. routinely identify important contributions of T., the reader who wishes to concentrate solely on Mishnah will not be at a disadvantage if he or she chooses to ignore the translation and commentary of T.

ACKNOWLEDGEMENTS

It gives me great pleasure to express my gratitude to those who have supported me in so many ways during the period in which I prepared this study. Above all, I wish to thank my parents, Abraham and Belle Jaffee, for all they have given me in my life, and for their faith in my ability to choose what was right for me. I hope that the appearance of this book will give them pleasure.

My teacher, Jacob Neusner, is responsible for whatever merits this book displays, for it was in his graduate seminars that the plan of the book took shape and its contents were first presented. Professor Neusner's criticism and insights have improved each page, such that I cannot imagine what kind of book I would have written without his guidance. To him I owe not only this book, but the education which made such a book possible, and the career which will issue from that education. If it is a truism that students are indebted to their teachers, it is true of me more than most.

The present volume was originally presented as a Brown University doctoral dissertation, and as such has benefited from passage under many eyes. I wish to thank, first of all, the official readers of my dissertation, Professors David M. Goodblatt (Haifa University) and William Scott Green (University of Rochester), both of whom made important suggestions and corrections which I have incorporated for publication. I must express as well my indebtedness to my colleagues in Professor Neusner's seminars over the past three years: Mr. Leonard Gordon, Professor Peter Haas (Vanderbilt University), Mr. Abraham Havivi, Professor Irving Mandelbaum (University of Texas), Mr. Alan Peck, Professor Richard S. Sarason (Hebrew Union College-Jewish Institute of Religion) and Ms. Margaret Wenig Rubenstein. Without their criticism, encouragement, and numerous kindnesses, the quality of this study would certainly have suffered.

I have received exceptionally generous financial support during, and immediately prior to, my residency at Brown University. The debt of longest standing is to the Max Richter Foundation, which supported my preliminary studies in Jerusalem from 1975-77 and provided timely assistance at crucial junctures thereafter, including provision of funds necessary for the publication of this volume. I wish to thank as well Brown University for naming me a University Fellow in 1977, and for extending to me a Religion Studies Fellowship in 1980. Finally, I am deeply grateful to the

Danforth Foundation, which appointed me Fellow in 1978, and since then has shown genuine concern for my academic and personal well-being.

This volume is dedicated to my wife, Cheryl Naomi Goldstein. We met in Jerusalem, at the beginning of the journey which has just now culminated in my first book. I am grateful to her for choosing to commit herself to my journey, and for allowing me the privilege of committing myself to hers. With the completion of this book we conclude one journey and look forward with great anticipation to embarking upon another.

June 1980

Martin S. Jaffee

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M.J.
Charlottesville, Va.
July 1981

ABBREVIATIONS AND BIBLIOGRAPHY

- Ah. = 'AhiLot
AJSR = *Association for Jewish Studies Review*
- Albeck = Hānoch Albeck, *Shishah Sidrei Mishnah: Seder Zera^Cim* (Jerusalem and Tel Aviv, 1957)
- Albeck, "Hefqer" = Sh. Albeck, "Hefqer," *EJ* 8:243
- Allon, *History* = Gedalyahu Allon, *A History of the Jews in Palestine During the Period of the Mishnah and Talmud* (Heb.) 2 vols. (Tel Aviv, 1961).
- Arak. = ^CArakhin
Aruch = Alexander Kohut, ed., *Aruch Completum*, 8 vols. (Vienna, 1878-1892; second ed., 1926)
- Applebaum, "Severan Empire" = Shimon Applebaum, "The Province of Syria-Palestina as a Province of the Severan Empire," *Zion* XXIII (1958)
- Avi-Yonah, *Jews* = Michael Avi-Yonah, *The Jews of Palestine* (Oxford, 1976)
- A.Z. = ^CAbodah Zarah
- b. = *Babli*, Babylonian Talmud, cited by tractate and folio number of ed. Romm (Vilna, 1886); *ben*, "son of," as in *Simeon b. Gamaliel*
- B = Mishnah *Zera^Cim*, MS. Berlin 93; see Sacks-Hutner, pp. 43, 77-78
- BAR* = G. Ernest Wright and David Noel Freedman, eds., *The Biblical Archaeologist Reader* I (Ann Arbor, 1975, 1978)
- B.B. = Baba' Batra'
- B.M. = Baba' Meṣi^Ca'
- B.Q. = Baba' Qamma'
- Bek. = Bekhorot
- Ber. = Berakhot
- Bes. = Beṣah

- Bert. = Obadiah b. Abraham of Bertinoro (fifteenth century), *Mishnah Commentary* in Romm ed. of *Mishnah* (Vilna, 1908)
- Blackman = Philip Blackman, *Mishnayot*, 2nd ed., 6 vols. (New York, 1964)
- Britton-Brown = H. A. Gleason, *The New Britton and Brown Illustrated Flora of the North-Eastern United States and Adjacent Canada*, 3 vols. (New York, 1952)
- Bunte = G. Beer, C. Holtzmann, S. Krauss, K. Rengstorf, and L. Rost, eds., *Die Mishna: Text, Übersetzung und ausführliche Erklärung. Maaserot/Maaser Scheni (Vom Zehnten/Vom Zweiten Zehnten): Text, Übersetzung und Erklärung nebst einem textkritischen Anhang*, by Wolfgang Bunte (Berlin, 1962)
- BZAW = *Beihefte Zur Zeitschrift für die Alttestamentliche Wissenschaft*
- C = *Mishnah*, early printed edition of unknown origin, ca. 1516; cf. Sacks-Hutner, pp. 64, 82-83
- Ca = *Mishnah*, Ms. Cambridge 470, 1; see Sacks-Hutner, pp. 63, 67
- Cohen = Isadore Epstein, ed., *The Babylonian Talmud: Seder Zera^eim II* (London, 1948), "Maaseroth," tr. with notes by Phillip Cohen
- Condit = I. J. Condit, "Fig," *EB* 9:255
- Dalman = Gustav Dalman, *Arbeit und Sitte in Palästina*, 8 vols. (Gütersloh, 1928-42)
- Danby = Herbert Danby, tr., *The Mishnah* (London, 1933)
- Dem. = Dema'i
- Dt. = Deuteronomy
- E = Tosefta, MS. Erfurt; see Lieberman, *TZ*, pp. 8-11
- EB = *Encyclopaedia Britannica*, 24 vols. (Chicago, 1968)

- Ed. = ^CEduyyot
- ed. princ.* = Tosefta, *editio princeps*, Venice, 1521
- Eissfeldt, *BZAW* = Otto Eissfeldt, "Zum Zehnten bei den Babyloniern," *BZAW* 33 (Giessen, 1918), pp. 163-174
- Eissfeldt, *Erstlinge* = Otto Eissfeldt, *Erstlinge und Zehnten im Alten Testament* (Leipzig, 1917)
- Eissfeldt, *RGG*³ = Otto Eissfeldt, "Zehnten," *RGG*³ 6:1877-1880
- EJ* = *Encyclopaedia Judaica*, 16 vols. (Jerusalem, 1972), cited by volume and column (*EJ* 9:200)
- Epstein = Jacob N. H. Epstein, *Prologomenon to the Text of the Mishnah* (Heb.), 2 vols., ed., E. Z. Melamed (Second ed., Jerusalem, Tel Aviv, 1964)
- Erub. = ^CErubin
- Ex. = Exodus
- Ez. = Ezekiel
- Feliks, *Ḥaqla'ut* = Yehudah Feliks, *Agriculture in Palestine in the Period of the Mishna and Talmud* (Heb.) (Jerusalem, Tel Aviv, 1963)
- Feliks, *Plant World* = Yehudah Feliks, *The Plant World of the Bible* (Heb.) (Tel Aviv, 1957)
- Freedman = Isadore Epstein, ed., *The Babylonian Talmud: Seder Nashim* (London, 1936), "Nedarim," tr. with notes by H. Freedman
- G = Mishnah, MSS. from Cairo Genizah, listed and numbered in Sacks-Hutner, pp. 87-112
- Gen. = Genesis
- Git. = *Giṭṭin*
- Gereboff, *Tarfon* = Joel Gereboff, *Rabbi Tarfon: The Tradition, The Man, and Early Rabbinic Judaism* (Missoula, 1979)
- Goldenberg, *Meir* = Robert Goldenberg, *The Sabbath Law of Rabbi Meir* (Missoula, 1979)
- Goldschmidt = Lazarus Goldschmidt, *Der Babylonische Talmud*, 12 vols. (Berlin, 1929)

- Gordon, *M. Shebitt* = Leonard Gordon, *A Study of Tractate Shebitt*, Brown University doctoral dissertation in progress, dir. Jacob Neusner
- GRA = Elijah b. Solomon Zalman (1729-1797), *Shanot Eliyahu*, Mishnah Commentary in Romm ed. of Mishnah; Tosefta emendations in Romm ed. of Babylonian Talmud
- Green, *Joshua* = W. S. Green, *The Legal Traditions of Joshua ben Hananiah in Mishnah, Tosefta, and Related Literature*. (Brown University dissertation, 1974)
- Green, *Approaches* = William S. Green, ed., *Approaches to Ancient Judaism I-* (Missoula, 1979-), cited by volume and page (*Approaches I*: 50)
- Greenstone = J. H. Greenstone, "Hefker," *JE* 6:316
- Guthrie, "Tithe" = H. H. Guthrie, Jr., "Tithe," *IDB* 4:654-655
- Haas, *M. Maaser Sheni* = Peter Haas, *A Study of Tractate Maaser Sheni*. Brown University doctoral dissertation in progress, dir. Jacob Neusner
- Hag. = Ḥagigah
- Hal. = Ḥallah
- Havivi-Eisenman = Abraham Havivi and David Eisenman, collaborating on *A Study of Tractate Hallah*, in progress, dir. Jacob Neusner
- HD = Ḥasdei David. David Samuel b. Jacob Pardo (1718-1790), *Tosefta Commentary: Sefer Ḥasdei David, Seder Zera^cim* (Livorno, 1776; reprint Jerusalem, 1970)
- HY = Ḥazon Yehezqel. Yehezqel Abramsky (1886-1976), *Tosefta Commentary: Ḥazon Yehezqel, Seder Zera^cim* (Vilna, 1925; second ed.: Jerusalem, 1971)
- Hor. = Horayyot

- Hul. = Hullin
 IDB = *The Interpreter's Dictionary of the Bible*, 4 vols. (New York and Nashville, 1962), cited by volume and page (IDB 2:400)
- JAAR = *Journal of the American Academy of Religion*
- Jastrow = Marcus Jastrow, *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature*, 2 vols. (New York, 1895-1903; repr. New York, 1975), cited by entry and page (Jastrow, s.v., "BGD," p. 137)
- JBL = *Journal of Biblical Literature*
 JE = *The Jewish Encyclopedia*, 12 vols. (New York and London, 1901-1906; repr. New York, 1975), cited by volume and page (JE 2:400)
- Jones = Q. Jones, "Fenugreek," *EB* 9:176
- Josephus, *Antiquities* = Flavius Josephus, *Jewish Antiquities*, in *Works*, tr., H. St. J. Thackeray, R. Marcus, A. Wilkgren and L. H. Feldman, 9 vols. [Loeb Classical Library] (London and Cambridge, Mass., 1926-1965), vols. I-IX, cited by volume and paragraph (*Antiquities* IV:100)
- JQR = *The Jewish Quarterly Review*
- JSJ = *Journal for the Study of Judaism*
- K = Mishnah, MS. Kaufmann A 50; see Sacks-Hutner, pp. 63, 65-66
- Kasovsky, *Mishnah* = C. Y. Kasovsky, *Thesaurus Mishnae: Concordantiae verborum etc.*, 4 vols. (Tel Aviv, 1957, rev. 1967)
- Kasovsky, *Tosefta* = C. Y. Kasovsky, *Thesaurus Thosephthae: Concordantiae verborum etc.*, 6 vols. (Jerusalem, 1932-1961)
- Kel. = Kelim
- Ket. = Ketubot
- Ker. = Keritot
- Kil. = Kila'im

- I. Klein = Israel Klein, tr., *The Code of Maimonides; Book Seven, The Book of Agriculture* (New Haven, London, 1979)
- S. Klein = Samuel Klein, "Weinstock, Feigenbaum und Sykamore in Palästina," in *Krauss*, pp. 399-400
- KM = *Kesef Mishnah*. Joseph b. Ephraim Karo (1488-1575). Commentary to Maimonides' *Mishneh Torah*, in standard editions of the latter
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- Kosovsky, *Sifre* = B. Kosovsky, *Otzar Leshon Hatanna'im: Concordantiae verborum quae in "Sifrei" Numeri et Deuteronomium*, 5 vols. (Jerusalem, 1974)
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- Krauss, *TA* = Samuel Krauss, *Talmudische Archäologie*, 3 vols. (Leipzig, 1910-1912)
- Krauss, "TBL" = Samuel Krauss, "TBL: Eine neu erschlossene hebräische Vokabel in geschichtlichen Beleuchtung," in *Krauss*, pp. 269-292
- L = Palestinian Talmud, MS. Leiden; see Sacks-Hutner, pp. 63, 72
- Levine, *Caesarea* = Lee I. Levine, *Caesarea Under Roman Rule* (Leiden, 1975)
- Lv. = Leviticus
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- Lieberman, *TM* = Saul Lieberman, ed., *The Tosefta According to Codex Vienna with Variants from Codex Erfurt, Genizah MSS. and Editio Princeps*, II. *The Order of Mo^Ced* (New York, 1962)
- Lieberman, *TZ* = Saul Lieberman, ed., *The Tosefta According to Codex Vienna with Variants from Codex Erfurt, Genizah MSS. and Editio Princeps*, I. *The Order of Zera^Cim* (New York, 1955)
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- M = Babylonian Talmud, Codex Munich 95; see Sacks-Hutner, pp. 63, 69-70
- M. = Mishnah (e.g., M. Maaserot, M. Kelim, etc.)
- Ma. = Ma^Caserot
- MacDonald = W. L. MacDonald, "Tyros," *Princeton Encyclopaedia of Classical Sites* (Princeton, 1976), p. 944
- Maim., *Comm.* = Maimonides (1135-1204), *Mishnah Commentary*; edition used: *Mishnah^Cim perush rabbenu Moshe ben Maimon*, Hebrew translation of the Arabic, introduction and notes, by Joseph D. Kappah, I. *Zera^Cim-Mo^Ced* (Jerusalem, 1964)
- Maim., *Tithes* = *Hilkhot Ma^Caser*, codification of tithing laws in Maimonides' *Mishneh Torah*, standard ed., cited by

chapter and paragraph (*Tithes* 3:5). This edition is the source of references to *Maim., Heave-Offering, Second Tithe and Fourth Year Fruit, Seventh Year and Jubilee and Uncleaness of Foodstuffs*

- Mal. = Malakhi
- Mak. = Makkot
- Makh. = Makhshirin
- MB = *Minhat Bikkurim*. Samuel Avigdor b. Abraham Karlin (nineteenth century), *Tosefta Commentary* in Romm ed. of *Babylonian Talmud*
- Me. = Me^Cilah
- Meg. = Megillah
- Melamed, *DeVries* = E. Z. Melamed, *Benjamin DeVries Memorial Volume* (Heb.) (Jerusalem, 1968)
- Men. = Menaḥot
- MH = *Mar'eh Hapannim*. Moses Margolioth (eighteenth century), supercommentary to the author's commentary to the Jerusalem Talmud (*Penei Moshe*; see *PM*), the Zhitomir edition (1860-1867)
- Mid. = Middot
- M.Q. = Mo^Ced Qaṭṭan
- MR = *Mishnah Rishonah*. Ephraim Isaac of Premysla (nineteenth century), *Mishnah Commentary* in Romm edition of *Mishnah*
- M.S. = Ma^Caser Sheni
- MS. = manuscript
- MS = *Melekheth Shlomo*. Solomon b. Joshua Adeni (ca. 1600), *Mishnah Commentary* in Romm edition of *Mishnah*
- N = *Mishnah, ed. princ.*, Naples 1492; see Sacks-Hutner, pp. 64, 81-82
- Naz. = Nazir
- Ned. = Nedarim
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- Neusner, "Redaction" = Jacob Neusner, "Redaction, Formulation, and Form: The Case of Mishnah," *Jewish Quarterly Review* 70 (1980), pp. 1-22
- Nid. = Niddah
- Nu. = Numbers
- O¹ = MS. Oxford 366, Babylonian Talmud, Orders *Zera^cim* and *Mo^ced*; see Sacks-Hutner, pp. 63, 67-69
- O² = MS. Oxford 393, Mishnah *Zera^cim* with Maimonides' Commentary; see Sacks-Hutner, pp. 63, 76-77

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- Oppenheimer, *Am Ha-arets* = Aharon Oppenheimer, *The Am Ha-Aretz: A Study in the Social History of the Jewish People in the Hellenistic-Roman Period* (Leiden, 1977)
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- Orl. = ^COrlah
- P = Mishnah, MS. Parma DeRossi 138; see Sacks-Hutner, pp. 64, 79
- Par. = Parah
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- Pes. = *Pesahim*
- Porton, "Dispute" = Gary G. Porton, "The Artificial Dispute: Ishmael and Aqiba," in Neusner, *Cults* IV:18:29
- Porton, *Ishmael* = Gary G. Porton, *The Tradition of Rabbi Ishmael, I. The Non-Exegetical Materials* (Leiden, 1976)
- Press = Isaiah Press, *A Topographical-Historical Encyclopedia of Palestine*, 4 vols. (Jerusalem, 1955)
- PM = *Penei Moshe*. Moses Margolioth (eighteenth century), Commentary to the Jerusalem Talmud, Zhitomir edition (see *MH*)
- Primus, *Aqiva* = Charles Primus, *Aqiva's Contribution to the Law of Zera^Cim* (Leiden, 1977)
- Qid. = Qiddushin
- Qin. = Qinnim
- R = Jerusalem Talmud, MS. Rome 133; Sacks-Hutner, pp. 63, 73
- R. = Rabbi

- Rabad = Abraham b. David of Posquieres (ca. 1120-1198), glosses to Maimonides' *Mishneh Torah*, in standard editions of the latter
- RDBZ = David ibn Zimra (1479-1589), super-commentary to Maimonides' *Mishneh Torah*, in standard editions of the latter
- Rashi = Solomon b. Isaac of Troyes (1040-1105), commentary to Babylonian Talmud, Romm edition
- RGG³ = *Die Religion in Geschichte und Gegenwart*, 3rd edition, 6 vols. (Tübingen, 1957-1962), cited by volume and page (RGG³ 6:200)
- R.H. = Rosh Hashanah
- Ribmaş = Isaac b. Melkhişedeq of Siponto (ca. 1090-1160), Mishnah Commentary in Romm edition of the Babylonian Talmud
- Rosh = Asher b. Yeşiel (1250-1327), Mishnah Commentary in Romm edition of Babylonian Talmud
- S = MS. British Museum 403, Palestinian Talmud, *Zera^cim*, with commentary of Sirillo; see Sacks-Hutner, pp. 63, 73-75
- Sa = Mishnah *Zera^cim*, MS. Sassoon 531; see Sacks-Hutner, pp. 63, 68
- Sacks-Hutner = *The Mishnah with Variant Readings, Order Zera^cim*, 2 vols., ed. Nissan Sacks (Jerusalem, 1972-1975)
- Samtner = A. Samtner, tr., *Mischnajot: die sechs Ordnungen der Mischna, hebräischen Text mit Punktation, deutschen Übersetzung und Erklärung*, I. *Sera^cim*, 6 vols., 3rd edition (Basel, 1968)
- San. = Sanhedrin
- Sarason, M. *Demai* = Richard S. Sarason, *A History of the Mishnaic Law of Agriculture: A Study of Tractate Demai, Part One* (Leiden, 1979)

- Sarason, "Mishnah and Scripture" = Richard S. Sarason, "Mishnah and Scripture: Observations on the Law of Tithing in *Seder Zera^cim*," in W. S. Green, ed., *Approaches II* (Chico, 1980)
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- Sens = Samson b. Abraham of Sens (twelfth-thirteenth centuries), *Mishnah Commentary* in Romm edition of *Babylonian Talmud*
- Shab. = Shabbat
- Shabu. = Shabu^cot
- Sheb. = Shebi^cit
- Sheq. = Sheqalim
- Sifra = *Sifra debe Rab, hu' Sefer Torat Kohanim*, ed., I. H. Weiss (Vienna, 1892; repr. New York, 1946)
- Sifre Nu. = *Siphre de'be Rab, Fasciculus primus: Siphre ad Numeros adjecto Siphre Zutta*, ed. H. S. Horovitz (Leipzig, 1917; repr. Jerusalem, 1966)
- Sifre Dt. = *Siphre ad Deuteronomium*, ed., L. Finkelstein, with H. S. Horovitz (Berlin, 1939)
- Sirillo = Solomon b. Joseph Sirillo (d. 1558), *Commentary to Palestinian Talmud, Zera^cim* (Jerusalem, 1963)
- Sot. = Soṭah
- Sperber = Daniel Sperber, *Roman Palestine 200-400: Money and Prices* (Ramat Gan, 1974)
- Sperber, "Pyrgos" = Daniel Sperber, "On the *Pyrgos* as a Farm Building," *AJSR* 1 (1976), pp. 359-361
- Strack = Hermann L. Strack, *Introduction to the Talmud and Midrash* (New York, 1974)
- Suk. = Sukkah

- Sussman, "Inscription" = Jacob Sussman, "A Halakhic Inscription from the Bet Shean Valley" (Heb.), *Tarbiz* 43 (1973-74)
- T. = Tosefta
- Ta. = Ta^Canit
- Tam. = Tamid
- Tarbiz* = *Tarbiz: A Quarterly for Jewish Studies*
- TAS = *Tosefot Anshei Shem*, anonymous collection of novellae on the Mishnah (nineteenth century) in Romm edition of Mishnah
- Tem. = Temurah
- Ter. = Terumot
- Theophrastus, *Enquiry* = Theophrastus, *Enquiry into Plants*, tr. Sir Arthur Hart, 2 vols. [Loeb Classical Library], cited by book, chapter and paragraph (e.g., *Enquiry* I. ii.9-10)
- Toh. = Ṭohorot
- TYT = *Tosefot Yom Tob*. Yom Tob Lippmann Heller (1579-1654), Mishnah Commentary in Romm edition of Mishnah
- TYY = *Tif'eret Yisra'el Yakin*. Israel b. Gedaliah Lipshcütz (1782-1860), Mishnah Commentary in Romm edition of Mishnah
- Uqs. = ^CUqṣin
- V = Tosefta, MS. Vienna Heb. 20; see Lieberman, *TZ*, pp. 11-12
- Weinfeld, "Tithes" = Moshe Weinfeld, "Tithes," *EJ* 15: 1156-1162
- White, *Roman Farming* = K. D. White, *Roman Farming* (Ithaca, N.Y., 1970)
- Wright, "Temple" = G. Ernest Wright, "The Significance of the Temple in the Ancient Near East, III. The Temple in Palestine-Syria," *BAR*, I:167-174
- y. = Yerushalmi, Jerusalem Talmud, ed. princ., Venice (1520-1523), cited by tractate, pericope, folio and column (y. Ma. 1:1[48d])

Y.T.	= Yom Tob
Yad.	= Yada ^C im
Yeb.	= Yebamot
Z	= Mishnah, MS. Paris 362, with commentary of Sens; see Sacks-Hutner, pp. 64, 79-80
Zab.	= Zabim
Zeb.	= Zebaḥim
Zahavy	= Tzvee Zahavy, <i>The Traditions of Eleazar ben Azariah</i> (Missoula, 1977)
Zuckerman	= <i>Tosephta, based on the Erfurt and Vienna Codices</i> , M.S. Zuckerman (Trier, 1881-1882; rev. with supplement by Saul Lieberman, Jerusalem, 1936-1939; reprint, Jerusalem, 1970)

Addendum: In the year which has elapsed since the completion of the manuscript, two Brown University dissertations cited in this study have been published or sent to press. Following are the bibliographical citations of those dissertations as used in this volume in addition to the published titles:

Haas, M. <i>Maaser Sheni</i>	= P. Haas, <i>A History of the Mishnaic Law of Agriculture: Maaser Sheni</i> (Chico, 1980)
Peck, M. <i>Terumot</i>	= A. Peck, <i>The Priestly Gift in Mishnah</i> (Chico, in press for 1981)

TRANSLITERATIONS

א = ' (aleph)	ל = l (lamed)
ב, בּ = b (bet)	מ, מּ = m (mem)
ג, גּ = g (gimel)	נ, נּ = n (nun)
ד, דּ = d (dalet)	ס = ś (samekh)
ה = h (het)	ע = c (ayin)
ו = w (vav)	פ, פּ, פֿ = p (pe)
ז = z (zayin)	צ, צּ = ś (tsade)
ח = ḥ (chet)	ק = q (kaph)
ט = ṭ (tet)	ר = r (resh)
י = y (yod)	ש = š (shin)
ך, כּ, כֿ = k (kaph)	שׂ = s (shin)
	ת, תּ = t (tet)

Transliterations represent the consonantal structure of the Hebrew word, with no attempt made to vocalize. We do not distinguish between the spirantized and non-spirantized forms of *b*, *g*, *d*, *k*, *p*, and *t*. Verbal roots are indicated by capitalization, e.g., *BGD*. When, on occasion a word is vocalized, the following notation is used:

a = <i>qamaṣ, pataḥ</i>	i = <i>ḥiriq</i>
ei = <i>ṣere-yod</i>	o = <i>ḥolem, ḥolem ḥašer,</i>
e = <i>ṣere, śegol, vocal šewa'</i>	<i>qamaṣ qatan</i>
u = <i>šuruq, qubbuṣ</i>	

Quiescent *šewa'* is not represented. Proper names and commonly used words are reproduced in their most frequent English usage, e.g., Eleazar, Mishnah, etc.

INTRODUCTION

A. *The Issues of Tractate Maaserot*

Tractate Maaserot (Tithes) defines the class of produce which is subject to Scripture's diverse agricultural taxes,¹ and determines when payment of these taxes is due. It thus amplifies, in rather predictable ways, those aspects of Scripture which are likely to interest Israelites concerned with the proper tithing of their food. That is, the tractate tells its audience what to tithe, and stipulates when they must remove the offerings from food they wish to eat. Where Scripture is clear on these matters, Mishnah is content to repeat and highlight the obvious. Thus in regard to the kinds of produce which must be tithed, Maaserot simply affirms Scripture's view that these gifts, the priestly dues and tithes,² are to be offered from all produce grown in the fields of the Land of Israel (cf. Dt. 14:22).

Maaserot receives little scriptural guidance, however, regarding its second, and major, focus of interest, the removal of the offerings from produce which is ready for the use of its owner. Scripture's interest in this question is colored by its overriding concern for the needs of those who are to receive the various offerings. Scripture simply stipulates, therefore, that the tithes must be paid each year. It goes not, however, elaborate how this is done. By contrast, Tractate Maaserot is primarily interested in the concerns of the common Israelites who want to eat their food. The tractate's questions, accordingly, reflect those concerns. That is: When, in the course of a crop's growth, may it be used to satisfy the obligation to tithe? When, further, in the course of the harvest of the crop, must the tithes actually be paid?

Mishnah's answer to this two-fold question is generated by Scripture's assumption that the agricultural offerings of the Land of Israel are a sacred tax which Israelites owe to God for the property they take from his Land (Lv. 27:30).³ Accordingly, the tractate points out that produce *may* be tithed as soon as it ripens, for at this point the crop becomes valuable as property. Payment of the tithes is not due, however, until the farmer or householder actually claims his harvested produce as personal property. This occurs, in Maaserot's view, whenever a person brings untithed produce from his field into his home, or when he prepares untithed produce for sale in the market. Produce

appropriated in this fashion is forbidden for consumption until it is tithed. Having claimed the produce for his own personal use, the farmer must remove those portions which belong to God before he may use it himself.

The framers of the tractate, however, are troubled by their own notion that produce need be tithed only after it has been claimed as property. What disturbs them is that now there normally will be a lengthy period of time--beginning with the ripening of the crop and extending until well after the harvest--during which the produce will remain untithed. It is precisely during this indeterminate period prior to tithing, however, that some of the produce is likely to be eaten by those who harvest it or who are otherwise involved in its processing or transport. This is what concerns Tractate Maaserot, for untithed produce presents a taxonomical problem. On the one hand, such produce is not sacred food, restricted for the use of priests, for the dues have not yet been designated within the produce and set aside from it for their meals. On the other hand, the produce cannot be used as profane or common food, for it is capable of yielding offerings which stand under the claim of God. Untithed produce, it follows, is subject to a special set of rules which take account of its ambiguous character. The problematic of Maaserot, as it articulates these rules, is to regulate the use of produce which is neither sacred nor profane, neither wholly God's nor wholly man's.⁴

Maaserot's basic principle for regulating the use of untithed produce is simple. Since untithed produce is taxonomically ambiguous, neither sacred nor profane, it may not be eaten as priests eat their sacred offerings or as common folk eat their daily food. That is, untithed produce may not be eaten in meals.⁵ This does not mean, however, that untithed produce is entirely forbidden for use as food. To the contrary, it is permitted for random eating as a snack or in any other informal manner. The point is that the anomalous character of untithed food prevents it from serving the normal purpose of food which is sanctified to priests or of tithed food which is available for the use of commoners. As long, however, as a person eats his untithed food in a manner which respects its anomalous character, he may do so without removing any offerings. Should he, to the contrary, wish to use the produce in a meal, he must tithe forthwith. He must make the food fit for normal use by designating the sacred offerings in the produce and removing them from the remainder. Thereafter, the produce is thoroughly profane, and is fit for use as its owner desires.

The bulk of the tractate is concerned to apply this principle to the use of untithed produce from the moment it ripens in the field, through the harvest season, and ultimately to the point at which it is brought into the home or sold in the market. At issue throughout is to determine whether untithed produce eaten during this period of transition is intended to serve as a meal or as a snack. If the former, the householder is forbidden from eating the produce at all until he tithes. If, however, the owner of the produce simply wishes to snack on the untithed fruit, he may do so without obligation. How, then, do we distinguish a meal from a snack? One possible criterion, scarcely explored by Maaserot, might be the quantity eaten and the context of the act of eating. A meal, that is, requires a substantial amount of food and is eaten at a table. A snack, to the contrary, consists of a small amount of food eaten, so to speak, on the run. Maaserot prefers, instead, a more subtle criterion, namely, the intentions of the person who actually eats the food. The tractate rules that what a person intends to eat as a snack, however great the quantity, is indeed a snack, and is permitted without the removal of tithes. Correspondingly, what a person intends to eat as a meal, however minimal in quantity, is deemed a meal, and is forbidden for such use until tithes are removed. The liability of a particular batch of produce to the removal of tithes, then, is determined solely by what its owner intends to do with it. To be sure, Maaserot recognizes that intentions must usually be inferred by what people actually do. To a great extent, therefore, its discussion of intention is actually an essay in the interpretation of human actions. Thus the tractate will rule, for example, that a farmer who cooks untithed produce on a field stove clearly intends to make a meal of it, for food used in meals is normally cooked. Had he simply left the produce in the field to ripen, however, no such intention could be inferred. Any uncooked food eaten in the field by such a person would be deemed a snack unless the owner's subsequent actions indicated a change of intention. It would, of course, be exempt as well from the removal of tithes.

This summary of the tractate's basic conceptions yields a curious result. The criteria which determine that produce must be tithed appear to be independent of each other. Produce is liable to the removal of tithes either at the time it is intended for use as a meal or at the time it is claimed as private property, whichever happens to come first. It is appropriate, then, to ask what these two criteria have in common. The answer, of course,

is that in both instances a human being has appropriated for his personal benefit produce against which God has a claim. God's claim is violated, in other words, whenever an Israelite farmer or householder prepares to use untithed produce as if he had full rights regarding its disposition. Whether he prepares it for a meal out in the field, or brings raw food into his home for the use of his family, he has claimed rights of ownership which in fact are still God's. Accordingly, the Israelite must give to God his due before exercising his own property rights.

We see then that the taxonomic ambiguity which shapes the problematic of Maaserot--the anomalous character of untithed produce--masks a theological problem as well. That is to determine, and then to adjudicate, the respective claims of man and God to the produce of the Land of Israel. At stake, in other words, is the relationship of Israel to the lord of its ancestral land. The theological agendum emerges most clearly if, from our present standpoint, we return to the key points which interest Mishnah as produce passes from the field of the Israelite farmer to his table. We recall that produce first becomes subject to the law of tithes when it ripens in the field. God's claim to the tithes of the produce, that is, is made only when the produce itself becomes of value to the farmer. Only after produce has ripened may we expect the farmer to use it in his own meals, or sell it to others for use in theirs. Thus God's claim to it is first provoked, and must therefore be protected, from that point onward. As we have seen, the produce is permitted as food only if the farmer acknowledges God's prior claim, e.g., by refraining from eating it as he would his own produce. Should the farmer overreach his privilege, however, either by preparing to make a meal of the produce in his field or by claiming to be its sole owner, he loses his privilege to eat altogether, until he tithes. Once God's claim against the produce is satisfied by the removal of the tithes, the produce is released for use in all daily meals. It is now common food.

What is striking in all this is that the entire mechanism of restrictions and privileges, from the field to home or market, is set in motion solely by the intentions of the common farmer. Priests cannot claim their dues whenever they choose, and God himself plays no active role in establishing when the produce must be tithed. Indeed, the framers of Maaserot assume a profound passivity on the part of God. For them, it is human actions and intentions which move God to affect the world. God's claims against the Land's produce, that is to say, are only reflexes of

those very claims on the part of Israelite farmers. God's interest in his share of the harvest, as I said, is first provoked by the desire of the farmer for the ripened fruit of his labor. His claim to that fruit, furthermore, becomes binding only when the farmer makes ready to claim his own rights to its use, whether in the field or at home or market.

The fundamental theological datum of Maaserot, then, is that God acts and wills in response to human intentions, God's invisible action can be discerned by carefully studying the actions of human beings. This datum must now be assessed in the context of the time and place in which Tractate Maaserot is constructed. With the Mishnah as a whole, Maaserot comes into being in second-century Palestine, at a time in which Israel's hopes for God's victory over his enemies have been abandoned, and in a place in which his Temple, the visible symbol of his presence, no longer stands.⁶ In such a time and place, both Maaserot's loyalty to Scripture's ancient tithing law, and its distinctive innovations upon that law, are equally suggestive. Fundamentally, Maaserot affirms an essential continuity of God's lordship over the Land of Israel. It presents Scripture's command to tithe all the fruit of the field as an obligation which extends even to the present. God's ancient tax on the Land must still be offered in its proper season, as it was when the Temple still stood and its priestly officiants brought God's blessing from heaven into the Land. At a time in which God's inability to protect his Land or its inhabitants has long been clear, this is a bold claim indeed. Maaserot asserts that historical catastrophe has left the sacred economy of Israel undisturbed. While the Temple is gone, the Land remains holy and its fruit is still under the claim of God. Those remaining in the Land, it follows, remain bound by the ancient system of obligations which their ancestors accepted in covenant with God.

The very law which affirms the continuity of God's lordship over Israel, however, reveals how much has truly changed, both in the Land and in the imagination of some of its inhabitants. Unlike the theologians of Scripture's priestly laws, Maaserot's authorities can no longer turn to the visible evidence of God's presence, the Temple, in order to legitimate the collection of agricultural taxes. Rather, the framers of Maaserot must locate the play of God's power, and the foundation of his claims upon the Land, in an invisible realm immune from the hazards of history. This, as we have seen, is the realm of human appetite and intention, as they are aroused in the mundane course of daily affairs, and as they are directed toward the produce of God's Land. In

Maaserot's view, the law by which God's lordship is affirmed is itself set in motion by those who continue to affirm that he is Lord. As I have pointed out, the God of Israel acts and wills in Maaserot only in reaction to the action and intention of his Israelite partner on the Land. Nowhere do the framers of Maaserot expect--or allow for--unilateral or uncontrollable actions proceeding from the initiative of God. As in the time of the Temple, then, God remains Lord of the Land of Israel, and owner of its fruits. But when his Temple no longer stands and his Land has been defiled, his status as Lord depends upon the action of his remaining people. That is the whole point of linking God's claim upon the tithes to the social rhythms of the agricultural enterprise. Those who impose upon themselves the task of reconstructing the human and social fabric of Israelite life make effective the holiness of the Land and make real the claims of its God. This reciprocity between Israel and its God, the near parity between two partners in the task of re-creation, is what distinguishes the vision of Maaserot's thinkers from that of the priestly theoreticians of Scripture, from whom Mishnah inherits and transforms the law of tithes.

B. *The Structure of the Tractate*

Maaserot's concern to link invisible, supernatural events to the common intentions of Israelite farmers during the course of the agricultural cycle is clearly reflected in the structure of the tractate.⁷ All of its laws may be subsumed under three topical headings, which discuss, in turn, the status of produce under the law during (1) the natural cycle of agriculture, (2) in the course of the activities which bring produce from field to table, and (3) ambiguous cases in which the status of the produce is in doubt because the intentions of its owner are uncertain. Unit I (M. 1:1-4) is concerned with the conditions under which produce becomes subject to the law of tithes, and its consumption is limited to random snacks. Unit II (M. 1:5-4:5A), by far the largest and most complex of the tractate's units, investigates four activities which complete the farmer's appropriation of harvested produce for his own use, and so impose upon him the obligation to tithe. Unit III (M. 4:5B-5:8) is dependent upon both of the foregoing units. It investigates the farmer's obligation to tithe his produce in cases in which the natural conditions of ripeness (unit I) are unmet, or the normal processes of appropriation (unit II) are imperfectly accomplished. Thus the unit explores the application of the law in cases in which clear

criteria of liability do not emerge from the facts provided in the major portion of the tractate. Maaserot's study of these issues is best clarified by a survey of the tractate's main units and their subtopics.

I. *Conditions under which produce becomes subject to the law*
(M. 1:1-4)

A. *General conditions* (M. 1:1)

M. 1:1A All produce which is edible, privately-owned, and which grows from the earth must be tithed.

M. 1:1B Produce is subject to the law as soon as it becomes edible.

B. *Specific conditions* (M. 1:2-4)

M. 1:2 At what point in their growth do various kinds of produce become subject to the law?
(+ list of ten: Figs--when they ripen, etc.)

M. 1:3 (ten further items: Carobs--when they become spotted, etc.)

M. 1:4 Cucumbers, gourds, melons are tithed at any point in their growth (+ dispute, Simeon)

Unit I sets the context for the entire tractate. All produce which becomes liable to the removal of tithes is presumed to have first met both the general and specific criteria enumerated at A and B. A points out that only agricultural produce useful as food need be tithed, while B's list offers an exhaustive set of examples in which criteria relevant to specific kinds of produce are defined.

II. *Procedures by which harvested produce is rendered liable to the removal of tithes* (M. 1:5-4:5A)

A. *Processing and storage of untithed produce* (M. 1:5-8)

M. 1:5 At what point in its processing is produce rendered liable to the removal of tithes?
(+ list of four: cucumbers and gourds--when he removes the fuzz, etc.)

Under what conditions? When he intends to market the produce. But if he intends to bring it home, he snacks on the produce without tithing until he arrives at his home, at which point he must tithe.

M. 1:6 (four further items continue M. 1:5: dried fruit--when he piles it up, etc.)

M. 1:7 Wine--when he skims it; oil--when it flows into the vat

M. 1:8 Fig cakes--when he glazes them; dried figs--when he presses them (+ dispute, Yose)

B. *Acquisition of another's untithed produce in four modes.*

(M. 2:1-3:4)

1. *Gifts* (M. 2:1-4)

M. 2:1 One who says, "Take figs for yourselves"--the recipient makes a snack of them without tithing until he arrives home, at which point he tithes (+ complementary case demonstrating the principle).

M. 2:2 If men were in a shop and a passer-by said, "Take figs," they make a snack without tithing, but the shopkeeper must tithe before eating, for the shop is like his home (+ gloss, Judah).

M. 2:3 A transporter of untithed produce makes a snack, but must tithe anything he eats after reaching his destination (+ gloss, Judah).

M. 2:4 Unprocessed produce from which heave-offering is removed--Eliezer prohibits a snack/Sages permit.

2. *Purchases* (M. 2:5-6)

M. 2:5 One who purchases five figs for an *issar* may not eat them without tithing: Meir. Judah: he may eat them one by one without tithing, but must tithe if he gathers the purchase together as a batch.

M. 2:6 One who purchases ten figs, a grape-cluster, a pomegranate, a melon eats one by one without tithing (+ complementary case in which the principle is questioned).

3. *Barter* (M. 2:7-3:3)

M. 2:7 One who hires a harvester--the harvester eats during his labor without tithing, because the Torah gives him this privilege (+ statement of the principle).

M. 2:8 Those who trade figs with each other--both parties must tithe what they receive (+ gloss, Judah).

M. 3:1 One who brings unprocessed produce into his courtyard--his dependents eat without tithing, but his workers must tithe if they depend upon him for their board.

M. 3:2 One who brings workers to the field--if they depend upon him for their board, they eat one by one from the tree.

M. 3:3 One who hires gardeners--they eat one by one from the tree.

4. *Lost produce found by another* (M. 3:4)
- M. 3:4 If one found figs in the road--they are permitted for untithed use unless they were processed prior to being lost.
- C. *Bringing produce from the field into the courtyard or home* (M. 3:5-10)
- M. 3:5 What kind of courtyard renders liable produce brought within it?
(+ five opinions: Ishmael, Aqiba, Nehemiah, Yose, Judah)
- M. 3:6 Roofs, gate-houses, etc., which stand within the courtyard--they do/do not share the status of the courtyard itself.
- M. 3:7 Storage-huts, watch-towers, etc., outside the courtyard do not render liable produce brought within them. Yose: any building which is not a year-round home has no power to render liable the produce of its owner.
- M. 3:8 A fig-tree standing in a courtyard--the householder eats one by one from the tree without tithing (+ gloss, Simeon).
- M. 3:9 A vine growing in a courtyard--he eats an entire cluster of grapes without tithing: Tarfon. Aqiba: he eats one grape at a time without tithing.
- M. 3:10 A fig-tree standing in a courtyard, with its bough extending into the garden--he may eat fruit from that bough as he pleases, but only one by one from the part of the tree within the courtyard.
- D. *Preparation of untithed produce for use in a meal* (M. 4:1-5A)
- M. 4:1 One who pickles, boils or salts untithed produce in the field is required to tithe before eating.
- M. 4:2 Children who hid untithed figs, intending to eat them on the Sabbath, but forgot to tithe them--after the Sabbath the figs remain liable to the removal of tithes (+ dispute, Houses).
- M. 4:3 Untithed olives which are being softened for pressing--he eats one by one from the bin without tithing, but if he salts a small batch he must tithe (+ gloss, Eliezer).
- M. 4:4 Untithed wine which is drunk at the vat--Meir permits him to drink without tithing, Eleazar b. Sadoq forbids. Sages forbid only if he mixes the wine with hot water before drinking it.
- M. 4:5A Untithed barley--he may husk and eat one kernel at a

time without tithing (+ matching case demonstrating identical principle).

This large unit follows logically from unit I. Produce which has ripened and become subject to the law (unit I) has now been harvested, and awaits its final disposition. We recall that, while it is forbidden for use in meals at this point, the untithed produce is nevertheless permitted for nibbling in random fashion. A-C take up discussion of three common means by which the farmer or householder appropriate such produce for their own use, and incur thereby the obligation to tithe it. The sequence of topics at A-C is explained chronologically. A's interest is in the farmer's rights to use the produce between the time he processes it for storage and the moment it is actually stored in his home or prepared for sale. B discusses the liability of such produce which never reaches the farmer's home, but rather is acquired by another as a gift or in some other formal or informal transaction. The problem is to determine when the recipient is deemed the new owner, and therefore responsible for tithing whatever he eats. At C the farmer himself finally reaches his home with the untithed produce. Now it is necessary to determine which areas surrounding his home are deemed part of the home itself. Produce brought into such areas must be tithed before it is eaten. The issue of D, the final subunit of unit II, cuts through all chronological considerations, and is equally appropriate at the beginning of the end of the unit. If the householder follows none of the procedures of A-C, but immediately sets the produce aside for use as a normal meal, it is liable at that point to the removal of tithes, regardless of all other considerations.

The sequence of pericopae within each sub-unit yields few difficulties. A begins with a simple question (M. 1:5), and supplies a cogent answer in an exhaustive, heavily-glossed, list (M. 1:5-8). The most ambitious sub-unit, B, raises the most literary problems. The sequence of topics--gifts (B1), purchases (B2), barter (B3), lost produce (B4)--appears to have no particular meaning. The logic emerges only from the content of the specific cases. B1 begins with informal transactions in the marketplace, and is followed at B2 with discussion of commercial transactions in the marketplace. B3 then asks about commercial transactions performed outside the marketplace, e.g., in the field. B4, finally, concludes with informal transactions outside the marketplace, i.e., lost produce found in the road. The redactor's sequence, then, is: transactions in the market--

informal and commercial/transactions outside the market--commercial and informal. Of the pericopae distributed within these four topical units, only M. 2:3-4 seem out of place. They are located within the category of gifts because the problem of each pericope, like that of M. 2:1-2, is to determine the point at which the householder's privilege to snack on his produce ceases, and his obligation to tithe is imposed. The remainder of the unit offers no difficulties. C is in two parts, M. 3:5-7 and M. 3:8-10. The former is interested solely in structures which may or may not be deemed homes, while the latter investigates the interplay of laws appropriate to produce harvested in the field with those governing produce which is brought into the home or courtyard. D's discussion begins with a general rule of thumb (M. 4:1), and proceeds to explore ambiguous cases and possible exceptions (M. 4:2-5A).

III. *Unmet conditions and incomplete procedures: ambiguities in application of the law* (M. 4:5B-5:8)

A. *Unmet conditions: produce which is edible, but is normally not deemed food* (M. 4:5B-4:6)

M. 4:5B If coriander is sown for seed, the leaves are exempt from the law. If it is sown for the leaves, both seeds and leaves are subject to the law.

M. 4:6 Pods of fenugreek, etc., are subject to the law: Gamaliel. Caper is tithed for its pods, berries and flowers: Eliezer. Aqiba: only the berries are tithed, for they are the normally-eaten part.

B. *Incomplete procedures: produce taken from the field prior to the harvest of the crop* (M. 5:1-2)

M. 5:1 One who uproots shoots for transplanting need not tithe. If he purchased produce before the harvest, or sent it to a friend before the harvest, he need not tithe (+ gloss, Eleazar b. Azariah).

M. 5:2 One who uproots turnips and radishes as a seed crop must tithe, for this is their harvest (+ complementary case).

C. *Unmet conditions: produce which is sold or purchased while inedible* (M. 5:3-5)

M. 5:3 A man shall not sell his produce, once it ripens, to one who is untrustworthy to remove tithes. He may take the ripe fruit for his own use, however, and sell the unripened remainder to whomever he wishes.

M. 5:4 A man shall not sell his straw, olive-peat or grape-lees to one who is untrustworthy. He may, however,

remove what is edible and sell the rest to whomever he wishes.

M. 5:5 One who purchases a field of greens in Syria--if he bought it before the crop ripened, he need not tithe once the crop ripens.

(+ glosses, Judah, Simeon b. Gamaliel)

Rabbi: he tithes the percentage of produce which ripens under his ownership.

D. *Incomplete procedures: produce which is insufficiently processed, or produce the processing of which is in doubt* (M. 5:6-7)

M. 5:6 One who soaks grape-lees for their liquid--if he extracted the same amount of water which he added, the water need not be tithed as wine. Judah: he must tithe.

M. 5:7 Ant-holes beside a stack of grain--grain within the holes is liable to the removal of tithes, for it is presumed to have been processed with the adjacent stack.

E. *Unmet conditions: produce which is not grown in the Land of Israel, or which is not food* (M. 5:8)

M. 5:8 Garlic of Baalbek is exempt. Inedible seeds are exempt.

M.'s concluding unit takes up the facts of the first two, and explores ambiguities in their application. The theory of I and II is that natural conditions of ripeness must exist before human procedures of appropriation can render produce liable to the removal of tithes. Two problems now arise. On the one hand, it is necessary to determine the farmer's obligation in cases in which the natural condition of edibility is deemed of no concern to the farmer (A), or indeed is not met at the time that the farmer appropriates the crop (C, E). On the other hand, there are cases in which the produce involved is perfectly edible and desirable to the farmer, but his appropriation of it has not followed normal procedure. That is, he has taken produce from the field before the time of the harvest (B) or processed it insufficiently for use as a table commodity (D). In each set of circumstances we must decide how the farmer's obligation to tithe is modified by the fact that one or another set of necessary conditions is lacking.

The above outline demonstrates the cogency with which the creators of Tractate Maaserot undertake their inquiry. They

clearly wish to limit the consumption of produce at two critical junctures in its passage from the field to the table. They direct attention to these junctures by organizing their tractate's laws into thematic units relevant to each. The earliest juncture, the ripening of the produce, provides an occasion for laying the conceptual groundwork of all that follows. A supernatural claim to the tithes is made upon produce grown by Israelites at the precise moment at which they wish to use it. The second juncture, the farmer's appropriation of the produce, offers an opportunity to explore issues involving the nature of ownership and the effects of human intentions in effecting ownership. These reflections on the tension between the farmer's right to his produce and his duty to satisfy supernatural claims upon it before he eats it comprise the bulk of the tractate. With all its principles fully articulated, Maaserot concludes with a series of exercises in their application to cases in which it is unclear whether both human and supernatural claims have been made upon a specific batch of produce.

C. Theory of Text and Exegesis

With the argument and structure of Tractate Maaserot before us, it remains to explain the interpretive work which, in the first place, permits identification of argument and discovery of structure. We turn, then, to the goals and methods of my commentary to Maaserot. The goal is to uncover the original meaning which the creator(s) of the tractate intended to convey to their immediate (and, to us, unknown) audience. Isolation of the original meaning of Maaserot yields important insight into the concerns which find expression in this early product of Rabbinic Judaism, and thus throws important light upon the nature of Rabbinic Judaism in its formative period. This fundamentally historical goal shapes the particular theory of meaning with which the text of the document is approached. This theory, the methodological foundation of the commentary, is that the way in which Mishnah's creator(s) formulate their ideas for literary purposes is the key to the meaning those ideas were expected to convey. That is, the form of mishnaic discourse is inseparable from its original meaning and governs the method by which that meaning is discovered.⁸ The commentary, then, is an attempt to elicit from Mishnah's distinctive literary traits the meaning of the ideas expressed within those conventions.

A fundamental assumption of my commentary is that the text of Maaserot reflects only the ideas of those who cast it into its

present form. While the tractate (with Mishnah as a whole) regularly cites authorities presumed to have flourished over a period of some centuries prior to the formation of Mishnah, the document as a whole appears to have been produced by a circle of late-second-century contemporaries. The reason is that the document follows a self-conscious aesthetic and intellectual program uniquely its own. The text conforms to consistent canons of literary taste and style, and is constructed so as to obscure, rather than point out, any diachronic literary development. There can be no "source-criticism" of Mishnah because its sources have been systematically homogenized by those who, in the brief period of a generation or two, produced the text before us.⁹ The sum of these observations is that the text of Maaserot is formulated in order to be used in the tractate as we have it. It is not a pastiche of early literary materials gathered together under a single rubric, but a masterful effort of stylistic taste and judgment. It is for this very reason that the literary conventions of the document are central to its exegesis. Maaserot, to paraphrase William S. Green,¹⁰ tells us what it wants us to know only in the way it wants us to know it. Study of the tractate's literary conventions, then, is crucial in the interpretation of what it has to say.

Accordingly, my exegesis of Tractate Maaserot is shaped by the most obvious characteristics of the text. First among these, as I have already pointed out, is that the text is highly formalized. Nearly all of its ideas are framed within a small number of stereotyped linguistic patterns, which exhibit easily-recognized syntactical characteristics.¹¹ The fundamental requirement of exegesis, then, is to discern the meaning which the form of a statement imposes upon its content. As I shall explain below, the imposition of standard forms of expression upon diverse kinds of ideas, and the repetition of specific linguistic patterns throughout a series of apparently unrelated rules, indicates an editorial judgment about the unity of principle to be discerned in the apparent diversity of facts. The task of the exegete is to discern that unity and explain the facts through which it is articulated.

Secondly, while the editor(s) of the text take pains to impose standard patterns upon their discourse, there are clear indications that materials of unknown provenance have been reworked for inclusion in a specific unit of the tractate (cf. M. 1:2-4).¹² The editorial standardization of the text, in other words, is not always perfect, and at times suggests that ready-to-hand literary

materials have been altered for use in the text. Where the editor(s) have sought to impose their own stylistic conventions upon earlier materials, it is possible as well that they have also imposed their own ideas upon those materials. Here analysis of Mishnah's formal traits permits us to isolate the editorial work from the prior material, and to trace how the editorial imposition of form shapes as well the meaning conveyed by the material. While it remains impossible to know the nature of such prior materials or their origins, such criticism permits us to appreciate the role of the editor(s) in shaping an intellectual agenda of their own.

A final observation issues from both of the above. The editorial principle of Mishnah is that inquiry into a particular theme or problem generally proceeds within a single dominant pattern of formulation. That is, a shift in the tractate's topic is normally signalled by a shift in literary style. We recall from the foregoing outline of the tractate, for example, that the first unit of Maaserot, which defines the kinds of produce which are subject to tithing, is composed almost entirely of lists. As the interests of the editor(s) move to the topic of liability to tithing, however, conditional sentences and disputes become the preferred mode of discourse. Attention to the literary traits of the text, therefore, enables the interpreter to control the work against the very canons of conceptual coherence employed by the editor(s). This prevents us from conflating ideas or principles which the framers of the document viewed as unrelated.

With the above considerations in mind, let us turn to the major exegetical foci of the commentary. These are, in turn, (1) the pericope and its formal traits, (2) the aggregation of pericopae into formal-thematic units, and (3) the tractate itself as a coherent essay. As we shall see, each of these foci shapes the others, for analysis of the tractate builds from a study of its smallest parts, to a discussion of the units to which they belong. Ultimately, it concludes with the foregoing introduction, a description of the tractate as a whole.

(1) *The pericope and its formal traits.* The pericope is the smallest literary unit of the tractate.¹³ Normally it consists of a number of rules or cases which examine a specific principle of law within one or more of Mishnah's typical stylistic conventions. The elements of the pericope, sentences and rulings, may be interpreted in the first instance only within the immediate context of the pericope in which they are located. It is from this perspective that a critique of the pericope's formal traits

is crucial. The distinctive formulation of the pericope's rules is commonly the formulator's way of directing attention to the issue or principle deemed central to the discussion. There are two common literary techniques for directing the reader's attention. These are, in turn, the use of a fixed form¹⁴ or the repetition of a distinctive formulary pattern.¹⁵

We begin with the common forms of Tractate Maaserot. These are, primarily, the list and the dispute. The list consists of a superscription followed by a series of substantives or brief clauses, which respond to the superscription. Thus a list of twenty items in M. 1:2-3 begins in the following way:

When is produce subject to the law of tithes?
 Figs--when they begin to ripen.
 Grapes and wild grapes--when...
 Sumac and mulberry--when...

The superscription links the diverse items appended to it into a single category subject to a common principle. The task of exegesis, accordingly, is to deduce from the listed items that principle which accounts for their collection beneath the superscription. In the above example, the problem is to determine, first, why various sorts of produce become subject to the law when they do, and, second, what the various criteria have in common with each other. Recognition of how the list functions to convey principles is central in the criticism of those lists which appear to include items unsuited to the superscription. When the rules of list-formation appear to be violated (cf. M. 1:4A-B), there are two interpretive possibilities. On the one hand, the formulator of the pericope may be directing attention to the critical problem of the law. The exegete, accordingly, must carefully study the relationship of the anomalous item to both the superscription and the other items in the list. On the other hand, the pericope itself may have been disturbed at some point in the post-mishnaic transmission of the text. If so, MS. evidence may turn up a better version of the form, which will itself have to be evaluated.¹⁶ However, the issue is resolved, the exegetical decision emerges from careful attention to the normal use of the form.

The second major form consistently employed in Maaserot is the dispute. Like the list, it is introduced by a superscription. Unlike the list, however, only two items are appended to the superscription. While the formulation of these items varies, they are normally attributed to specific individuals, exhibit metrical balance, and present direct or indirect modes of discourse linked by the conjunction *w-* ("and" or "but"). Thus (M. 2:4):

A basket of figs from which one separated heave-offering--
 R. Simeon permits making a random snack of it.
 But Sages forbid making a random snack of it.

The dispute is a remarkably compact means of conveying a great deal of information. The superscription, with its particular substantive concerns, provides the context within which the conflicting opinions are to be understood. The exegetical task is to discern the principle at issue between the disputants, that is, the position which explains both the connection of each opinion to the superscription as well as the relationship of the opinions to each other. Identification of the divisive issue, in turn, uncovers the ground of shared opinion which, in the first place, brings the disputants into (editorial) conversation with each other. A dispute, therefore, yields three sorts of information. The first, presented in the superscription, is the moot issue itself, pointing toward an ambiguity in a principle which at first appears uncontroversial. Secondly, the actual disputing opinions suggest the principles of resolution which the editor(s) deem relevant to the particular problem. Third, identification of these principles points toward the shared assumptions out of which the dispute itself has emerged. These, most probably, are the assumptions of the dispute's framer.

Forms, as I have said, are only one common way in which the editor(s) signal what is of interest to them. A far more common method in Tractate Maaserot is the repetition and variation of stereotyped formulary patterns in the expression of cases and rules. Where the same syntactical construction informs a series of rules (e.g., "If he found X, it is Y," repeated three times at M. 3:4), we learn first of all that, according to the editor of the pericope, the principle of interpretation is identical for all rules. Thus, even though the substance of each might appear amenable to varying principles of interpretation, attention to syntax permits us to locate the meaning imposed by the editor. Such criticism is particularly useful when, as in M. 1:5-8, the imposition of a standard formulary pattern on a series of rulings has clearly imposed a standard meaning on originally diverse observations.

When, as often happens, rules displaying careful formal balance contain matching, but contradictory apodoses, the exegetical problem is to determine the issue which yields the contrast in the rulings. Suppose, as in M. 4:1, that a pericope contains a catalogue of rules in the following pattern (One who X is A/B):

A. One who pickles produce in the field is required to tithe.

- B. One who buries produce in the ground is exempt from tithing.
- C. One who seasons produce in the field is exempt from tithing.

A asserts that produce treated in a certain way must be tithed, while B and C are clear that produce treated in different fashion is exempt from tithing. Exegesis of the pericope emerges from the contrast between A and B-C. In what way is pickling different from burying or seasoning, and how are burying and seasoning like each other but different from pickling? The answer to the question will yield the principle at issue in the entire catalogue.

(2) *The formal-thematic unit.* Once a pericope is thoroughly explained on the basis of its internal traits, a further problem of exegesis remains. That is to discern the meaning imposed upon the pericope by the context in which it is placed. For the most part, individual pericopae do not stand in isolation, but are constituent parts of larger, more ambitious constructions. Normally, the formal traits of these larger constructions are consistent. That is, the pericopae of which they consist share similar patterns of formulation. Further, the unit explores a single theme or problem, to which each pericope makes its distinctive contribution. The problem is to define the limits of the formal-thematic unit, identify the issue which accounts for its creation, and explain the role of the pericopae within the overall construction.¹⁷

Two exegetical concerns are served in this work. First, the identification of a group of pericopae as a unit prevents the arbitrary ascription of one unit's principles to pericopae found in a separate unit on some quite independent theme. The formal-thematic unit, like the pericope itself, has its own integrity. It must therefore be interpreted within its own editorial conventions. Secondly, as I have suggested, identification of the formal-thematic units helps to trace the levels of meaning which the editor(s) impose upon the pericopae within a given unit. When a pericope appears to make one point in isolation from its context and a second point within that context, we discern at work the essentially exegetical method of Mishnah's editor(s). In Mishnah the creation of novel literary contexts for an idea is a means of testing that idea and expanding it beyond its former range of meaning.

(3) *The tractate as an essay.* Identification and interpretation of the tractate's formal-thematic units leaves unexplained the relationships among the units and the larger program which

they serve. The purpose of the editor(s), self-evidently, is to produce a tractate on the topic of tithes. By understanding the relationships which bind the diverse units into a single literary project, we discover how the creators of the document themselves understood the topic of interest to them. We learn, in other words, more than the sum of all the tractate's laws. Rather, we decipher the larger statement which the collection of laws is intended to make. I view Tractate Maaserot, therefore, as an essay, a construction of ideas which pursue a particular problematic. This problematic is the unstated question to which the tractate, the essay, provides an answer. As I have already demonstrated in part I of this introduction, the question of the tractate is discernible only on the basis of the form and structure of the answer. Once, therefore, the laws of the tractate are fully understood, and the relationship among different units of law is clear, the final task is to explain the law as a coherent product of its parts.

The foregoing remarks on the exegetical theory and method of my commentary should appear peculiar in one important respect. The discussion proceeds as if Tractate Maaserot had been recently dug up from an ancient library and had never been subject to exegesis. In fact Tractate Maaserot, with the rest of Mishnah, has been the subject of nearly two millenia of continuous and acute exegetical labor. Why, then, is a new exegesis of Maaserot, complete with hermeneutical introduction, a necessary enterprise? The reason is that the goal of the present exegesis, to achieve historical understanding of Maaserot from within its own conventions of expression, differs from the goals of all earlier studies of the tractate. Let us, then, turn to the dominant exegetical methods which have been applied to the tractate, the goals of such methods, and the contribution of such work to the present study.

The oldest, and from the present perspective, the most important exegetical tradition is that of rabbinic exegesis, a tradition which begins with Tosefta and evolves in unbroken lines through two Talmuds, the medieval academies of Babylonia, Europe and North Africa, and into the present day in the United States and the State of Israel.¹⁸ The methods of rabbinic exegesis are shaped by the Torah-theology of rabbinic Judaism. This asserts that the Oral Torah, consisting of Mishnah and the literature generated by Mishnah, is a revealed complement to the Written Torah, Scripture. Together, these two Torahs are one wholly coherent, internally consistent, eternally binding Torah, a law of life. This theological perspective has important consequences for

the methods and goals of rabbinic exegesis of Mishnah, for at issue now is the interpretation of revelation. A law of Mishnah must not only make coherent sense in its own setting but it must also be harmonious in principle with all other revealed law on that same subject. That is so whether such law is found elsewhere in Mishnah or anywhere else in the ever-growing literature of Oral Torah, e.g., the Babylonian Talmud (sixth century), Maimonides' *Code* (twelfth century), or the *Shulhan 'Arukh* (sixteenth century). The goal of such exegesis, accordingly, is to juxtapose and harmonize Mishnah's laws with the entire corpus of revealed law, as well as that body of exegesis of revealed law which is deemed normative. Thus its dominant method is the atomization of a tractate's text into discrete laws, the fundamental units of revelation, and the harmonization of these laws with principles adduced by legal philosophers who lived and worked as much as 1500 years after the formation of Mishnah, yet who are deemed to participate in the unfolding of revelation.

Clearly, rabbinic exegetes, at any particular stage in their own evolving tradition, interpret a text far different in character from the text I find before me. Their text is the single, revealed law, which finds its natural context within the entire body of Oral Torah, early and late, relevant to the subject of that law. My text, to the contrary, is the unit of meaning constituted by the formal limits of a pericope, which is itself to be understood solely within the context of the single tractate. Thus, where rabbinic exegetes find in Tractate Maaserot a collection of diverse laws under the rubric of tithes, I find an "essay," systematically exploring a carefully defined problematic. A mode of exegesis which, through honoring the single law, ignores the immediate intellectual structure which shapes that law, ignores precisely what I wish to recover--the historical meaning of Maaserot. This, of course, is no loss at all to those who wish to articulate the eternally cogent system of revelation; it is a great loss, however, to the historian of Judaism, for whom the earliest meaning of the law is crucial for the interpretation of all that comes later.

To the extent, therefore, that the methods and goals of my commentary differ from those of prior exegesis, my use of the results of such exegesis is selective. The Talmuds of Babylonia and Palestine, and those later exegetes who base their work upon the programs of the Talmuds (e.g., MS, Sirillo, TYT), offer indispensable guidance in identifying the subtle issues of logic which emerge from any careful reading of the text from any perspective. Insofar as I share the rabbinic concern to discern the structure

and relationships of ideas, the rabbis are thoughtful and helpful partners in conversation. I am particularly indebted to the work of Maimonides' *Commentary*, the first and only rabbinic commentary (after Tosefta) which takes Mishnah seriously within its own documentary limits. The considerations of Maimonides' and the reflections of his later critics (e.g., KM, MR) frequently exhaust the entire range of meanings, plausible and implausible, which a particular pericope can support. From these, on the basis of my own independent formal analysis, I am generally bound to choose. The reader will note my frequent dependence upon Maimonides or MR for a clarification of an otherwise murky logical conundrum. Indeed, there is little in my interpretation of individual pericopae which is entirely unprecedented within the rabbinic exegetical tradition. Where I claim to improve upon such exegesis is in my ability to control the work on the basis of formal analysis. I thus gain a grasp of the document as a whole, and a sense for the interplay of ideas *within* the tractate. This is often lost in the atomistic exegesis of the tractate's rules.

In recent times, within the past century, the exegesis of Mishnah has interested individuals outside of the institutional framework of Rabbinic Judaism.¹⁹ Mishnah contains data of great interest to linguists, historians of antiquity, and students of ancient Judaism and early Christianity. For numerous reasons, it has fallen to philologists to make Mishnah's data available to a broader scholarly community. Most often the work consists of translations of Mishnah with brief explanatory comments and philological observations (e.g., Goldschmidt, Sampter, Danby, Cohen, Bunte, Blackman). University scholarship in Hebrew foregoes the translation, but maintains the general goal of appending to the text (of a selected MS. with appropriate text-critical apparatus) brief clarifications and expansions, as well as historical and philological observations (e.g., Albeck). This work has proved useful in my own exegesis insofar as translations and philology add new perspectives to individual words and phrases. Such efforts, nevertheless, are disappointing, for they share the shortcoming of atomistic rabbinic exegesis, but not its exegetical brilliance. I have found no academic commentary to Tractate Maaserot which advances the rabbinic discussion in any way, apart from clarifying the meaning of words and, particularly in Maaserot, the precise kinds of fruit or buildings referred to in the course of legal inquiry. In this regard, I intend my work to replace philological commentaries of this sort, a goal unthinkable in regard to rabbinic exegesis. I address the original and appropriate

audience of the philological commentary, the student of the humanities in general and the historian of religion and culture in Late Antiquity in particular. For those who approach Mishnah as a datum of culture and a construction of human meaning, I offer an exercise in the explication and interpretation of that meaning.

D. *Guide to the Use of the Commentary*

The theoretical perspective outlined above has a profound affect upon the form of the commentary itself. The commentary consists of a translation of each pericope of the tractate, followed by an exegetical essay devoted to that pericope. Thus a dialogue between pericope and exegesis is established and maintained. The translation provides the information upon which the exegesis is based and by which the exegesis may be evaluated. The exegesis, in turn, articulates the sense of the pericope and shows how that sense emerges from the words, clauses and formal traits of the pericope.

The technique of the translation is determined by the formulaic character of Mishnah. In order to highlight that character, and make it available for exegetical purposes, the translation closely replicates the characteristic syntax of the text. The goal is not elegance of English style, but loyalty to the aesthetics and rhetoric of the Hebrew. Where necessary, I have interpolated explanatory language or essential stylistic phrases into the text. These appear in brackets. Where the translation is unavoidably paraphrastic, or reflects a problematic *Vorlage*, I have transliterated the Hebrew within parentheses immediately following the relevant English passage. Important MSS. variants appear as well within parentheses, and are coded by Latin letters. This code is explained in the bibliography.

Essential to understanding the text is the ability to identify the basic compositional units employed in the construction of the pericope, as well as extraneous materials which may have been interpolated or glossed into the unit. In order to facilitate recognition of a pericope's building blocks I have divided each into individual stichs and have appended to the left margin of each stich a Latin letter (i.e., A, B, C, etc.). The exegetical remarks following each pericope regularly refer to each stich by the designated letter, e.g., "A introduces the topic of the pericope, and is elaborated at B-C."

Beneath each translated pericope the reader will find a listing of parallel passages in Mishnah, Tosefta, the halakhic midrashim and the Talmuds. I offer these for convenience only and

make no claim to provide an exhaustive list. The parallels are interesting primarily for the information they provide concerning the interpretation of the pericope in later rabbinic documents.

My own exegesis of the pericope immediately follows the translation. The exegetical essay regularly addresses three issues. Most often, the essay begins with a description of the formal traits and structure of the pericope. This description provides the literary framework within which the work of exegesis must proceed. The central task of the essay is to explain the clear sense of the pericope, and to identify its main point. This includes an account of the legal issues it addresses and the assumptions which make such issues important to the framers of the tractate. The problem is to explain the intellectual agendum served by any particular law. Where possible, the exegesis attempts as well to describe the larger perspective upon the world which the law takes for granted. Not all pericopae yield this sort of information, nor need it be stressed in each case. Nevertheless, at crucial turns in the argument I offer my own judgment of what is ultimately at stake in the law.

For reasons of convenience the chapter divisions of the commentary follow those which have been imposed upon the tractate by its copyists and printers. Thus the commentary is divided into the traditional five chapters, even though the tractate itself consists of three basic divisions among which are distributed some six clear-cut formal/thematic units. The introductions to each chapter locate the reader in the unfolding argument of the tractate. The first task of each introduction is to present an overview of the chapter's central issues and the formal-thematic units within which these issues are articulated. There follows a more wide-ranging set of reflections upon the issues which exegesis reveals to lie at the heart of the law. In sum, then, the chapter introduction prepares the reader to follow the tractate's major turns of argument as well as the assumptions upon which that argument is based.

Following the exegetical comments to each pericope of the tractate, I translate and explain the relevant pericopae of *Tosefta Maaserot*. This document, redacted between the third and fifth centuries, is the only commentary to Mishnah which pays attention to the formal characteristics of the latter and which systematically employs them in the interpretation of its law. The insights of *Tosefta Maaserot*, therefore, are often especially illuminating for my own work, and deserve full attention and comment.

The translation of Tosefta Maaserot follows the same method employed in Mishnah. The only difference is that where Tosefta cites Mishnah I reproduce that citation in italics and indicate the specific passage in brackets at the end of the stich. This highlights the exegetical method of Tosefta most clearly. My comments to Tosefta, which follow each pericope, are limited to a description of the latter's relationship to Mishnah and to the point Tosefta wishes to make about Mishnah's law. Normally, Tosefta adds supplementary or explanatory materials. Where this is the case, I explain the point of the supplement or amplification. At times, Tosefta will contradict or criticize Mishnah's view. Here as well I try to explain the grounds on which Tosefta differs. In general, these grounds emerge from Mishnah itself. Tosefta thus affords rich insight into the interpretive possibilities of Mishnah's rulings. Finally, Tosefta presents relatively few pericopae which stand entirely apart from the literary or substantive characteristics of Mishnah. Here I provide extensive comments which attempt to explain not only the law, but the reason that the pericope has been included in a commentary to Mishnah Maaserot. An invaluable aid in such cases, as well as in all matters of Tosefta exegesis, is Saul Lieberman's *Tosefta Ki-fshuta*. Lieberman's encyclopaedic talmudic learning and his mastery of the documents of hellenistic civilization often shed important light on obscure passages of Tosefta.

In the preparation of the commentary to Mishnah I have made use of the entire range of texts and translations available to me. The translation is based upon the text of Tractate Maaserot provided in Albeck, with constant reference to the variant readings catalogued in Sacks-Hutner. My translation has benefitted from the earlier translations of Goldschmidt, Sammter and Bunte (in German) as well as the more well-known English translations of Danby, Cohen and Blackman. The translation of Tosefta Maaserot, the first into English, is based upon MS. Vienna, as reproduced in Lieberman, *The Tosefta*.

CHAPTER ONE

MAASEROT CHAPTER ONE

Chapter One commences M.'s discussion of the law of tithes at the logical foundation of the subject. Of primary interest is the establishment of basic facts regarding 1) what sorts of produce must be tithed (M. 1:1B), 2) when such produce becomes suitable for the removal of tithes (M. 1:1D-H, 1:2-3+4), and 3) how the owner of the produce incurs the obligation to tithe it (M. 1:5-8). As a whole, the chapter offers a self-contained unit of law which regulates the consumption of produce at all points in its growth, processing and preparation for the table. The purpose of these regulations is to prevent produce from being eaten in daily meals until all agricultural offerings have been removed.

The chapter begins with a pair of rulings, M. 1:1B and 1:1D-H, which the redactor identifies as "general rulings." These establish the theory of tithes within which the subsequent details of the chapter are to be understood. M. 1:1B limits the removal of tithes to agricultural produce alone. Its limitation of the range of the law to food cultivated by man reflects the scriptural postulate that the produce of the Land of Israel is a gift of God, for which Israel expresses its gratitude by the presentation to God of sanctified offerings (Lv. 27:30, Dt. 26:14-15).¹ Tithes represent God's claim against each season's harvest, a claim which, according to M. 1:1B, can be satisfied only by the offering of produce grown by man on the land. The second "general rule," M. 1:1D-H, adds that tithes need be removed from produce only after it becomes edible. If it is edible early in its growth, as are greens (T. 1:1b), it is subject to the law of tithes at this early stage (M. 1:1D-F); if, on the other hand, produce is not edible until a relatively late stage of its growth, it is not subject to the law until it is edible (M. 1:1G-H). The point is that God's claim is made upon the produce at the precise moment that it becomes of value to man and, consequently, is likely to be eaten by him. It is necessary, at that point, to adjudicate the respective rights of God and man to the produce. This is precisely what the law of tithes, as presented in Chapter One, proposes to do.

The chapter balances the farmer's right to consume the fruit of his labor against the right of God to a portion of the land's

yield. This balance is defined and elaborated within the limits of two formulaically identical catalogues, M. 1:2-3 and M. 1:5-8,² each of which answers an important question. M. 1:2A asks at what point produce growing in the field becomes subject to the law, a question for which M. 1:1D-H has already provided a general answer. The subsequent catalogue, M. 1:2B-3P, now offers a detailed exemplification of the familiar principle. The catalogue provides information regarding the point at which twenty kinds of produce are deemed edible and, therefore, subject to the law. The point is that prior to ripening, the catalogued items may be eaten without the removal of tithes. After ripening, however, they may not be eaten unless they are tithed. Since God claims the produce in its ripeness, man must satisfy that claim before he consumes the produce.

M. 1:4, joined to the foregoing by the disjunctive *waw* ("but"), is clearly foreign to the catalogue. It presents a list of produce followed by the single apodosis, "are subject to the law whether they are large or small." The apodosis breaks the formulary pattern established at M. 1:2-3, recalling instead M. 1:1D-F's ruling that produce edible early in its growth is "subject to the law whether it is small or large." M. 1:4, therefore, supplements the latter, rather than M. 1:2-3. If we dismiss the *waw* as a copyist's addition, however, the difficulty is removed. The redactor of the chapter has laid out his materials in the following pattern:

- | | | |
|------------|------------------------------------|-----|
| M. 1:1D-F: | produce edible small or large | (a) |
| M. 1:1G-H: | produce edible after it ripens | (b) |
| M. 1:2-3: | examples of 1:1G-H | (b) |
| M. 1:4: | examples of 1:1D-F, large or small | (a) |

The whole, therefore, is a single well-constructed redactional unit, introduced by M. 1:1A-B+C. Its theme, the point at which produce growing in the field becomes subject to the law of tithes, is exhaustively examined, both in terms of guiding principles and particular details.

M. 1:5A, introducing the chapter's second catalogue, asks an entirely fresh question. M. 1:5A wants to know how long produce may remain untithed beyond the point at which it ripens. The question assumes that while produce *may* be tithed at its ripening, it need not be tithed until some later point.³ As we shall see, M. 1:5-8 claims that the farmer's own acts determine when he is obliged to tithe produce which has become suitable for tithing. A series of extensively glossed rulings points out that ripened

produce need not be tithed until it is harvested and processed for storage. The processing, which removes natural impurities from the produce, indicates the owner's intention to store the produce for use as food. The owner has claimed the produce as his own and intends to use it in his daily meals. Precisely at this point he is prohibited from using the produce until he tithes it (T. 1:1a). Having established his claim to the produce, he must now offer to God what is His.

A significant qualification of this general position is made at M. 1:5L-M, an interpolation into the catalogue. The ruling states that processing the produce obliges the owner to tithe it only if he intends to sell it afterward. The owner's intention to sell indicates that he considers himself in control of the crop's disposition--that he is, in fact, sole owner. Thus he may neither eat the produce himself nor sell it to another (M. Dem. 2:2) unless, by tithing, he acknowledges God's proprietorship. If, to the contrary, the owner intends to bring the processed goods home for domestic use, he need not tithe until he gets home, and may even snack on the produce until that point. Since he will not establish his claim to the produce until arriving home, he may, without tithing, make limited use of it, in the interim between field and home. The notion that a farmer makes a random snack of produce he has not appropriated is the assumption which underlies the bulk of Chapters Two through Four. M. 1:5L-M, while it is introduced rather abruptly into M. 1:5, is nevertheless one of M.'s most crucial rulings.

It is not difficult to attribute the construction of Chapter One to a specific generation of Mishnah's authorities. Ushan glosses at M. 1:2 (Judah) and M. 1:4 (Simeon) engage the central principles of their unit, and therefore attest the construction of M. 1:1-4 to Usha. Judah and Yose, both Ushans, gloss M. 1:7-8 as well, but their materials, as we shall see, are extraneous to the catalogue in which they appear. In themselves, therefore, they yield no information regarding M. 1:5-8's provenance. On thematic and formal grounds, however, the unit must be deemed Ushan, for it develops the issue of M. 1:1-4 in a significant way, employing the same formulary pattern as the earlier catalogue of M. 1:2-3. The chapter as a whole, then, is created at Usha and reflects the conception of the law current among that generation of authorities.

The entire first chapter of Tosefta is devoted to Chapter One of M. T.'s editor closely follows the thematic sequence of M., with the single exception of T. 1:1a. That pericope, one of

four autonomous pericopae designated in MSS. and printed editions as T. 1:1, introduces T. with a general definition of the point at which produce must be tithed. The ruling is congruent with, and indeed is an abstract formulation of, M. 1:5ff. The placement of T. 1:1a is sound judgment on the part of T.'s redactor, for the bulk of M., Chapters Two through Four, is concerned with the proper disposition of produce which has become liable to the removal of tithes by some act of appropriation. Rules relevant to produce growing in the field, while central in Chapter One, play a relatively minor role thereafter. T., therefore, presents its understanding of major principles at the outset. Only thereafter does it proceed to supply a series of rulings complementary to, and in the sequence of, M.'s major units. Without exception, these add little to the law as found in M., generally remaining content to refine M.'s principles or improve its formulation (e.g., T. 1:1b vs. M. 1:1D-H).

1:1

- A. A general principle they stated concerning tithes:
- B. anything (*kʔ š-*) that is
 - (1) food (*'kʔ*),
 - (2) cultivated (*nšmr*),⁴
 - (3) and which grows from the earth
 is subject to [the law of] tithes (*hyyb bm^esrwt*).⁵
- C. And yet another general principle they stated:
- D. anything (*kʔ š-*) which at its first [stage of development]⁶ is food and which at its ultimate [stage of development] is food (e.g., greens: T. 1:1b)--
- E. even though [the farmer] maintains [its growth] in order to increase the food [it will yield]--
- F. is subject [to the law of tithes whether it is] small or large (i.e., at all points in its development).
- G. But (*w-*) anything (*kʔ š-*) which at its first [stage of development] is not food, yet which at its ultimate [stage of development] is food (e.g., the fruit of trees: T. 1:1b)
- H. is not subject [to the laws of tithes] until it becomes edible.

M. 1:1 (A: cf. b. Shab. 68a, y. Shab. 7:1[8d]; B=b. Nid. 50a, cf. M. Pe'ah 1:4)

The tractate begins with two rulings, B and D-H. The former concerns the range of produce to which the law of tithes applies,

while the latter treats the moment in the growth of such produce at which the law actually takes effect. The rulings are formally and substantively autonomous, but the order of presentation and the superscriptions (A, C) transform them into a complementary pair, inviting us to read D-H in light of B.

The three criteria enumerated at B point out that all plants cultivated by man as food are subject to the law of tithes.⁷ When such agricultural produce is harvested, the householder must designate a fixed percentage of it as heave-offering and tithes.⁸ These offerings are deemed sanctified and are therefore set aside from the rest of the harvest for the use of priests and others to whom such offerings are due (M. Ter. 3:5-8). Only after the removal of these offerings is the remaining produce deemed "unconsecrated," and permitted for general consumption.

The subject of this process of sanctification and deconsecration is food (B1) that exhibits two distinguishing characteristics. As agricultural produce, it is the focus of the Israelite farmer's labor on his own land (B2), and as plant-life, it grows from land given to Israel by God (B3).⁹ According to B, then, the law of tithes applies only to food which man labors to produce from land leased from God. Sanctification, in other words, pertains only to produce which issues from land over which both God and man have legitimate claims. Man's claim is justified by his need and his labor, God's by his ultimate ownership of the land and all its fruits.¹⁰ Claims on both sides are satisfied by the separation of a portion of the produce for God. With God's portion removed, the remainder is deemed fit for human consumption. In Mishnah's technical language, it is now *ḥulin metuqanin*, food which has been made suitable for common use by the removal of offerings.

The second unit of M., D-H, assumes the criterion of edibility stated at B1, but raises an independent issue. It points out that agricultural produce need be tithed only after it has *actually become* edible. While C identifies D-H as a single rule, the unit actually contains two well-balanced rulings, D+F and G-H. An interpolation at E upsets this balance, but provides important exegetical guidance.

We begin with D+F. The rule takes for granted that only produce grown for food is subject to the law. Its claim is that the law goes into effect only at the point in the growth of the produce at which it is deemed to be food. It follows, then, that produce which can be eaten as soon as the edible portion develops (MR), such as leafy vegetables, is subject to the law when these portions appear. It remains subject to the law throughout its

future growth, or as long as these portions remain edible (y. Ma. 1:1[48d], s.v., 'mr rby ywnh). G-H adds the logical complement of D+F. If the produce remains inedible until a relatively advanced point in the development of the portion usually eaten, as is the case with most fruit, the produce is exempt from the law until the portion in question becomes edible. If for some reason the produce is eaten before it is normally deemed to be food, it need not be tithed at all.

E, inserted between D and F, adds a new consideration which will become central to later developments in the tractate. It points out that once produce is edible it is subject to the law even if the farmer does not deem it worthy of harvest until the yield is greater. At issue is the criterion for determining when a crop is deemed to be food. Such a criterion can be based upon either the actual condition of the produce, i.e., its edibility, or the actions of the farmer, i.e., his harvest of the crop for food. E rules that the edibility of the produce is the normative criterion, for its edible condition permits us to assume that the farmer deems the produce useful as food. The alternative criterion is that we deem the crop to be food only when it is harvested as such. This would permit the farmer to use the produce prior to the harvest without removing tithes. By rejecting this alternative, E stresses the fact that food is food whether man intends to harvest it as such or not. It is subject to the law when it is edible, regardless of human intentions. As we shall see, the problem of establishing when the objective condition of produce imposes upon it the strictures of the law, and when, on the other hand, the subjective intentions of the owner are determinative, proves to be a recurrent concern of the tractate (cf. M. 4:5-6).

- D. (1) *Anything which at its first [stage of development] is food and which at its ultimate [stage of development] is food [= M. 1:1D],*
- E. *such as green vegetables (yrq),¹¹*
- F. *is subject [to the law of tithes] at its first [stage of development] and at its ultimate [stage of development] [cf. M. 1:1F].*
- G. (2) *Anything which at its first [stage of development] is food but which at its ultimate [stage of development] is not food,*
- H. *such as one who prolongs [the growth] of green vegetables for [their] seed (hmqyym yrq lzar^c) [cf. M. 1:1E],*

- I. is subject [to the law of tithes] at its first [stage of development] but is exempt [from the law upon reaching] its ultimate [stage of development].
- J. (3) *Anything which at its first [stage of development] is not food but which at its ultimate [stage of development] is food* [= M. 1:1G],
- K. such as the fruits of the tree,
- L. is exempt [from the law of tithes] at its first [stage of development] but is subject to [the law of tithes] upon reaching its ultimate [stage of development].

T. 1:1b (p. 227, l. 2-5)
(G-I: cf. y. Ma. 1:1[48d])

T. 1:1, of which only T. 1:1b is before us, is composed of four entirely autonomous pericopae. We shall discuss each in connection with its appropriate pericope of M. T. 1:1b's triplet is clearly a commentary to M. 1:1D-G, citing, glossing and reformulating the latter at D-F and J-L. G-I, generated by M. 1:1D-F, exploits the potential of M.'s logic in order to stake out yet a third ruling exemplifying the principle that produce is subject to the law only if it is edible.

D-F and J-L clarify M. 1:1D-G. First we are told the kinds of produce which M. has in mind (E, K). Then M.'s unbalanced apodoses (M. 1:1F, G) are placed in perfect balance both with each other (F, L) and with their respective protases (D, J). Only G-I offers something new. If a man, in order to harvest seeds for future sowing, prolongs the growth of edible produce past its point of edibility, it is subject to the law only as long as it remains edible. As in M., the objective state of the produce, rather than the intentions of the farmer, determine its status under the law. Since the man has no intention of using the produce for food, we might expect the produce to be exempt from the law at the outset. T., following M., rules otherwise. Despite the farmer's intentions, the crop remains subject to the law as long as it is edible, and must be tithed if it is used as food during that time. It follows that any produce eaten at the time of the seed-harvest, however, is exempt from the law (HY). The seeds are exempt, for they are not to be eaten,¹² and the produce is exempt, for it is not suitable as food.¹³

- (G. *You shall tithe all the yield of your seed, which comes forth from the field year by year* [Dt. 14:22].)¹⁴
- H. Is it possible (*ykwl*) that something which grows from the earth, such as woad (*štyś*)¹⁵ or madder (*qwšh*),¹⁶ is subject

[to the law of tithes]? Scripture says: *You shall tithe* (Dt. 14:22) and *You shall eat* (Dt. 14:23).

- I. Is it possible that even honey and milk [are subject to the law of tithes]? Scripture says: *which comes forth from the field year by year.*
- J. Conclude from this ('wmr m^cth) [that Scripture prescribes tithing only for] something which comes from the domain of the field (*hywš' mršwt sdh*: GRA emends: *hywš' mn hsdh wn'kl*, "which comes from the field and is eaten").

Sifre Dt. 105b (ed. Finkelstein, p. 164) (cf. y. Ma. 1:1[48d])

Like M. 1:1B, Sifre restricts the law of tithes to produce which is edible, cultivated, and which grows from the earth. Sifre's point is to demonstrate that the restrictive nature of the ruling is congruent with the explicit meaning of Scripture. Sifre inaugurates the tradition of exegesis, followed by me, which perceives M. 1:1B as a restrictive rule designed to exclude from the law produce which is neither anchored in God's land (I) nor produced by agricultural labor (J).

1:2-3

- A. From what time is fruit (*prwt*)¹⁷ subject to [the law of] tithes?
- B. (1) Figs--when they have begun to ripen (*msbh^lw*);¹⁸
- C. (2) grapes and (3) wild grapes (*bšym*)¹⁹--when their seeds have become visible inside them (*mšhb'yšw*);²⁰
- D. (4) sumac²¹ and (5) mulberry²²--when they have become red;
- E. and (6) all red [berries]--when they have become red;
- F. (7) pomegranates²³--when they have become soft;
- G. (8) dates--when they have begun to swell;
- H. (9) peaches²⁴--when they have developed red veins;²⁵
- I. (10) walnuts²⁶ (S adds: "and almonds")²⁷--when they have developed a chamber.
- J. R. Judah says "Walnuts and almonds--when they develop a husk."
- M. 1:2 (B = b. Nid. 48a; cf. M. Sheb. 4:7; C: cf. M. Sheb. 4:8; G: cf. T. Dem. 1:1, y. Dem. 1:1 [21c])
- K. (11) Carobs--when they have become speckled;
- L. (12) and all black [produce, e.g., myrtle berries: y.]--when it has become speckled;

- M. (13) pears, and (14) crustumenian pears,²⁸ and (15) medlar,²⁹ and (16) crab-apples³⁰--when they have become smooth;
 N. (17) and all white produce³¹--when it has become smooth;
 O. (18) fenugreek³²--when the seeds are able to sprout;
 P. (19) grain and (20) olives--when they reach a third of their mature growth (*mšyknýšw šlyš*).

M. 1:3 (O-P = b. R. H. 12b; P: cf. M. Sheb. 4:9, y. Sheb. 2:7[34a], M. Hal. 1:3, y. Hal. 1:3[57d], b. Git. 47a)

The superscription A introduces a catalogue of twenty kinds of produce and the point at which each is deemed ripe (B-P). The pericope, in its present redactional context, is a detailed explanation of the rule at M. 1:1G-H, that produce which is inedible at its first stage of growth becomes subject to the law as soon as it is edible. As A announces, we are now given criteria for determining when various kinds of produce have indeed become edible and, therefore, may no longer be eaten freely unless they are tithed (MR).

From a literary-critical perspective, the pericope is a unitary construction. Any sources upon which the pericope's redactor may have drawn have been totally reshaped for use in the present context. Fourteen separate stichs (B-I, K-P), incorporating twenty substantives, are cast into the identical formulary pattern (substantive + *mš-* + imperfect plural) and placed into context by A. Indication that the principle of redaction is the number of substantives, rather than the number of stichs, comes at J, where Judah's lemma breaks the catalogue into two units of ten items each. Further, items such as E, L, and N, which add little new information, seem to be included solely for the purpose of reaching the desired number of items in the catalogue.³³ I cannot explain, however, why twenty items in particular are desired.

While the redactor has crafted his sources into a unified literary whole, certain inconsistencies in the pericope suggest that the sources do not entirely agree as to what the various signs of ripeness indicate. As we have already pointed out, A, in juxtaposition with M. 1:1G, leads us to expect that the signs of B-P indicate the point at which produce is edible, and therefore subject to the law of tithes. This is most plausible for the items of B-H and K-N, for all point to a relatively advanced stage in the ripening of the respective kinds of produce,³⁴ an appropriate point at which they may be deemed edible. This is not

however the case at I-J. At issue in the dispute is the point at which the fruit itself is deemed to have been formed (cf. Ribmaš vs. Maim., *Comm.*). I claims that the walnut has been formed when the nutmeat is distinguishable from the shell. Judah (J), on the other hand, holds that the separated nutmeat is not a piece of fruit in its own right until it forms a husk, i.e., its own individual skin, around the meat. It is only within the context established by A that the issue is understood to relate to the point at which the produce is edible. If I-J is originally formulated in response to a problem concerning the law of tithes, its claim is that produce becomes subject to the law when the fruit forms, some time earlier than the point at which the produce may be eaten.

We meet similar problems at O and P. Fenugreek seeds, used primarily for medicinal purposes, can meet these purposes as soon as the seeds form.³⁵ O, however, states that they are not subject to the law until they have become fertile. Edibility, therefore, is hardly at issue. Rather, the seeds become subject to the law when they can reproduce, i.e., when they become recognizable representatives of their species. Interpretation of P depends upon the meaning of the *terminus technicus*, "reaching a third" (*KNŠ/BW' šlyš*).³⁶ M. Sheb. 4:9 indicates that, in reference to olives, the term defines the point in their growth at which one *se'ah* of young olives will yield a third of the oil they would yield if fully-grown (i.e., one *log* instead of three *logs*: y. Sheb. 4:7[35c]). At issue, then, is the yield, not edibility. The point is the same for grain, which becomes subject to the law only when it can yield a worthwhile, if smaller than average, harvest. According to P, then, at least one sort of produce becomes subject to the law when it becomes an economically feasible harvest.

It is clear, then, that while M.'s redactor certainly wants us to understand all the signs he has listed to indicate edibility, his sources reveal the existence of rather different opinions. I-J and O suggest that produce becomes subject to the law when the edible portion becomes an independent entity, while P indicates that produce must become economically useful before it becomes subject to the law.³⁷

M. R. Ishmael b. R. Yose said in his father's name, "Even if the seeds had become visible in only one grape of the bunch, the entire bunch indeed is subject [to the law of tithes]" (*hyyb*; y. and y. Dem. 1:1 read: *hybwr lm^csrwt*, "connected for the purpose of tithing")³⁸ [cf. M. 1:2C].

- N. Hazelnuts³⁹ and peaches (*hpršqyn*; Lieberman, following y. and commentaries, suggests *h'pštqyn*, "pistachio nuts"),⁴⁰ and cedar nuts⁴¹--when they have developed a husk;
- O. walnuts and almonds--when they have developed a chamber [= M. 1:2I].
- P. R. Judah says, "When they have developed a husk" [M. 1:2J].
- Q. Of which husk did they speak? Of the netherhusk which is upon the nutmeat (*'wkl*; lit., "food").
- T. 1:1c (p. 227, ls. 5-8) (N: cf. y. Dem. 1:1[21c], y. Ma. 1:1[48d]; N-Q: cf. y. Ma. 1:2[48d])

T. consists of two autonomous units, M and N-P+Q, both of which supplement M. 1:2. M assumes the ruling of M. 1:2C, that grapes are subject to the law when their seeds become visible. The natural question which arises is whether, in the case of grapes, which are normally harvested in bunches, the ripening of a single grape indicates that the entire bunch stands under the law. At bottom, the question is whether the "fruit" is considered to be the bunch of grapes, or rather, the individual grape (cf. M. 3:9, Tarfon vs. Aqiba). Yose, as Ishmael reports, argues that the grape is deemed part of a larger fruit, the bunch, following Tarfon's earlier view. Therefore as soon as one grape, i.e., one *part* of the fruit, is ripe, the entire bunch is subject to the law.⁴²

N-P, autonomous of the foregoing, places M. 1:2I-J in a new context, created by N. At issue is whether walnuts and almonds are deemed one with other nuts (N), and subject to the law when they develop a husk (Judah, P), or whether, to the contrary, they stand within a special category, becoming subject to the law only when they develop a chamber (O). Q, glossing P, indicates that all nuts are judged by the development of their husk, for it defines the precise husk in question.

- A. Savory,⁴³ sweet marjoram,⁴⁴ and thyme⁴⁵--when they develop berries⁴⁶ (*mšyybynw*; *ed. princ.* and HD read *mšynyšw*, "when they blossom");
- B. and all (*wkl*; E reads *wkn*, "and also") red sprouts (*h'wbyn*⁴⁷ *'dwmy*; HD emends to *h'zwbyn h'dwmy*, "red marjoram")--when they develop berries (*ed. princ.*; *mšynyšw*).
- T. 1:4 (p. 228, ls. 12-13)
(Cf. y. Sheb. 7:6[37c])⁴⁸

The pericope supplements the catalogue of M. 1:2-3. The formulary pattern is familiar from M. 1:2D-E, M. 1:3K-L and M-N. Following HD's emendation of B, the rule states that four types of herb become subject to the law of tithes when they develop seed-bearing berries. Since the herbs are edible prior to the development of the berries, it is clear that T. reflects a conception of the law similar to that of M. 1:2/0--that ability to reproduce, rather than edibility, determines the point at which produce becomes subject to the law.

- A. [If] it was the second [year of the Sabbatical cycle] and the third year began (*wknšh šlyš*), lo, [the crops] belong to the third year.
- B. [If] it was the eve of the seventh year [of the Sabbatical cycle] and the seventh year began, lo, they belong to the seventh year.⁴⁹
- C. Rabban Simeon b. Gamaliel says, "The House of Shammai and the House of Hillel did not differ that [fruit reaching] maturity (*hgmwr*) [before the New Year] belongs to the past [year] (*lš^cbr*) [even if it is harvested in the New Year (HY)], and that [fruit] which has not blossomed [before the New Year] belongs to the coming [year] (*l^ctyd lbw'*).
- D. "Concerning what did they differ? Concerning sprouts (*'wbyn*; Lieberman emends to *'ybwn*, "the development of berries") [before the New Year].
- E. "For the House of Shammai say, 'to the past [year]',"
- F. "and the House of Hillel say, 'To the coming [year]'."

T. 1:5a (p. 228, ls. 13-18)
 (A-B: cf. y. Sheb. 7:6[37c];
 C-F = T. Sheb. 2:6)

The pericope is composed of two independent units. A-B is a rule consisting of a balanced pair of declarative sentences, while C-F revises a Houses-dispute not before us. C-F also appears at T. Sheb. 2:6, where it glosses M. Sheb. 2:8. There too no Houses-dispute is at hand.⁵⁰ In its present context, the juxtaposition of C-F and A-B is intended to indicate that the latter is an imperfect transmission of a tradition which is properly to be attributed to the Houses. I cannot explain, however, the motive behind such a claim. That motive is certainly not the clarification of M., for T.'s interest in M. is at best tangential.

While M.-T. has thus far concerned itself with defining the point at which fruit becomes subject to tithes, A-B turns its interest to a problem which arises concerning the actual separation

of tithes. It maintains that the decision concerning which tithes to separate is determined by the particular tithing schedule applicable to the year in which it is picked.⁵¹ That is, if crops are planted in the second year of the Sabbatical cycle but are not picked until the third year, the owner must separate poorman's tithe (along with heave-offering and first tithe), since poorman's tithe is removed only in the third and sixth years of the cycle. Had the produce been picked in the first, second, fourth or fifth year, the owner would be required to separate second tithe instead of poorman's tithe. Should the crops be planted in the sixth year, however, the advent of the seventh year before their harvest exempts them from the tithes entirely, since produce of the seventh year is technically ownerless (Lev. 25:6-7; M. Sheb. 7:3, 9:4-9) and thus not subject to the removal of tithes (M. Sheb. 4:7-10).

The addition of C-F, which is formulated in response to a pericope other than A-B, is intended by the redactor to revise the conception of A-B outlined above.⁵² C is meant to show that A-B is a statement of law based upon the Hillelite position in the following hypothetical dispute:

- A. If it was the second year and the third began:
 the House of Shammai say, "To the past year,"
 and the House of Hillel say, "To the coming year" (= A).
- B. If it was the eve of the seventh year and the seventh began:
 the House of Shammai say, "to the past year,"
 and the House of Hillel say, "to the coming year" (= B).

Having established that A-B is a Houses tradition, C continues to revise the entire agendum of the dispute. As Simeon b. Gamaliel phrases the matter, the Houses agreed that if crops ripen before the new year, they are tithed according to the year of ripening and not according to that in which they are picked; if they have not yet blossomed before the advent of the new year, they are to be tithed in the new year, for that is when they will eventually mature. This agreement that a stage in the growth of the crop at the new year determines its tithing year assumes a conception of the law which entirely excludes the original issue of A-B from consideration. Details concerning the acts of sowing and harvesting are simply irrelevant once we assert that the system hinges upon the growth of the crop.

Now that C has defined the parameters of the issue, D-F records the "correct" version of the dispute--whether the appearance of berries⁵³ after blossoming, but before maturity, determines

the tithing year. The Hillelite opinion, which assigns the appearance of berries "to the coming year," can now be read back into a thoroughly revised understanding of A-B. That is, if berries develop in the second year and the third year begins, the crop is tithed according to the third year. The reason apparently is that the appearance of berries is not a sufficient sign of maturity. To summarize, the redactional juxtaposition of A-B and C-F has accomplished two goals. First, it has established that the anonymous rule of A-B accords with the Hillelite view of the law. Second, it has completely revised the agendum of the dispute in order to locate the objective criteria for establishing the tithing year in the events of the natural economy rather than in the actions of the owner.

A question remains concerning the interpretation of D-F. For what type of crop is the appearance of berries a debatable issue? T. 1:4 has already told us that savory, sweet marjoram, red marjoram and thyme become subject to the laws of tithes when they bear the berries which contain their seed. In the absence of evidence that the appearance of such berries is a significant stage in the growth of other crops, we must assume that the issue of D-F also concerns the berries of herbs. If so, in the present context, D-F seeks to revise T. 1:4 as well as A-B. The berries not only indicate the beginning of liability to tithes, but also determine the tithing year of the herbs.⁵⁴

- K. Since it is said: *And before the lord your God, in the place he will choose, to make his name dwell there, you shall eat the tithe of your grain (dgnk), of your wine (tyršk) and of your oil (yghrk)...* (Dt. 14:23), is it possible that one obligates nothing but ('yn lhyyb 'l') grain, wine and oil [to the laws of tithes]?
- L. On what basis (mnyn) [do I know] to include (lrbwt) other types of fruit (š^r pyrwt)? Scripture says: *(all) the yield (tbw't) of your seed (zr^ek)* (Dt. 14:22).
- M. This must be stated (y'mr zħ),⁵⁵ for (š-
- N. If so ('ylw kn; R, O, B and GRA read š'lmly kn, "for if it were not so") I should say: Just as grain (tbw'h) is distinctive in that one places it in storage (GRA omits:) and it is normally eaten as it is (Finkelstein emends: "and it is *not* normally eaten as it is"), so too I need include only similar items.
- O. What, then, do I include? Rice and millet and panicum (prgym)⁵⁶ and sesame.

- P. On what basis do I include other types of pulse (*š^cr qṭnywt*)⁵⁷?
Scripture says: *you shall tithe (all the yield of your seed).*
- Q. (B omits this entire passage:) Shall I include pulse which is normally eaten as it is, yet not include lupine (*twrmwś*)⁵⁸ and mustard seed which are not normally eaten as they are?
Scripture says: *you shall tithe (all...that comes forth from the field)* (Dt. 14:22).
- R. Is it possible [that they are subject to the law] even though they have not taken root? Scripture says *and you shall eat.*
- S. On what basis [do I know] to include green vegetables (*yrqwt*) among produce subject to the laws of tithes? Scripture says: *all the tithe of the land* (Lev. 27:30).
- T. *Of the seed of the land* (Lev. 27:30)--to include (O adds "the seeds of") garlic, pepperwort⁵⁹ and field rocket.⁶⁰
- U. Should I include (Nešib and GRA add, "the seeds of") turnip, radish and garden seeds (so Jastrow, p. 414, for *zr^cny gynh*) which are not eaten? Scripture says: *of (m-) the seed of the land*, but not all (*kl*) the seed of the land.
- V. Of the fruit of the trees (*mpry h^cś*) (Lev. 27:30)--to include the fruits of trees (*pyrwt h'yln*).
- W. Should I include sycamore pods⁶¹ (*ḥrwby sqmh*; O, B, R, Nešib and GRA read: *ḥrwby šyṭḥ*, "acacia pods"),⁶² carobs [from the area of] Ṣalmonah and carobs [from the area of] Gedurah which are not eaten? Scripture says: *of (m-) the fruit of the trees*, but not all (*kl*) the fruit of the trees.

Sifre Dt. 105c (ed. Finkelstein, pp. 164-65, ls. 10-13, 1-9).

(K-W: cf. y. Ma. 1:1[48d]; O: cf. M. Sheb. 2:7; R: cf. M. Sheb. 2:7; S-W = Sifra Beḥuḡotai 12:9)

I discern three distinct units in the pericope, each of which interprets the scope of Scripture's tithing regulations. None of the units exhibits dependence upon M. K-L shows that while only the tithes of grain, wine and oil must be brought to Jerusalem, Scripture is clear that all fruits are tithed. N-R is separate from the foregoing, yet is linked to it by the clumsy joining language at M.⁶³ As the unit stands before us, N's "if so" refers back to the word "yield" of L. Thus, following the emendation of the MSS, the sense of the passage is: "If Scripture had not modified the word 'yield' by the word 'seed,' I could have reasoned...." The unit extends the tithing laws to pulse by establishing an analogy between pulse and grain based upon the need to prepare both before eating (N-O). P-Q completes the

extension to *all* types of pulse by reference to Scripture. R glosses N-Q with a new issue. Presumably since it is impossible to eat pulse before the plant itself has taken root, it is not subject to the law until that time. S-W is an exegesis of Lev. 27:30, and in fact appears in Sifra Behuqotai 12:9. In Sifra, T-W precedes S. While K-R have been interested in expanding the application of Scripture's rules, S-W seeks scriptural warrant for limiting the kinds of fruit to which the law applies.

1:4

- A. And among green vegetables (*wbyrq*)--
- B. cucumbers,⁶⁴ and gourds,⁶⁵ and chatemelons,⁶⁶ and muskmelons⁶⁷ (Sirillo adds: "are subject [to the law of tithes whether they are] large or small" [= D]).
- C. (O², B and G¹ read: "and") Apples and citrons⁶⁸
- D. are subject [to the law of tithes whether they are] large or small.
- E. R. Simeon exempts citrons which are immature (*bqṭnn*).
- F. That which is subject [to the law] among bitter almonds [i.e., the small ones] is exempt among sweet [almonds] (*hḥyyb bḥḳdym hmrym pṭwr bmtwqym*).
- G. That which is subject [to the law] among sweet almonds [i.e., the large ones] is exempt among bitter [almonds].⁶⁹

M. 1:4 (E = b. Suk. 36a, y. Suk. 2:7 [53a]; F-G = M. Hul. 1:6; cf. b. Hul. 25b)

M. supplements and concludes M. 1:2-3's catalogue. The pericope consists of two autonomous units, A-D+E and F-G, each of which must be discussed separately.

Imperfect literary transmission obscures the fact that A-D+E is itself a composite of two separate units, A-B and C-D+E. The superscription at A introduces a list, B, but the required apodosis has dropped from the text. Thus we do not know what point the ruling of A-B originally made. Since the material immediately follows M. 1:2-3, however, it seems intended to extend M. 1:2-3's catalogue of produce and relevant signs of edibility. Most commentators solve the literary problem by interpolating D at B (so Sirillo), or by reading C-D as a continuation of A-B (Maim., *Comm.*). The resulting rule is that the items of B and C are subject to the law whether they are large or small. The problem with this unitary reading, however, is that A, which promises a list of green vegetables, now includes among these apples and

citrons, which do not fall within M.'s category of *yrq*. Clearly, then, we cannot conflate the two rulings. The point of A-B must remain obscure.⁷⁰

C-D, glossed at E, presents no problems. Apples and citrons are subject to the law when the fruit is "small," i.e., at the beginning of its formation (MR), and remains so throughout its later growth. The ruling is congruent with M. 1:2I-J which, as we have seen, claims that produce is subject to the law when the portion normally eaten is fully formed. It disagrees, however, with the dominant thesis of M. 1:1D-H and M. 1:2-3, that produce becomes subject to the law only when it is edible. Simeon (E), on the other hand, represents the opinion of M. 1:1G-H. He exempts small citrons from the law, presumably because they are not edible until a later point in their growth. I cannot explain why he does not exempt small apples as well (but cf. T. 1:1d, below).

A pair of perfectly balanced declarative sentences, F-G, is entirely autonomous of the foregoing. The ruling assumes we know that bitter almonds are edible only when small, while sweet almonds are edible only when large (so T. Hul. 1:24). The point is that when the small bitter almonds are subject to the law, the sweet counterparts, which are still inedible, remain exempt. By the time the almonds become large, the sweet ones are subject to the law while the bitter ones are now exempt. F-G is a rather elegant conclusion to M.'s first major thematic unit, for the ruling permits us to apply the criterion of edibility to a concrete problem in the growth of produce.⁷¹

- R. Nahorai b. Shinayya said in the name of R. Simeon, "Small apples are exempt [from the law of tithes].
 S. "Honey apples"⁷² (*tpw̄hy nmylh*; E reads: *tpw̄hy my nmlh*, "apples from Namlah") are subject [to the law of tithes] whether they are large or small."

T. 1:1d (p. 227, ls. 9-10)
 (cf. y. Ma. 1:4[49a])

T. completes Simeon's opinion of M. 1:4E, Nahorai b. Shinayya pointing out that Simeon differs from M. about apples as well as citrons. S qualifies R, and must be read as a continuation of Simeon's tradition. While regular apples are not subject to the law of tithes when small, honey apples are tithable at all stages of development, and are therefore subsumed under the rule of M. 1:4C-D.

- A. R. Simeon exempts muskmelons which are immature
 B. when (*mš-*; HY and Lieberman emend to ^c*d š-*, "until") they become smooth (*yqrḥw*).

T. 1:3 (p. 228, l. 12)

A's formulary pattern is identical to that of M. 1:4E: *rby X pwt̄r Y bqt̄nn*. B is a gloss qualifying A. The unit supplements Simeon's opinion at M. 1:4E. At A Simeon exempts small muskmelons from the law, the third instance in which he differs from M. 1:4A-B (cf. M. 1:4E and T. 1:1d[A]). B narrows the difference between Simeon and M. 1:4B. He does not flatly exempt all small melons. Rather he exempts only those which have not yet become smooth.⁷³ Apparently, this is the point at which he deems the melons to be edible.

- A. (Lieberman, following *ed. princ.*, inserts the following:
 [R. Ishmael b. R. Yose said in his father's name,⁷⁴ "Bitter almonds are subject⁷⁵ to the law whether large or small;]
 B. "sweet almonds--when (*mš-*; y. Ma. 1:4 reads: ^c*d š-*, "until") their outer shell (*ql̄yptn ḥḥyṣwnh*) separates [from the meat, forming a chamber:PM]."

T. 1:2 (p. 227, ls. 10-11) (cf. y. Ma. 1:4[49a] and b. Hul. 25b)

T. presents two rules defining the point at which the almonds mentioned at M. 1:4F-G become subject to the law. A, which states that bitter almonds are subject to tithes at all stages of their growth, makes no contribution to M. 1:4F-G; rather it ignores M.'s clear assumption that bitter almonds are not tithable at all times, and simply asserts that they are tithable both large and small. For its part, B simply asserts that the separation of the shell determines the point at which sweet almonds become subject to the law. Thus it, too, falls outside the range of M. 1:4F-G's vision.⁷⁶

T.'s disinterest in M.'s problem suggests that the pericope is not formulated in response to M. at all, but is rather an autonomously formulated unit with its own set of concerns. Indeed, a *baraita* cited in y. Ma. 1:4⁷⁷ raises the possibility that T. might indeed refer to T. Hu. 1:24 which reads:

- A. Bitter almonds--small [ones] are subject [to the law],
 large [ones] are exempt.
 B. And sweet almonds--large [ones] are subject [to the law],
 small [ones] are exempt.
 C. *Thus (nms't 'wmr): [That which is] subject [to the law] (ḥyyb b-) among bitter almonds is exempt among sweet [almonds].*

[That which is] subject [to the law] among sweet [almonds] is exempt among bitter [almonds]⁷⁸ [= M. Hul. 1:6 and M. 1:4F-G].

Reading T. 1:2 as a gloss of T. Hul. 1:24, we find that T. 1:2A disputes the explicit rule of T. Hul. 1:24A, accepting the latter's terminology but departing from its concrete rule. The relationship of T. 1:2B to T. Hul. 1:24B remains less clear-cut. The former simply proposes a criterion different from the rule of T. Hul. 1:24B without explicitly acknowledging it. It exhibits no closer relationship to T. Hul. 1:24 than it does to M. Thus we can reach no conclusive opinion about the original reference of T. 1:2 and must remain satisfied with the observation that the pericope is autonomous of M.

1:5-8

- A. At what point after the harvest must tithes be removed from produce ('y^zhw grnn l^me^srw^t)?⁷⁹
- B. (1) Cucumbers and gourds--after they remove the fuzz [from them] (mšy^pqšw).⁸⁰
- C. But if (w'm)⁸¹ he does not remove the fuzz, [tithes are removed] after he stacks them up (mšy^emyd^e rymh).⁸²
- D. (2) Chatemelons--after he scalds [them in order to remove the fuzz] (mšyš^lq).⁸³
- E. But if he does not scald [them] [tithes need not be removed] until he makes a store [of melons] (e^d šy^esh mwqšh).⁸⁴
- F. (3) Green vegetables which are [normally] tied in bunches--after he ties [them].
- G. If he does not tie them, [tithes need not be removed] until he fills the vessel [into which he places the picked greens].
- H. But if he does not fill the vessel [tithes need not be removed] until he collects all he needs.
- I. (4) [The contents of] a basket [need not be tithed] until he covers [the basket].
- J. But if he does not cover [it], [tithes need not be removed] until he fills the vessel.
- K. But if he does not fill the vessel [tithes need not be removed] until he collects all he needs [in that basket].
- L. Under what circumstances [do these criteria apply]? If he is bringing the produce to market.
- M. But ('bl) if he is bringing it home [it is not liable to the removal of tithes, and] he eats some of it as a random snack

(*'wkl mhm^cr'y*) until he reaches home.

M. 1:5 (A-B = b. B.M. 88b;
A-C = b. Bes. 13b; F = b. Hul. 7a;
F-G = b. R.H. 12a)

- N. (5) Dried split-pomegranates (*prd*),⁸⁵ raisins and carobs--
after he stacks them up.
- O. (6) Onions--after he strips off [the peels].
- P. But if he does not strip off the peels, [the onions must be
tithed] once he stacks them up.
- Q. (7) Grain--after he evens [the pile on the threshing-floor]
(so TAS for *mšymrḥ*).
- R. But if he does not even [the pile on the threshing-floor]
[the grain need not be tithed] until he stacks it up [in
the bin].
- S. (8) Pulse--after he sifts it.
- T. But if he does not sift it, [it need not be tithed] until he
evens [the pile].
- U. Even though he has evened [the pile], he takes (*nwtl*) [edible
kernels] from those which are not properly threshed (*qt^cym*),⁸⁶
from the sides [of the smoothed pile], and from whatever is
[left] in the straw,
- V. and eats [without tithing].

M. 1:6 (N = y. Ter. 1:9[41a];
O-P: cf. b. Bes. 13b;
Q = Sifre Nu. Huqqat 123)

- W. (9) Wine--after he skims [the scum from the fermenting
juice in the receiving tank] (*mšyqph*).⁸⁷
- X. Even though he has skimmed, he collects (*qwlṭ*) [liquid] from
the upper vat [where the grapes are trod] and from the duct
[which connects the latter to the receiving tank],
- Y. and drinks [without tithing].
- Z. (10) Oil--after it has flowed (*yrd*) into the trough [from
the press].
- AA. Even though it has flowed, he takes [oil] from the pressing
bale (*qḷ*),⁸⁸ from (*wmn*)⁸⁹ the press-beam (*mmḷ*),⁹⁰ and from
between the boards [of the pressing vat],
- BB. and puts [the oil] into a plate (*ḥmth*)⁹¹ or dish (*tmḥwy*).
- CC. However (*'bl*), he shall not place [the oil] into a pan or pot
- DD. when [their contents] are boiling [unless he tithes].
- EE. R. Judah says, "Into anything may one put [oil], except what
has vinegar or brine [in it.]"

M. 1:7 (W = Sifre Huqqat 121, y.
Ma. 2:6[50a]; X-Y = b. A.Z. 56a,
cf. b. B.M. 92b; BB-EE: cf. M.
Shab. 3:5, b. Shab. 42b)

- FF. (11) A [fig] cake--after he glazes its surface.
- GG. They glaze with [the juice of] figs or grapes which are liable to the removal of tithes (*šlṭḅl*) [and need not tithe the juice].
- HH. R. Judah forbids [the use of untithed juice as a glaze].
- II. One who glazes with [the juice of] grapes--
- JJ. [that which he glazes] has not been made susceptible to uncleanness (*l' hwkšr*).
- KK. R. Judah says, "It has been made susceptible to uncleanness."
- LL. (12) Dried figs--after he presses [them into a storage jar],⁹² and molded figs (so Sens for *mgwrh*)--after he presses them with a roller.
- MM. [If] he was pressing [them] into a jar or rolling [them] in a mold,
- NN. [and] the jar broke or the mold cracked,
- OO. he shall not make of them a random snack.
- PP. R. Yose permits [him to make a random snack].

M. 1:8 (II-KK = b. Shab. 145b;
LL-MM = y. Bes. 4:1[62c])

This catalogue of twelve heavily glossed rulings is the second and final unit of Chapter One. It commences, at A, the problem which occupies the bulk of Chapters Two through Four: to determine the point at which produce must be tithed. On the basis of M. 1:1-4 we have assumed that produce is to be tithed no earlier than the point at which it ripens and no later than its harvest. Now we learn (M. 1:5L-M) that produce may remain untithed until a relatively late stage in its passage from field to table--as long as the owner has not established his own claim to the produce (cf. M. 1:1B and discussion, pp. 29-30). At issue, then, is to determine when such a claim has been made. In view of the prolixity with which M. 1:5-8 introduces this issue, our analysis of the unit proceeds in two steps. First, we discuss the unit's distinct rulings and identify their glosses, pointing out the literary traits and basic propositions distinctive to each. This exercise permits us to isolate the various conceptual elements of the unit and examine how they have been combined into a coherent statement of law. Following this preliminary exegesis, we engage in more detailed analysis of the unit's several literary and substantive difficulties.

A. *Literary and Substantive Analysis*

Each ruling of the catalogue follows the identical formulary pattern (substantive + *mš-/^od š-* + imperfect: cf. M. 1:2-3), framed in response to the question at A. Each, likewise, makes

the same point: the farmer is obliged to tithe his produce as soon as he removes inedible impurities from it (B) or otherwise makes it available for general consumption (e.g., by preparing it for convenient sale: F). At the completion of such processing the produce is deemed *tebel*⁹³ (T. 1:1a), and is forbidden for the farmer's consumption until heave-offering and tithes are removed. The point is that the produce, while edible at its harvest, is not genuinely desirable as food until it is processed. Once processed, however, the produce is deemed desirable, and therefore must be tithed.

This understanding of matters serves as the point of departure for a series of formulaically disciplined glosses. Each significantly qualifies its ruling by revising the context within which the act of processing is to be understood. The first series, C, E, G-H, J-K, P, R, and T,⁹⁴ is based upon the formulary pattern and verb choice of the rulings themselves: *w'm 'ynw* + operative verb, *mš-/d š*-. . . . The glosses point out that if no processing is contemplated, produce must be tithed as soon as it is stored up. By storing the produce away, the owner establishes his claim to it. According to this series of glosses, then, processing is the earliest possible indication of the owner's intention to appropriate the produce for his own use. If, however, he does not process the produce, his storage of the crop indicates his intention to establish his claim to it, for we assume that the owner contemplates no processing after he stores the goods.

The first series of glosses is interrupted by the interpolation of L-M, the only item in the entire unit without a formal mate.⁹⁵ L-M further qualifies the rulings of B, D, F, and I in light of the newly introduced issue of appropriation. It points out that processing imposes the obligation to tithe only if the owner intends to market the produce in question. Since he intends to profit from it, we assume he will offer the produce for sale as soon as feasible (y. Ma. 1:1[49a], s.v., *mh byn mwlk lbytw*). His appropriation of the produce, therefore, is deemed complete as soon as it is processed, for now it is suitable for sale. If, to the contrary, the owner intends the produce for personal use, he may make a random snack of it until he brings it home, at which point he must cease eating until he tithes. His clear intention to make use of the produce at home renders inconsequential any snacks he may make while transporting the produce. Since the farmer as yet has made no claim upon the entirety of the produce, his random snacking indicates no pretension to sole ownership. Matters, of course, change as soon as the man brings the produce

home, for produce inside a man's home must be tithed regardless of how it is intended to be eaten.⁹⁶

The notion that the owner may make a snack of produce which is as yet unclaimed is the key assumption of the second series of glosses, U-V, X-Y, and AA-BB. These employ an entirely new formulary pattern ('p ^{al} py + verb, *nwṭl/qwlṭ*... + participle), and depend upon their respective rulings for their operative verbs alone (*MRḤ*, *QPH*, *YRD*). Each points out that the owner may make a random snack of any unprocessed remnants of a batch of processed produce, e.g., kernels found in straw after the grain has been winnowed and piled. The point is that the act of processing renders liable only that part of the batch which has actually been affected by the owner's labor. Even if failure to process all of the produce is a result of inattention, as in the case of the kernels, the unprocessed produce remains permitted as a random snack, for its condition does not conform to the desires of the owner. His claim, in other words, affects only that which he is deemed to desire--the processed portion. Whatever is unprocessed remains unclaimed and may be eaten without tithing.

The final series of glosses, four disputes (CC-EE, GG-HH, II-KK, MM-PP), is the most difficult. The first three, all of which involve Judah, are substantively unrelated to the unit's central issues. CC-EE, as we shall demonstrate in a more detailed discussion below, is neither a true dispute, nor is it related in any way to GG-HH and II-KK. The unit is a revised version of M. Shab. 3:5, originally concerned with the prohibition against cooking on the Sabbath. There Judah's lemma glosses an already-completed unit, which appears here at BB+CC-DD. GG-HH and II-KK, while formally unrelated, are both interested in the role of human intention in establishing whether a substance is 1) deemed to be food (GG-HH), and 2) capable of rendering food unclean (II-KK). Only the final dispute, MM-PP, clearly responds to the ruling to which it is appended (LL). At issue is whether produce, the processing of which has been interrupted, is considered processed or unprocessed, i.e., forbidden as a random snack or permitted. Yose (PP) rules in accord with U-V ff. A man's intention to process his produce affects only that part of the batch which he is able to process. Once the mold is broken, all the dried figs are deemed unprocessed, and are permitted as a random snack (cf. T. 1:11).

Let us now stand back and view the unit's content as a whole. We see that M. 1:5-8 systematically examines three basic propositions: 1) the owner must tithe his produce when it is

desirable as food (twelve rulings); 2) the owner must tithe his produce when he appropriates it for profit or personal use (glosses C-T); 3) as long as produce is unclaimed the owner may make a random snack of it without incurring the obligation to tithe (L-M, U-V, X-Y, AA-BB, MM-PP). The striking fact about these propositions is that they have no intrinsic connection with each other. Propositions 1) and 2) are obviously independent in conception, for each proposes an entirely coherent, self-sufficient criterion for determining when a man must tithe his produce. They have nevertheless been made to complement each other by the introduction of 2), as a series of glosses, into the exegesis of 1), the catalogue's rulings. Proposition 3) also stands on its own. In the present construction its basic task is to answer the central question left open by the juxtaposition of M. 1:5-8 with M. 1:1-4. That is, What are the owner's rights of consumption between the time his produce becomes subject to the law and the moment he is obliged to tithe it? We learn that during this period the produce enters an indeterminate status in which it is no longer permitted for free consumption (as it was prior to ripening), but is not yet prohibited for consumption as a regular meal (as it shall be when the owner establishes his claim to it). During this time the produce, which is technically unclaimed, may be eaten as a random snack only.

B. *Special Literary and Substantive Problems*

With the basic literary traits and substantive issues of M. 1:5-8 in our grasp, we may now turn to more detailed literary and conceptual problems. We begin with the organization of the rulings themselves. These are organized into three topical units of four rulings each: fresh produce (M. 1:5); non-perishable produce (M. 1:6); and manufactured produce (M. 1:7-8). There are indications, however, that the neatly arranged twelve-count is artificial. M. 1:5I, for instance, is hardly in phase with the other items of the catalogue, for it identifies a mode of processing rather than a type of produce. Indeed, the ruling could be read as a further gloss of M. 1:5F+G-H. This route is impossible, however, for J-K proceeds to gloss I as if it were a legitimate item of fresh produce, an intrinsic item of the catalogue. Clearly, the redactor of these materials intends them to be understood as a ruling + gloss, the fourth such sequence to his first topical unit (cf. MS and Sens).

A second difficulty in the catalogue occurs at LL. Here we have two rulings, each consisting of its own protasis and apodosis.

The gloss, however (MM-PP), treats these rulings as a single unit, for it incorporates the operative verb of each ruling (*DWŠ*, ^c*GL*) into the protasis of its own dispute (*hyh dš b-...wm^cgl b-...*). It appears, then, that the redactor wishes LL to be read as a single ruling. As at I+J-K, the redactor's use of glosses has helped us to identify his conception of what is to be considered a distinct element of his basic catalogue.

In view of the importance of these glosses, let us look at them more closely. The first series, except for the interpolated item at L-M, presents no problems.⁹⁷ L-M, for its part, might better have been placed at the very end of the construction, for it applies, in principle, to all cases. Its present location is explained by two considerations, one formal and one substantive. Formally L-M concludes the first series of four rulings + glosses with a general observation relevant to the whole. Substantively, L-M introduces the problem of a random snack, the issue implicit in the second series of glosses and explicit at MM-PP. L-M's present location, therefore, is the most convenient in light of the formal and conceptual tasks which the redactor has set for himself.

The second series of glosses is far more problematic. U-V, which follows S-T, is clearly out of place. Its concern for kernels buried in straw is relevant only to grain (Q: cf. MS). I can only explain the clumsy arrangement by pointing out that the redactor clearly wants his glosses in consecutive series. He cannot, therefore, append U-V to Q, for the fourth ruling of the sub-unit (S) is then glossed by T, which belongs to the first series of glosses. This does not explain, however, his failure to reverse the order of Q-R and S-T, a solution which yields a more sensible flow of ideas.

A more serious problem arises at AA-BB+CC-EE, the transition from the second series of glosses to the third. Note that BB breaks the formulary pattern established at V and Y. These conclude their respective rulings with a single verb, while BB adds an entire clause. There is no substantive reason for this, for Z+AA-BB makes the same point as S+U-V and W+X-Y: a random snack is permitted of unprocessed remnants of processed produce. The problem, rather, is literary. BB, in fact, is originally independent of AA. It has been appended to the latter, along with CC-EE, to effect a transition to the third series of glosses. The unit as a whole has been moved here, in slightly revised form, from its original context in M. Shab. 3:5. There we read:

- D. The pan or pot which one has taken off the stove while it is boiling--
- E. one may not put spices in it (cf. CC-DD).
- F. But he may put [spices] into [hot food which is] in a plate or dish (BB).
- G. R. Judah says, "Into anything may one put [spices], except what has vinegar or brine in it" (= EE).⁹⁸

Neusner points out that, in M. Shab., the unit is concerned with the prohibition against cooking food on the Sabbath. At issue is whether heating by indirect heat is considered cooking, and therefore forbidden on the Sabbath. D-F assumes that food boiling from the original source of heat cooks whatever is poured into it. Thus putting spices into such food on the Sabbath is forbidden. If the spices are poured into hot food in a cold plate, however, the heat is no longer deemed sufficient to cook the spices. This unit, reworked for use in M., now refers to the unprocessed oil of Z+AA. A man may use unprocessed oil placed in a dish without tithing it, for such use is deemed a snack (Maim., *Comm.*). Oil placed in a pot of boiling food, however, is considered to be part of a regular meal, for it has been cooked. As M. 4:1 will tell us, use of any untithed produce in a regular meal, whether or not such produce is processed, is strictly forbidden. The oil, therefore, must be tithed before it may be placed in boiling food. Judah now disputes DD. He argues that the oil may be put into any receptacle, even one containing boiling food, unless the vessel contains vinegar or brine. Apparently, such substances flavor the oil and make it desirable for use in a meal. Maim., *Comm.*, Bert., *et al.* explain that Judah holds that the brine aids the boiling of the food. Such food removed from the fire will be "hotter" for the brine than were the brine absent. While such an explanation may be appropriate to M. Shab. 3:5, I do not see how it helps us here.

Judah's lemma, despite its obscurity in the present location, has been preserved for formal reasons alone. As we have pointed out above, BB-EE inaugurates a series of four disputes, of which the first three involve Judah. We turn now to Judah's disputes at GG-HH and II-KK, both of which are entirely independent of FF, to which they are appended. The sole link between ruling and glosses is the issue of the juice of grapes used as a glaze. The glosses, however, are both informed by the same principle regarding the role of human intention in determining whether fruit juice is deemed a food.

At GG-HH we learn that it is permitted to glaze fig cakes with the juice of untithed grapes. Since the owner of the grapes is interested in eating the fruit itself, any juice which happens to exude from it will not be used for drinking, but will go to waste (MR). Since there is no intention to use the juice as food, it is not liable to the removal of tithes, even though the grapes themselves are liable. When such juice is used to glaze fig cakes, there is thus no concern that untithed produce is being used as food. The juice was never considered food by the owner and its function as a glaze is not deemed to be a use as food. Judah objects (HH). He understands the juice, which comes from the grapes, to share the status of the grapes. The juice, therefore, may not be used as a glaze unless the grapes themselves are tithed. According to Judah, then, since the grapes are deemed food, all products derived from them, accidentally or intentionally, are subject to the law of tithes as food.

Related issues are worked out at II-KK, this time concerning the problem of susceptibility to food-uncleanness. The ruling at II-JJ holds that grape juice applied to fig cakes does not render the cakes susceptible to uncleanness. Since M. Makh. 6:4 and M. Ter. 11:3 are clear that the juice of grapes, like water, renders food susceptible to uncleanness (cf. Lv. 11:38), the exception here must be based upon the assumption which stands behind GG. That is, the grape juice has not been intentionally squeezed and preserved, but has rather exuded on its own (M. Toh. 9:1-3). Underlying the ruling, then, is the principle of M. Makh. 1:1. As interpreted by Maimonides,⁹⁹ the principle is that liquid has the power to render foodstuffs susceptible to uncleanness only if it has intentionally been detached from its source (e.g., a pond) and then intentionally applied to the food. Since the naturally exuding grape juice has not been extracted to serve some purpose, it cannot become capable of rendering food susceptible to uncleanness even when it is later put to some use, such as glazing fig cakes (cf. Bert., MR). Judah (KK) disagrees on the basis of principles he has articulated at M. Makh. 3:5-7. That is, the final disposition of the liquid by the owner determines the character of his intention at the time it was detached from its source.¹⁰⁰ Since the juice has ultimately been put to use, therefore, it is deemed to have been desirable from the moment it exuded, and thus renders the fig cakes susceptible to uncleanness.

A. [The stage in processing for] storage [addressed by the law of] tithes (*grnn l^esrwt*)--

- B. [which] imposes upon [the owner] (*lḥyyb^c lw*) [the obligation to tithe all produce which is as yet] untithed (*mšm t̄bl*)--
- C. [occurs] when its processing or its storage is complete.

T. 1:1a (p. 227, ls. 1-2)
(cf. b. B.M. 88b)

The pericope begins Chapter One of T. with an explanation of the term *grnn lm^c srwt* (M. 1:5A),¹⁰¹ proposing an abstract definition (B-C) which covers the various acts of processing and storage listed at M. 1:5B - M. 1:6T. By beginning its tractate with a clarification of M. 1:5, T. departs significantly from the order of issues found in M. T.'s redactor argues that the primary business of the tractate is the proper disposition of produce which has become liable to tithes. He places the issue, therefore, at the very head of his tractate.

- G. [If] he was removing the fuzz (*hyh mpqš*) from the very first [cucumber or gourd],
- H. or was scalding the first [watermelon]--
- I. as soon as (*kywn š-*) he finished all he needs,
- J. lo, it is [rendered] liable [to tithes].

T. 1:5b (p. 228, l. 18)
(Cf. y. Ma. 1:5[49a])

T. raises a question concerning M. 1:5B+D, which has told us that cucumbers, etc., are considered fully processed when their fuzz is removed. The problem is whether liability to tithes falls upon each individual piece of fruit as it is processed or whether all remain exempt until the entire batch is processed. I-J takes the latter position.¹⁰² It follows, then, that T.'s rule would permit the first melon to be eaten without removal of tithes as long as the last one of the batch remained unprocessed. The principle is that of M. 1:6U-V and M. 1:8MM-PP: produce is liable when the owner's intention to process is fulfilled. In the present case, since the owner's intention is to process a large batch, he becomes liable for individual pieces of fruit only when the whole conforms to his wishes.

- A. One separates heave-offering (*twrmyn*) [from] cucumbers and gourds even though [he has not]¹⁰³ removed the fuzz [from them];
- B. [from] chatemelons and muskmelons even though he has not scalded [them].
- C. Muskmelons which are to be removed from the vat [in which they are being scalded]--

- D. he is not required [to tithe them] until he removes them from the vat.
- E. Green vegetables which he tied [in bunches] in the field
- F. and which are to be made into a small bundle (*synwq*) for scalding (*lšlwq*; GRA and Lieberman, following E, emend: *lšwq*, "for market")--
- G. as soon as he has tied them [in the field: MB], lo, this one is [rendered] liable [to tithes].
- H. One who gathers vegetables in the field--
- I. as soon as he has gathered all he needs, lo, this [i.e., the contents of the gathering basket] is [rendered] liable [to tithes].

T. 1:6a (p. 228, ls. 19-22)
(E-G: cf. y. Ma. 1:5[49a])

T. is a series of discrete glosses to M. 1:5. A-B gives a rule relevant to M. 1:5B-E. Although separation of heave-offering (which must be removed prior to other offerings: M. Ter. 3:6-7) is required from produce which is completely processed, T. says that one is permitted to remove the heave-offering, and presumably the rest of the tithes, before the completion of processing.¹⁰⁴ The point is obvious, for despite its lack of desirability (i.e., it is unprocessed), the produce is edible and therefore subject to the law in principle. As M. 1:5-8 has labored to point out in detail, processing is the act which *imposes* the obligation to tithe; it is not, however, a *precondition* for the removal of tithes. C-D also glosses M. 1:5B-E. The rule is simply that the produce is rendered liable when processing is complete and not before. The principle is that adduced at T. 1:5b (= M. 1:6U-V, M. 1:8MM-PP). E-G glosses M. 1:5F. Once the picker has tied the vegetables into bundles, they are irrevocably rendered liable to the removal of tithes, even if he later undoes his labor in order to make smaller bunches (Lieberman, TK, II:672, 21). This, of course, contradicts Yose's position at M. 1:8 PP. H-I requires no comment.

- J. If he was going to braid garlic or tie onions, he is not required [to tithe them] until he braids [the garlic] or ties [the onions].
- K. [Unwinnowed] ears [of grain] which find their way (*pwłtw*) from the threshing floor into the pile of grain, and inferior kernels (*mhpwrwt*)¹⁰⁵ in the pile, and pods (so Jastrow, p. 1408, for *qššyn*) of pulse--

- L. when the [pile] is smoothed [on] the threshing floor, he may not eat [anything in the pile] until he removes tithes.
- M. *Pulse is [rendered liable] when he sifts [it]* [= M. 1:6S].
- N. [y. Ma. 1:6 adds 'bl, "But"] he takes (*nwtl*) [pulse] from beneath the sieve and eats [without tithing].

T. 1:6b (p. 228, l. 22-p. 229,
ls. 1-3) (E = y. Ma. 1:6[49b])

J continues the interests of T. 1:6a (C-H) and T. 1:5b, stipulating that an intended act of processing must actually be complete before liability is incurred. Although J mentions onions, as does M. 1:6/O, it shows no interest in M.'s problem, and is therefore probably an autonomous formulation placed here primarily to continue T.'s interests while maintaining a superficial relation to M. K-L demonstrates agreement with the principle of M. 1:6U-V by outlining an exactly inverse case. In M. the edible odds and ends have been excluded from the smoothed pile and are therefore permitted. In T. the normally undesired items, despite all precautions, have remained in the pile and have been processed along with the rest of the pile.¹⁰⁶ For this reason they are forbidden, while M.'s edible items, because they are unprocessed, are permitted. M quotes M. 1:6S, and N glosses. Now the principle of K-L and M. 1:6U-V is refined further. On the one hand, the pulse has all been processed; yet, the smaller beans have fallen through the sieve into the dirt. Thus they are both desirable (M.), and processed (T.), yet are still in need of further processing since they have fallen back into the dirt. The owner may therefore eat the pulse even though its processing is completed, since the product itself is not in the cleaned condition which is the goal of its processing.¹⁰⁷

Maimonides (*Tithes* 3:13) combines M. 1:6S-T and T. 1:6bN into a single rule: "Pulse [is rendered liable] when he sifts [it]. And he [may] take pulse from beneath the sieve and eat. If he does not sift, [the pulse is not liable] until he evens the pile."

- A. One who consecrates a vat [of wine solely for Temple use] before drawing [the waste from it] (*ŠLH* or (w-) skimming [the waste off the top],
- B. [GRA deletes:] and after he has drawn it or (w-) skimmed it the Temple treasurer (*gzbr*) came,
- C. and he [i.e., the original owner] redeemed it--
- D. [the wine] is liable [to tithes] (*hyyb*).
- E. [If] he consecrated it before drawing or skimming,

- F. and the Temple treasurer came and drew or skimmed [on his own],
 G. and afterwards [the original owner] redeemed it--
 H. since at the moment [in which] the liability [to tithes] should have been incurred], [the wine was] exempt (*hw'y l wbs^c t hwbtw ptwr*),
 I. [it remains] exempt (*ptwr*).

T. 1:7a (p. 229, ls. 25-28)
 (Cf. M. Pe'ah 1:6, 4:8,
 M. Hal. 3:4, y. Ma. 1:6 [49b])

T. is autonomous of M. It is placed within T.'s discussion of M. 1:7 because it raises an issue relevant to completing the manufacture of wine. The pericope consists of two apocopated sentences, A-D and E-I, each of which is composed of a compound protasis presenting a case (A-C, E-G) and an apodosis stating the law (D, H-I). E's language assumes A and depends upon it for context. The elements of the pericope are well balanced, with B-C standing over against F-G, and D corresponding to I. H is an explanatory interpolation.

As they stand before us, A-D and E-I present two contradictory views of the consequences of redeeming wine which has been processed while consecrated to the Temple. In both cases a man has made a gift of wine to the Temple. As Temple property, the wine is now exempt from the laws of tithes, for the Priests and Levites do not give themselves offerings. Now, while the wine is in a state of consecration, either the donor (B) or the Temple treasurer (F) completes the processing, and the wine is now ready for priestly use. At this point, however, the donor decides to redeem the wine. That is, he buys the wine back from the Temple, exchanging a monetary gift for the original wine. D rules that the wine, whose processing has been completed, becomes liable to tithes upon return to the donor's possession. H-I, on the other hand, explains that since the wine was not subject to the law at the time of its processing, it remains exempt even upon return to the original donor. The contradiction is that the conditions of H satisfy the case of A-C as well as that of E-G, for in both instances the wine was Temple property at the time of processing. On what grounds, then, does D require the wine of A-C to be tithed upon return to the donor's possession?

I can make no sense of what is before us within the framework of principles provided by M.-T.¹⁰⁸ The soundest exegetical path has been suggested by GRA, who simply deletes B, the stich which has the donor skimming the Temple's wine. While the observed

formal balance of our pericope would normally inhibit such a maneuver, in this case there is much to recommend it. First of all, the deletion makes sense of the pericope. Now A+C-D tells us that a man who consecrates his wine and then redeems it *before completing the processing* is responsible for removing tithes once he completes the work. The point of the rule is now explicable in terms of H. Since the wine has passed into and from the Temple ownership without undergoing any acts of processing, its status is identical to that which it had before being consecrated. It is simply wine which has not yet been completely processed. Therefore, as soon as the donor completes the processing of the redeemed wine, it becomes liable to tithes like anything else.

There are also formal grounds for accepting GRA's version of the pericope. While his deletion of B is unsupported by any MS evidence¹⁰⁹ and cannot explain why B was inserted into the pericope in the first place, there is a close formal and substantive parallel between our pericope (minus B) and M. Pe'ah 4:8 (= M. Hal. 3:4).

- A. One who consecrates his fruits before they have reached their tithing season.
- B. and he redeemed them--
- C. [the fruits] are subject [to the law of tithes] (*hybybyn*).
- D. [If] he consecrated them after they have reached their tithing season,
- E. and he redeemed them--
- F. [the fruits] are subject [to the laws of tithes] (*hybybyn*).
- G. [If] he consecrated them before they were completely processed (*ed šl' ngmrw*),
- H. and the Temple treasurer completed their processing.
- I. and afterwards the owner redeemed them--
- J. [the fruits] are exempt (*ptwryn*),
- K. since at the moment [in which] their liability [to tithes] [should have been incurred] they were exempt (*šbš^ot hwbtn hyw ptwryn*)

A-C above corresponds precisely to A+C-D of our pericope. D-F, which simply provides a complement to A-C exemplifying the same principle, is lacking in T. G-K corresponds almost exactly to E-I, the sole difference being in the phrasing of the crucial principle at K and H, which in any event leaves the principle unaltered. Clearly, T. and M. Pe'ah 4:8 are alternate formulations of the same principle. This is convincing evidence that B

is indeed a confusing and confused interpolation, and that GRA's deletion should be accepted.

H. *Wine--after he skims [the scum from the fermenting juice in the receiving tank]. Even though he has skimmed, he collects [liquid] from the upper vat and from the duct and drinks [without tithing] [= M. 1:7W-Y].*

Oil--after it has flowed into the trough. Even though it has flowed, he takes [oil] from the pressing bale, from the press beam, and from between the boards [of the pressing vat], and places it into a plate or dish [= M. 1:7Z-BB].

J. But he may not gather it in a vessel [in sufficient quantity] to make [continual] use of it (*lhywt mštmš mmnw[whwlk]*).¹¹⁰

T. 1:7b (p. 229, ls. 28-31)

J ignores M. 1:7CC-EE entirely, appending its own gloss to M. 1:7Z-BB. The point is obvious. Placing the oil into a vessel for continuous use is tantamount to storing the produce, and therefore renders the oil, even though it is unprocessed, liable to the removal of tithes (cf. M. 4:1 G-I).

A. [If] he was eating [untithed produce as a random snack]

B. and left [some food] over (*whwtyr*),

C. and dusk fell on Sabbath Eve (*wḥšyky blyly šbt*)--

D. [he is] permitted [to continue eating the leftovers on the Sabbath].

E. Said R. Simeon b. Eleazar, "Under what circumstances?

F. "[Only] in the event that he was eating and left [some food] over, and dusk fell on Sabbath Eve.

G. "But he may not intentionally add (*l' ytkwyn wytn*) [the food] to [a bowl containing] much *anigaron*¹¹¹ in order to make a surplus (*bšbyl šywtyr*) and bring it into his home."

T. 1:8 (p. 229, ls. 31-33)

(A-D: cf. M. Ter. 8:3, y. Ma. 1:6 [49b])

T. is autonomous of M., and far more relevant to M. Ter. 8:1-3, where A-D is paralleled in a ruling attributed to Eliezer in dispute with Joshua.¹¹² At issue in A-D, as Peck points out,¹¹³ is whether an individual can complete a forbidden act which, at its inception, was permitted. When the man began eating his untithed produce, he was fully within his rights. With the onset of the Sabbath, however, all eating is deemed a regular meal, in honor of the day of rest (see discussion to M. 4:2, pp. 125-126). Since it is forbidden to tithe on the Sabbath (M. 4:2), the

question is whether the man must cease eating. A-D permits him to continue to eat, since he began his eating at a permissible time (cf. y. Ma. 3:9[50d] and b. Bes. 35a). Simeon b. Eleazar (E-G) adds that this rule applies only when the man does not intentionally plan to circumvent the law.

- A. One who skims [wine] in a tub (^e*rybh*)
- B. and one who skims [wine] in a vessel (*kly*)
- C. puts [the skimmed wine] *into a small bowl or a plate* [= M. 1:7BB].
- D. One who pours [hot food] from [one] cauldron into [another] cauldron, and from [one] stew-pot (*'lpš*) into [another] stew-pot, and from [one] pot into [another pot]
- E. is permitted to put [untithed wine or oil] into the second [vessel],
- F. and forbidden from putting [it] into the first [vessel].
- G. One who squeezes (*šḥṭ*) [the juice of] grapes into his hand [is] exempt [from tithing the juice].
- H. [One who squeezes the juice] into a cup--lo, this one is required [to tithe].

T. 1:9 (p. 230, ls. 34-36)
 (D-F = T. Shab. 3(4):9;
 G-H: cf. M. 4:1)

T. presents three cases, A-C, D-F, and G-H, sharing a common formulary pattern: *h* + present participle + apodosis. The cases refine M. 1:7's principle that wine and oil remain exempt from the removal of tithes until their processing is complete.

A-C augments M. 1:7W-BB's demonstration that residual wine or oil left in the press after processing is exempt from tithes. T. shifts our attention to a case in which the actual processing of the wine has no affect upon its prior status. The rule describes a situation in which someone has filled a container with unskimmed wine directly from the receiving tank of the wine-press. Should he then skim the wine in the container, A-B, the skimming does not render the wine liable to tithes, as C, which permits the wine to be placed in a bowl or plate, points out.¹¹⁴ In this case, the act of skimming, which normally renders the wine in the receiving tank liable to tithes, has not been done in the normal fashion. Only a small portion of wine has been skimmed in a container other than the tank. Therefore, the skimming does not have its usual effect of rendering wine liable. Both the wine still in the tank and that in the container retain their former exempt status.

D-F augments M. 1:7CC-DD in light of M. Shab. 3:5. Here we learn that while untithed wine or oil may not be poured into a pot in which food is cooking, one may nevertheless place the untithed product into a vessel containing hot food which has been removed from the fire. Since the food in the latter vessel is not actually cooking, its heat is not considered sufficient to cook the oil (y. Ma. 1:7[49b], s.v. *ḥd hykn*).

G-H extends M. 1:7's rule that products which require sophisticated manufacturing are not liable until that process is completed. Now we find that even the relatively simple process of squeezing grape juice is considered a type of manufacturing which is subject to specific regulations. The issue is whether or not the grapes have been dealt with in a way which constitutes processing. Since crushing the grapes in one's hand is not a normal way of obtaining juice, it is exempt even if drunk. However, crushing the grapes into a cup prepares the juice for consumption, and it must be tithed as a manufactured product. The principle is identical to that of A-C. Only a normal method of manufacture is sufficient to render the product liable.¹¹⁵

- A. Oil pressers who take their lighting oil alternatively from one press and another (Jastrow's translation, p. 139 of: *hbddyn hmdlyqyn mbd lbd*)--
- B. one does not suspect (*'yn ḥwššyn*) them of robbing the owner (*mšwm gyalw šl b^el hbyt*)
- C. for this is customary behavior.

T. 1:10 (p. 230, ls. 37-38)

The only apparent connection between T. and M. is interest in oil. The point, according to Lieberman (*TK*, II:675,37), is that since the owner would not want his workers to labor in the dark, he gladly permits them to use the oil in order to aid them in their work.

- A. [*If*] he was pressing [*them*] into a jar or rolling [*them*] in a mold, [*and*] the jar broke or the mold opened, he shall not make of them a random snack. And R. Yose permits [*him to make a random snack*] [= M. 1:8MM-PP],
- B. because the [*figs on the*] bottom require the [*figs on*] top [*in order to keep from falling apart without the mold to hold them together*].

T. 1:11 (p. 230, ls. 38-39)
(B = y. Ma. 1:8[49b])

T. simply cites M. and provides a gloss at B which explains Yose's reasoning. The dependency of the completely pressed lower layer of figs upon the pressure exerted by the unpressed upper layer indicates that the processing, while begun, has in fact not been accomplished.¹¹⁶

- X. On what basis [do I know] that a man tithes what he eats? Scripture says: "You shall tithe" (Dt. 14:22).
- Y. Is it possible [to tithe produce] even though its processing is not completed in the field?
- Z. Scripture says: "as the corn of the threshing floor" (Nu. 18:27)--lo, it [i.e., the threshing floor:Nešib] is in the field¹¹⁷ (*whry hw' bsdh*; V reads: *whry hy' ksdh*, "lo, it is like the field");
- AA. "and as the fullness of the wine press" (Nu. 18:27)--[he is not required to tithe] until it [i.e., the wine] is in the wine press (*°d šhy' byqb*; B and Nešib read: *°d šhyqb bsdh*, "until the wine press is in the field") [but he is *permitted* to tithe beforehand],
- BB. Is it possible that a man make a snack in the field [after processing is complete: R. Hillel]?¹¹⁸ Scripture says: "You shall tithe" (Dt. 14:22).
- CC. On what basis do I know that he must tithe what he sows? Scripture says: "what comes forth from the field" (Dt. 14:22).
- EE. They said: They destroyed the stalls of the sons of Ḥanan (*bny ḥnn*; B and y. Pe'ah 1:6 read: *byt ḥnn*, "Beth Hanan")¹¹⁹ three years before [the fall of] the Land of Israel [to the Romans] because they [i.e., the stall owners] would remove their produce from the scope of the tithing laws (*mydy m°srwt*).
- FF. For they would interpret [Scripture] to mean [the following]: "You shall tithe ... and *you* shall eat" (Dt. 14:22)-- [that is, the one who eats shall tithe,] but not the merchant.
- GG. "the yield of your seed (Dt. 14:22)--[that is, the farmer shall tithe,] but not the buyer.

Sifre Dt. 105d (Finkelstein, p. 165, ls. 9-15) (H-J: cf. b. B.M. 88a, y. Pe'ah 1:6[16c])

X-CC provide a series of exegeses establishing Scriptural warrant for fundamental tithing rules. The whole is relevant to, but exhibits no literary dependence upon, M. 1:5-8. X requires no comment. Y-AA is obscure no matter which combinations of readings we prefer. Y's question raises an issue which has elsewhere been

settled by T. 1:6A-C, which permits the tithing of produce which is not completely processed. I do not understand the point of Z. The answer to Y is at AA: even though wine--and presumably other products--are not liable until completion of processing, one is permitted to tithe them before that time just as we have learned at T. 1:6A-C. BB-CC continue elementary exegesis. EE, glossed by FF-GG, is autonomous of the foregoing, appended to it by "they said." EE tells us that the greed of the stall-keepers of Beth Ḥanan hastened their doom. FF-GG now ties EE into the interests of CC. CC has established scriptural warrant for the obligation of the farmer-owner to tithe. FF-GG bring Scripture to bear upon the obligations of merchants and buyers, the next logical step in the extent of the law's power. It says that the stall-keepers of EE *misinterpreted* Scripture to exclude the merchant and the buyer from the obligation to separate tithes, while Scripture intends just the opposite (cf. M. Demai 2:2).

CHAPTER TWO

MAASEROT CHAPTER TWO

Chapter Two develops the thesis of M. 1:5-8, that the owner of untithed produce incurs the obligation to tithe when he effects acquisition of it. In the present chapter the focus merely shifts from produce which the householder brings home from his own field to produce which he acquires from another. Such acquisition may occur either in the form of a gift or through financial transaction. Under either circumstance the recipient of produce incurs the obligation to tithe it only when the transaction is complete and he has actually claimed as his own the produce involved. This, in fact, is the point of the entire chapter. The recipient of a gift of untithed figs, for example (M. 2:1-2), may snack on the produce until he brings it home. He must tithe it at that point only, for as we recall, this is the point at which the produce becomes his. Those who purchase produce in the market (M. 2:5-6), however, or who exchange their labor (M. 2:7-8C) or their own produce (M. 2:8D-J) for untithed produce, incur the obligation to tithe as soon as they accept the produce for which they have bargained. Since the transaction cannot be rescinded after a buyer has taken his purchase (M. B.M. 4:2), he is deemed to have effected acquisition immediately, even prior to bringing the produce home.

The problem in each of the chapter's three primary units (M. 2:1-2, M. 2:5-6, M. 2:7-8) is to distinguish cases in which produce merely changes hands from genuine transactions in which title to the untithed produce is actually transferred to a second party. Only in the latter transactions does the second party incur the obligation to tithe. The unit on gifts (M. 2:1-2) begins the discussion, for here matters are most clear-cut. M. assumes that gifts remain the property of the donor until the recipient brings them into his home. It follows that the recipient of a gift of untithed produce shares the donor's privilege to make a snack of it until he becomes the new owner. Within this framework, M. raises two issues. First, if the recipient has cause to assume that the donor himself has incurred the obligation to tithe, the produce is forbidden to him as well (M. 2:1F-I). He may, however, refrain from the produce until he brings it home, at which point, as the owner of the produce, he tithes and eats it. Secondly, if the recipient accepts untithed produce in his place

of business (deemed by M. to be analogous to his own home) he may not eat the produce unless he tithes, for he has already become the new owner (M. 2:2J-O).

M. 2:3 and M. 2:4, appended to M. 2:1-2, are out of phase with the chapter's overall inquiry. M. 2:3 carries forward M. 2:2J-O's interest in structures deemed analogous to a man's own home. Travelers who carry untithed produce on a journey may eat it without tithing until they enter a dwelling which serves as their temporary home. Meir (M. 2:3E) holds that such a surrogate for the home must be a place in which the traveler is made to feel like a guest, while Judah (M. 2:3H) holds that any dwelling will do, even if the traveler just passes through it. At issue in M. 2:4, a pair of disputes, is whether the removal of heave-offering from unprocessed produce renders the remainder forbidden until all other offerings have been removed as well. The pericope is relevant to our chapter only insofar as the answer to its question determines whether the householder may snack on the produce after the removal of the heave-offering. The true interest of the disputes, however, lies in the nature of the tithing process itself, a matter we shall examine in detail in the commentary. Here we simply observe that this potentially crucial matter is never again addressed in M., and remains buried at the end of a sub-unit on the privilege of making a snack of untithed produce.

At M. 2:5-6, the second of the chapter's three units, we turn to what is perhaps the paradigmatic transfer of title, monetary purchases. According to Mishnah's general theory of purchases, such transactions are consummated as soon as the purchaser takes possession of the product (M. B.M. 4:2). It follows that until the purchaser of untithed produce accepts the produce for which he has paid, no title has been transferred, and the purchaser assumes no obligation to tithe the produce. On this basis Judah rules (M. 2:5C) that if a purchaser refrains from gathering his stipulated purchase, he may eat at random one piece of produce at a time without tithing. Thus a man who stipulates a purchase of five figs may, without obligation, eat one at a time from the bin, for he is not deemed to have accepted the produce until he gathers five figs at once. Despite the disagreement of Meir (M. 2:5B), Judah's position serves as the foundation of two further series of cases at M. 2:6E-I and J-O.

Investigation of transactions continues at M. 2:7, the chapter's final unit, which takes up the special problem of barter. M. 2:7's triplet presents cases in which a field worker stipulates that any produce he eats while on the job shall be deemed part

of his wage. Normally, we should expect such produce to be liable to the removal of tithes, for the worker has acquired it by his labor. In the present circumstances, however, there has been no transfer of title over the produce. All field workers, as M. 2:7L-M (cf. M. B.M. 7:2) points out, are entitled by the Torah to eat produce which they are harvesting. Such produce, therefore, is deemed the worker's, even though it grows in his employer's field. It follows that despite the worker's stipulation there has in fact been no transfer of title, for the produce belongs to the worker in the first place. He therefore eats it while on the job without obligation to tithe. If, however, he offers figs to non-laboring dependents (M. 2:7D-G), or eats them himself after he has finished his work (M. 2:7H-K), these are deemed his by acquisition and must be tithed.

Following a minor gloss of M. 2:7 at M. 2:8A-C, M. 2:8D-J concludes the chapter with a second case of barter, in which figs are exchanged for other figs. The unit does not address the chapter's central interest, but rather raises a secondary problem in Judah's name. He points out that if one receives as barter unprocessed figs, they need not be tithed until the purchaser completes the processing. The point, which we have already encountered in M. 1:5-6, is that produce is permitted even after formal acquisition until it is made desirable as food. M. 3:1A-B, as we shall see, assumes this point as well, permitting us to view Judah's discussion as a transition to M.'s third chapter.

T. for our chapter consists of only five pericopae. Its observations are episodic and do not follow the order of M.'s chapter. It is interesting to note that T.'s most carefully constructed commentaries upon M., T. 2:1 and T. 2:2-3, do not relate to the major issues of M.'s chapter, but rather concentrate upon M. 2:3 and M. 2:4, the secondary materials appended to M. 2:1-2.

2:1-2

- A. (1) [If] one was passing through the market
- B. and said, "Take figs for yourselves,"
- C. [those who accept them] eat [the figs while they are in the market] and are exempt [from tithing] (*'wklyn wptwryn*).
- D. Therefore, if they brought [the figs] into their homes
- E. they tithe (*mtqnym*) [them as they would tithe figs which are] certainly untithed (*wd'y*) [*viz.*, they remove heave-offering,

first tithe and either second or poorman's tithe in the usual manner].

- F. (2) [If he said,] "Take [the figs] and bring [them] into your homes,"
- G. [those who accept them] shall not make a random snack [of the figs while they are in the market].
- H. Therefore, if they brought [the figs] into their homes
- I. they tithe [them] only [as they would tithe figs which are] doubtfully tithed (*dm'y*) [*viz.*, they remove only the heave-offering of the tithe, and consume the rest of the produce as if it was completely tithed].

M. 2:1

- J. (3) [If] they were sitting in a doorway or stall,
- K. and [the passer-by] said, "Take figs for yourselves,"
- L. [those who accept them] eat [the figs in the doorway or stall] and are exempt [from tithing] (*'wkllyn wptwryyn*).
- M. But (*w-*) the owner of the doorway or (*w-*) the owner of the stall are required [to tithe].
- N. R. Judah exempts [the owner from tithing]
- O. unless (*^cd š-*) he turns his face [away from the public] or unless he moves from where he is sitting [to a private part of the stall].

M. 2:1-2

The present triplet assumes that the recipient of untithed produce shares those privileges or restrictions regarding its consumption which apply to the donor himself.¹ If the donor yet enjoys the privilege of making a snack of his produce without tithing (A-C, J-L: cf. M. 1:5L-M), the recipient shares his right. If, on the other hand, the donor has already obliged himself to tithe his produce, those to whom he offers such untithed produce are likewise obliged to tithe it before eating (F-G). Materials appended to the basic triplet, while falling into distinct formal groups (D-E, H-I vs. M+N-O), all address a single secondary notion. The recipient of the produce is obliged to tithe it as soon as he effects appropriation of it, despite the fact that untithed produce remaining with the donor may still be exempt. In all, then, M. must be regarded as an application of the principle informing M. 1:5L-M, that produce is permitted as a snack until it is appropriated by its owner for his personal use. Under discussion now is the point at which the produce is deemed to have a new owner. At this point the status of the produce *vis a vis* the law is determined solely by the new owner's actions and intentions.

A provides the context for both B-C and F-G. The contrast between the two rulings (C vs. G) is generated by the change in locution at B and F ("take figs" vs. "take figs home"). The problem is whether the recipient can assume that the figs are permitted to the donor himself as a random snack. A-C is clear that if a passer-by simply offers figs to his fellow in the market, the latter may snack on them without tithing. Since the figs are not offered for sale, we assume the donor is taking them home (Maim., *Comm.*). As M. 1:5L-M points out, they may therefore be eaten by their owner as a snack. A-C simply adds that they are permitted as well to anyone to whom the owner offers his figs. Matters change at F-G because the ambiguity of the donor's remark casts doubt upon whether or not he himself has the privilege of eating his figs. His stipulation that the recipient bring the figs home may indicate that the figs are presently liable to the removal of tithes, i.e., that they are intended for sale in the market.² In light of this ambiguity the recipient refrains from consuming the figs until he is certain of their status regarding the law. That is, he waits until he brings them to his own home, where they are clearly liable to tithes on his account.

This solution generates a new problem--how are such figs to be tithed when the recipient brings them home? H-I assumes that although the figs are certainly liable to the removal of tithes, it is unclear whether the donor had removed any of the offerings on his own behalf prior to offering the figs. The figs, therefore, are deemed *demai*-produce. That is, there is doubt whether, and to what extent, agricultural offerings have been removed by the original donor. In such circumstances we assume that heave-offering, the priestly gift (and the smallest offering), has already been removed.³ The householder, therefore, removes only the heave-offering of the tithe--the other sanctified priestly offering--and consumes the rest of the produce as if it were fully unconsecrated. Tithing of the produce at A-C, of course, requires no such precautions, for we have no reason to assume that the donor tithed his exempt figs in the first place. Therefore, as D-E states, the recipient tithes them in the normal fashion when he brings them home.

J-L, the third case, repeats B-C at K-L. The superscription at J, however, changes the situation in an important respect, preparing us for the amplifications at M+N-O. Now the recipients accept the figs in a doorway or stall instead of in the open air of the market (J). The problem is whether the structure functions in a way which is analogous to the recipients' homes. If so, they

would be required to tithe the figs just as if they had taken them home. K-L rules that the recipients may eat the figs without tithing. The explanation comes at M, which stipulates that only the *owner* of the structure must tithe his figs. The point is that since the structure is his possession it is equivalent to his home. The other recipients, however, who are merely guests or customers, need not tithe, for they are not deemed at home.⁴ Judah, N-O, qualifies M. His point is that the stall or doorway, since it affords no privacy, is not analogous to the home (cf. M. 3:5 below). The owner of such a structure, therefore, need not tithe his figs unless he establishes for himself a private corner within the structure. Only then is the space deemed *his* and, therefore, analogous to his private home.

2:3

- A. One who transports (*hm^clh*) produce from Galilee to Judea,
- B. or [who] goes up (*^cwlh*) [from a location in Judea: TYY] to Jerusalem,
- C. eats of [his untithed produce] until he reaches his destination (*lmqwm šhw' hwlk*) [at which point he must tithe before eating].
- D. And [this is] also [the case] on the return trip (*wkn bħarh*).⁵
- E. R. Meir says, "[He eats] until he reaches the place [where he intends to] spend the Sabbath (*lmqwm hšbyth*: y. Ma. 2:3[49d])."
- F. [Eleven MSS. omit *w-*, "And"] peddlars who circulate among [a number of] towns
- G. eat [their untithed produce] until they reach their night's lodging (*lmqwm hlynh*) [at which point they must tithe before eating].
- H. R. Judah says, "The first house [he enters] is [considered] his house [even should he lodge elsewhere]."

M. 2:3

The present pericope, like M. 2:1-2, carries forward the consequences of M. 1:5L-M. As before, we assume that a man may eat, as a random snack, untithed produce which he has not yet brought into his own home. The present problem, for which M. 2:2J-O has prepared us, is to determine what counts as a surrogate for a man's actual home, such that any produce he brings into it is rendered liable to the removal of tithes. The matter is examined in two glossed rulings (A+C+E and F-G+H) which discuss individuals who carry untithed produce with them on a journey.

There are two basic positions concerning what constitutes such a traveler's surrogate home. The first, assumed by both A+C and Meir (E), is that such a surrogate is constituted by any house in which a man is deemed at his ease. Meir's qualification of A+C does not challenge this basic position. The same point informs F-G as well, to which Judah (H) now objects. His position is that any home is a surrogate for a man's actual dwelling, as long as he has been granted access. Judah, it appears, holds a "formalist" position:⁶ the surrogate for a man's home is quite literally any dwelling into which he enters. For Meir, A+C and F-G, however, a surrogate for a man's home must *function* as his home. That is, the owner of the dwelling must offer his guest the comforts of home. Only then is the dwelling deemed equivalent to the guest's actual home in such a way that he must tithe any untithed produce he brings into it.

We turn now to the details. Disregarding for the moment the interpolations at B and D, we see that A+C permits the transporter of untithed produce to snack on it until he reaches his destination, i.e., the house where he will establish temporary domicile while away from home (TYY). Any dwelling in which he takes shelter during the journey is deemed too temporary to function as a surrogate for his own home. His produce, it follows, is not rendered liable when he enters such dwellings, and remains permitted to him as a snack until he completes his journey (Maim., *Tithes* 4:11). Meir observes that if the Sabbath intervenes during the journey, the place where the traveler takes his Sabbath rest is deemed his temporary home (MR). It follows, for Meir, that the produce must be tithed as soon as the traveler accepts Sabbath hospitality, for it is as if the man has entered his own home with the untithed produce.

The interpolations at B and D do not alter the point of A+C in any way. B simply augments A's description of a journey covering some distance, claiming that even a journey from a locale in Judea to Jerusalem requires the law's attention. D adds that the rule of A-C holds true as well for the return trip. I can think of no reason for stressing this point.⁷

F-G, the second ruling, assumes that peddlars pass through a number of towns and therefore can be expected to enter many homes in order to sell their wares.⁸ The point of the ruling is that these homes, like those in which the transporter takes shelter (A+C), are not surrogates for the home of the peddler. Any untithed produce he happens to bring into such homes, therefore, need not be tithed. Rather, such a surrogate is constituted only by

the home in which he spends the night, i.e., where he is made to feel at home (A+C+E). Judah, at H, objects, stating that the very first home entered by the peddler is considered "his" home, and therefore renders the produce with him liable to the removal of tithes. Judah's point must be that any dwelling renders liable the produce of the person who enters it.⁹

- A. Ass-drivers and householders (*b^cly btym*; *ed. princ.: b^cly hgtym*, "oil merchants") who were traveling from place to place (*mmqwm lmqwm*)
- B. eat [untithed produce in their possession] and are exempt [from tithing it] (*'wklyn wptwryn*)
- C. until they reach the specific place [they have in mind] (*l'wtw mqwm*) [cf. M. 2:3A-E].
- D. Therefore, if a householder [at whose dwelling they arrive] designates a specific lodging-place for them--
- E. if they spend the night there, they are required to tithe [untithed produce in their possession before eating it],
- F. and if not, they are exempt from tithing.
- G. *M^csh š-*: R. Joshua went to visit Rabban Yoḥanan b. Zakkai at Beror Ḥayil, and the townspeople brought figs out to them. They [i.e., those in Joshua's party] said to him, "Must we tithe [the figs] (*mh 'nw l^csr*)?"
- H. He said to them, "If we are going to spend the night (*'m lnyn 'nw*) [we are] required to tithe, and if not, [we] are exempt from tithing."
- I. [If] they arrived *at their night's lodging* [= M. 2:3G]--
- J. even [if they remained only] two hours¹⁰--
- K. they must tithe (*šrykyn l^csr*).
- L. R. Meir says, "[If] they arrived *at the place [where they intended to] spend the Sabbath* [= M. 2:3E]--
- M. even [if they arrived] on the second day [of the week]--
- N. he is required to tithe (*ḥyyb l^csr*; E reads: *ptwryn ml^csr*, "they are exempt from tithing").¹¹

T. 2:1 (pp. 230-31, ls. 1-7)
 (G-H: cf. y. Ma. 2:3[49d],
 y. Dem. 3:1[23b])

T. contains three independent units: A-C+D-F, G-H and I-N. A-C, in accord with the "functionalist" position of M. 2:3A+C, E, and F-G, permits ass-drivers, who transport grain over wide areas (HY), and householders, who presumably make shorter journeys, to snack on produce in their possession until they reach their final destination. The rule is a substantial reformulation of M. 2:3A-C

and F-G. A, which includes the long-distance transporter (M. 2:3A) and the local traveler (M. 2:3F) in a single category, claims that one rule holds for all who carry untithed produce on a journey. As B-C tells us, these travelers eat of their produce, for it does not become liable until it is brought into the home-surrogate, established by the owner at his destination. But, D-F adds, if someone designates a lodging-place for the traveler, his produce becomes liable to tithes unless he refuses the hospitality. The point is that by accepting the householder's hospitality the traveler makes the home of the householder his own. Thus it is as if the traveler brought the produce into his own home, rendering it liable to tithes as produce which is going to be eaten at the table.

The independent precedent at G-H demonstrates the point made at D-F. Joshua (H) points out that the figs are liable only if the travelers intend to sleep in their host's house. In light of D-F, the redactor leads us to assume that if they have no such intention, they may eat the figs as they please until they actually decide to spend the night at someone's home.

I-N is separate from the foregoing materials, introducing glosses into M.'s text. I-K defines the minimum amount of time which is considered a night's lodging. If the travelers spend as little as two hours of the night at a householder's home, they are considered to have made his home their own, and must tithe their produce before eating it. L-N expands Meir's opinion¹² to include the notion that if the traveler reaches his Sabbath resting place early in the week, his produce is immediately liable. The produce is liable as early as the second day of the week preceding the Sabbath, for the traveler is already enjoying the privileges which, on the Sabbath, render the home a surrogate for his own.

2:4

- A. Produce from which one separated heave-offering before its processing was complete--
- B. R. Eliezer prohibits making a random snack of it [from that moment on].
- C. But Sages permit [a random snack until the processing is complete],
- D. except [in the case of] a basket of figs.
- E. A basket of [unprocessed] figs from which one separated heave-offering--

- F. R. Simeon permits [making a random snack of it].
 G. But Sages prohibit [making a random snack of it].

M. 2:4 (A-C = b. Bes. 35a, b)

At issue in the present pericope is the effect of removing heave-offering from produce which the householder is not yet obliged to tithe.¹³ All would agree that produce removed as heave-offering prior to the completion of processing may be used as heave-offering, despite its premature removal (M. Ter. 1:10). Our problem concerns the effects of this act on the householder's right to use the remaining unprocessed produce. Quite simply, we want to know whether the removal of heave-offering, an act normally performed upon forbidden produce, requires us to impose a forbidden status on produce which, for other reasons, is exempt from the law. The matter is disputed twice, first at A-C, in regard to produce in general, and again at E-G, regarding a basket of figs. The substance of the disputes is identical, except that Sages of A-C hold a position which contradicts Sages of E-G. D, which links the two disputes, harmonizes the contradiction.¹⁴ The pericope as a whole is a singleton, bridging two larger independent units (M. 2:1-3, M. 2:5-8) with an issue relevant to both--conditions under which untithed produce may be eaten.

Underlying the two disputes are divergent theories of the tithing process. For Eliezer¹⁵ (= Sages, G) this process, which brings the owner into contact with the sacred,¹⁶ has a continuity which cannot be interrupted. Once begun, the owner may not interrupt his removal of offerings by making a snack from that very produce. Now that part of the produce has been designated for a sacred purpose, the remainder is taboo (*tebel*) until the deconsecration of the entire batch is completed. The fact that, in the present circumstances, the owner is not yet obliged to tithe in the first place, can therefore be of no concern to Eliezer. The process of deconsecration, once begun, must be completed before the produce may be eaten. Sages at C (= Simeon, F), however, hold that designating part of the produce for a sacred purpose has no affect upon the remainder, unless the produce as a whole has already been processed and is desirable as food. Prior to the point at which a man is obliged to tithe, the removal of offerings is viewed as a series of discrete, unconnected actions. While the removal of the heave-offering itself is valid, the act of removal imposes no special taboo upon the produce from which it is separated. Since the owner has incurred no obligation, his produce remains permitted to him for snacking. It remains so until the

processing is complete and the produce, now desirable as food, stands under God's claim (cf. pp. 25-26). At the completion of processing, Sages will agree with Eliezer that all remaining offerings must be removed before the produce is permitted to its owner.

The juxtaposition of the two disputes places Sages of A-C in opposition to the position attributed to Sages at E-G. At C Sages appear to object to Eliezer (B) on grounds supplied by Simeon (F), while at G Sages dispute with Simeon on the basis of Eliezer's earlier position. The inconsistency is harmonized by the linking of the two disputes at D. D points out that for most types of unprocessed produce Sages permit a snack after the removal of heave-offering, except when the heave-offering has been removed from a basket of figs. In the latter case, they agree with Eliezer that all eating must cease. M. provides no clue to interpreting this distinction. T., however, will suggest that at issue at E-G is whether a basket of figs are deemed to be processed or unprocessed. In this case Sages, who at C permit a random snack of unprocessed produce after the removal of heave-offering, simply hold that a basket of figs is already deemed processed, and therefore is forbidden even before the removal of the heave-offering. This interpretation goes quite beyond the data of M. and, as we shall see below, requires a most curious interpretation of Simeon's reason for permitting a random snack of the figs.

- A. One who separates heave-offering from 1) dried figs [which] are going to be pressed, [or from] 2) dates [which] are going to be mashed--
- B. R. Eliezer says, "He shall not make a random snack of them [from that point on]."
- C. But Sages say, "He makes a random snack of them [until the processing is complete]" [cf. M. 2:4A-C].
- D. R. Eliezer concedes to Sages in the case of one who separates heave-offering from 1) grain [which] is going to be threshed, [or from] 2) grapes [which] are going to be made into wine, [or from] 3) olives [which] are going to be made into oil, that he shall make a random snack of them [until the grain is threshed and the grapes or olives are pressed].
- E. And Sages concede to R. Eliezer in the case of a basket of fruit (*klklh šl pyrwt*: E reads *klklt t'ynym*, "a basket of figs") from which he separated heave-offering before its processing was complete, that he shall not make a random snack of them [from that point on] [cf. M. 2:4D].

- F. But R. Simeon permits [making a random snack of them until their processing is complete] [= M. 2:4F]
- G. on the basis of an argument *a minoris ad majus* (*mql whwmr*): since he makes a random snack when there is an obligation to remove three tithes from it [viz. heave-offering, first tithe and either second tithe or poorman's tithe], it is logical that he shall make a random snack when there is an obligation to remove only two tithes.

T. 2:2

- H. One who purchases 1) dried figs [which] are going to be pressed, [or] 2) dates [which] are going to be pressed--
- I. R. Meir says, "He shall not make a random snack of them,
- J. "and he removes tithes [from them as he would for] doubtfully tithed produce."
- K. But Sages say, "He makes a random snack of them,
- L. "and he removes tithes [as he would for] doubtfully tithed produce" (*wm^csrn dmyy*; *ed. princ.* and y. Ma. 2:4 read: *wm^csrn wdyy*, "and he removes tithes as he would for certainly untithed produce").
- M. Yet (*w-*) R. Meir concedes to Sages in the case of one who purchases 1) grain [which] is going to be threshed [or] 2) grapes [which] are going to be made into wine, [or] 3) olives [which] are going to be made into oil, that he shall make a random snack of them.
- N. And Sages concede to R. Meir in the case of produce which does not require completion of processing [e.g., grapes or olives picked for immediate eating],¹⁷ that he shall not make a random snack of it.

T. 2:3

T. 2:2-3 (pp. 231, ls. 7-19)
 (A-C: cf. y. Ma. 2:4[49d];
 F-G: *loc. cit.*; H-L: *loc. cit.*.
 cf. b. Bes. 35b)

The two primary units of T. are A-E and H-N, exhibiting careful formal balance. Each unit begins with a dispute (A-C, H-L), the protases of which differ only in the operative verbs (*twrm* vs. *lwqh*). These protases, however, raise separate problems regarding the disposition of the produce in question. Thus the additional stichs, J and L, must be added at I-L to the otherwise identical apodoses, B-C and I+K. In each unit the dispute is followed by a description of exceptional cases (D-E, M-N) in which the disputants are said to agree with each other. In substance, the pericope creates an excellent bridge between M. 2:4 and M. 2:5.

A-E amplifies the dispute at M. 2:4A-C (+ D-G), while H-N introduces the problem of the tithing of produce which has been sold, the issue raised for the first time in M. at M. 2:5.

A-C offers a more detailed version of M. 2:4A-C, with Eliezer and Sages holding their positions as before. The important amplification of M. is at D, which, by qualifying Eliezer's objection to Sages, forces us to rethink the issue underlying the dispute. At D Eliezer agrees that if heave-offering is separated from totally unprocessed produce, the owner continues to snack on it. The reason emerges from the contrast between the produce of A and that of D. The former is in the midst of processing, while the latter is entirely untouched. The point can only be that, in the former case, the removal of heave-offering indicates that the householder considers the processing complete and the produce liable, while in the latter, the removal of heave-offering is obviously a matter of choice, for the produce can hardly be considered processed in its present condition. For T., then, the dispute at M. 2:4A-C concerns whether the act of separating heave-offering from unprocessed produce indicates that the owner deems the processing complete and the produce liable. E-G now takes up the problem of M. 2:4D+E-G. E, in conjunction with D, indicates that the Sages hold a basket of figs to be completely processed.¹⁸ The figs, therefore, are liable whether or not heave-offering has been removed. Simeon's objection, explained at G, is most interesting. He, like Sages, considers the figs processed and liable to the removal of tithes. Unlike Sages, however, he argues that the removal of heave-offering, the most holy of the offerings, actually decreases the power of the taboo which applies to the remaining produce. This theory of tithes, we must note, is attested nowhere else in M.

The second unit of the pericope, H-N, assumes that the sale of processed produce renders it liable (cf. M. 1:5L). The question at H-L concerns the disposition of produce which has been sold *before* the completion of processing. The figs and dates of H-L have been sold *after* drying but *before* pressing. There are two problems to solve. First, since the owner will not be able to process the produce any further after he sells it, do we therefore consider the produce completely processed at the time of sale? Second, can we assume that the owner has tithed the produce before selling it, even though he had not completed the processing which would make him responsible for tithing it? Meir (I) prohibits the purchaser from making a snack on the grounds that the owner's intentions to press the figs or dates are nullified by the sale.

In effect, the produce acquired by the purchaser is completely processed in its dried condition, and rendered liable by the sale. Yet (J), the purchaser tithes the produce under the assumption that the owner might have separated the heave-offering before sale, as A has indicated. Sages (K) permit the purchaser to make a snack, applying the same reasoning which they employ at C. Since the produce is intended for pressing, it remains in the category of unfinished produce until it is actually pressed, despite any intervening events. Thus the purchaser eats them until he himself presses them. Thereafter, as we would expect, he tithes the purchase as if it were certainly untithed.¹⁹

Turning to the familiar example of completely unprocessed grain, grapes or olives (M), Meir agrees with Sages that sale of such produce does not inhibit the purchaser's privilege of making a chance meal. As at B, he holds that the owner's intentions to process the produce are nullified by the sale. However, since the produce at M is completely untouched, the purchaser has simply acquired unprocessed produce. Therefore, he may continue to make a random snack of it, since the sale cannot render unprocessed produce liable. The concluding stich of the pericope (N) seems to be tacked on to provide the required case in which Sages agree with Meir, for it raises a non-issue. Produce which does not require completion of processing is simply ready for eating as soon as it is picked. Naturally, when it is sold, no one would dispute the fact that it is liable to the removal of all tithes before it may be eaten.

- A. One who harvests his vineyard for marketing,
- B. [under the condition] that, if ($\check{s}'m$) he finds no customers ($l' m\check{s}' lhn \check{s}wq$), he shall return them [i.e., the grapes] to the press (lgt);
- C. [or, one who harvests] his olives for marketing,
- D. [under the condition] that, if he finds no customers, he shall return them to the press (lbd)--
- E. [the purchaser of the grapes or olives] makes a random snack of them [without tithing],
- F. but ($w-$) tithes them [as he would tithe] produce which is certainly-untithed.

T. 2:4 (p. 232, ls. 19-20)

The pericope is autonomous of both M. and T. 2:2-3. The sentence has a double protasis, with C-D dependent upon A-B. E-F completes the rule, with an apodosis familiar from M. 2:1 and T. 2:3. T. employs principles already familiar to us. The owner

of the produce has harvested the crop and brought it to market, under the condition that, if he cannot sell it, he will process the produce further, i.e., press the grapes for wine or the olives for oil. The question raised is whether the produce is rendered liable by the owner's intention to sell it (as in M. 1:5L-M), or conversely, whether the owner's intention to process whatever he *cannot* sell exempts the entire batch from the removal of tithes until the processing is complete. The ruling (E) is that the purchaser of the produce may make a random snack. That is, the owner's intention to process what he cannot sell determines the status of that which he does sell. Whatever he sells is considered incompletely processed; therefore, as in T. 2:3M, the buyer makes a random snack. F assumes that the buyer knows the owner's plans to process the produce which remains unsold, for the buyer is required to tithe the produce as he would tithe produce which is certainly untithed. Since the buyer knows that the owner intends to press the grapes or olives, he assumes that the owner has not tithed them (Lieberman, *TK* II: 679.21).

2:5-6

- A. "One who says to his fellow, 'Take (*hylk*) this *issar*²⁰ and give me five figs for it,'
- B. "shall not eat [the figs] unless he tithes"--the words of R. Meir.
- C. R. Judah says, "[If] he eats [the figs] one by one (*'ht 'ht*), he is exempt [from tithing]; but if he gathers [them] together (*šrp*), he is required [to tithe the figs before eating any of them]."
- D. Said R. Judah, "*m^csh b-*: There was a rose garden in Jerusalem [where] figs were sold at three or four per *issar*, yet heave-offering and tithes were never removed from [the purchase]" (*mmnh*).

M. 2:5 (D: cf. T. Neg. 6:2,
b. B.Q. 82b)

- E. One who says to his fellow, "Take this *issar* [in payment] for ten²¹ figs which I shall choose (*š'bwrl y*),"
- F. chooses and eats [each fig separately without tithing the batch as a whole] (*bwrr w'wkl*).
- G. [One who says, "Take this *issar* in payment] for a cluster of grapes which I shall choose," plucks one grape at a time (*mgrgr*) and eats [each grape without tithing the cluster as a whole].

- H. [One who says, "Take this *issar* in payment] for a pomegranate which I shall choose," splits it into segments (*prt*) and eats [each segment separately without tithing the pomegranate as a whole].
- I. [One who says, "Take this *issar* in payment] for a melon which I shall choose," cuts it into slices (*šwpt*) and eats [each slice separately without tithing the melon as a whole].
- J. But if he said to him, ["Take this *issar* in payment] for these twenty figs,"
- K. [or] "for these two grape clusters,"
- L. [or] "for these two pomegranates,"
- M. [or] "for these two melons,"
- N. he eats as he pleases and is exempt [from tithing the batch],
- O. for he bought [them while they were still] attached to the ground (*mḥbr lqrq^o*) [*vis.*, before they were picked, when they were exempt from the removal of tithes].

M. 2:6

All purchases are deemed acts of appropriation by which the purchaser makes his own that which formerly belonged to another. The purchaser of untithed produce, therefore, must tithe it just as if he had brought it into his home. The present pericope offers an exemplification of this principle at A-B, and proceeds to qualify it with glosses at C-D and a major expansion at E-I + J-O. The point of Meir's ruling is that once money has changed hands and the quantity of the purchase is specified, any produce the buyer receives is deemed part of his purchase. It therefore must be tithed. Judah (C), however, points out that as long as the purchaser refrains from gathering the entire quantity into his possession at one time the purchase is deemed unconsummated (cf. M. B.M. 4:2).²² The purchaser, therefore, may eat one piece of produce at a time without incurring any obligation to tithe, for in this manner he refrains from appropriating the produce. Since it is at no point deemed a separate batch under his control, he cannot be responsible for tithing it. D, also attributed to Judah, is autonomous of the foregoing. I am unclear what the precedent is intended to demonstrate. Perhaps it explains Meir's stipulation that the sale include five figs. If so, Judah now points out that purchases of fewer than five figs are too insignificant to be tithed.²³

E-I, a secondary development of A-C, depends upon A for its language and C for its principle. In each of the four cases the purchaser offers to select the produce he intends to purchase.

E-F, the model for G, H, and I, states that if a customer stipulates a purchase of ten figs, he may select and eat each one at a time, and never be obliged to tithe. Since he has not gathered the stipulated quantity into his possession, the figs he has chosen are not deemed to belong to the batch he has bargained for. The same logic is exhibited, in progressively more subtle cases, at G-I. If a man purchases a cluster of grapes on the vine he must tithe them as soon as he picks the cluster. At G such a customer avoids this obligation by picking one grape at a time from the cluster while it remains on the vine (Maim., *Comm.*). As at E-F, he at no time has the stipulated purchase in his possession. The purchase of a pomegranate (H) raises more complicated problems for its segments are joined together into a single fruit. Once the fruit is plucked, it is, naturally, liable to be tithed. Nevertheless the purchaser, who has stipulated a purchase of the entire pomegranate, may split individual sections from the fruit and eat them without tithing, as long as the pomegranate itself remains on the tree. The last problem, I's melon, demonstrates the lengths to which E-F's logic may be pushed. The melon is obviously a single, indivisible fruit, yet as long as the melon is attached to the vine, the purchaser may cut slices of melon and consume them without tithing. In all of these cases, Judah's principle (C) clearly supersedes Meir's (A-B). If Meir had his way the mere transfer of coins would oblige the purchaser to tithe any part of the purchase he actually takes into his possession.

J-N, clearly formulated to balance E-I, is obscure. Now the purchaser doubles the quantity of his purchase, but no longer selects it himself (L-M). He merely indicates the produce he has in mind. I cannot explain why these conditions of purchase permit the buyer to eat as he pleases without tithing (N). O's explanation is hardly satisfactory. If the point is that the buyer paid for the produce before it was picked (MR), this is clearly the case at E-I as well. If, following Maimonides (*Comm.*), we understand O to indicate that the man has bought unripe produce growing on the vine, we are no nearer to a solution. While M. 5:1 certainly exempts such purchases from the removal of tithes, there is no reason to believe that the case of J-N describes such a purchase. I conclude that the glossator of J-N was as much perplexed by it as I.

- A. *One who says to his fellow, "Take this issar and give me five figs for it" [= M. 2:5A],*

- B. *eats [the figs] one by one (ed. princ. adds: w-, "and") is exempt [from tithing the purchase]. If he gathers [them] together, he is required [to tithe the figs before eating any of them] [= M. 2:5C].*
- C. "If the owner brought (*hby'*) [the figs] out and hands (*nwt'n*) [them] to him,
- D. "he [i.e., the purchaser] eats and need not tithe" (*'wkl w'yn ḡryk l^osr*; Lieberman emends: *'pylw 'ḡryk l^osr*, "even [if he eats only] one [fig], he must tithe")²⁴--the words of R. Meir.
- E. R. Judah says, "In either case (*byn kk wbyn kk*), he eats one by one (ed. princ. adds: w-, "and") is exempt [from tithing the purchase]. If he gathers [them] together, he is required [to tithe the figs before eating any of them]" [= M. 2:5C].
- T. 2:11 (p. 234, ls. 41-44)

A-B recasts M. 2:5A + C. Judah's gloss in M. now becomes the apodosis of an anonymous rule, permitting a purchaser to pick and eat one fig at a time without tithing. C-D (on the basis of Lieberman's emendation) qualifies the foregoing. In Meir's view, if the owner picks the figs himself and hands them to the purchaser, they are rendered liable by the sale. The owner has gathered the figs together, requiring the purchaser, whose purchase is now before him, to tithe. This understanding of Meir's ruling at M. 2:5A-B suggests that, in T.'s view, Meir does not differ with Judah over a case in which the purchaser himself picks the figs (A-B; cf. y. Ma. 2:5[49d]). E glosses D in Judah's name, adding that whether the purchaser picks the figs or receives them from the owner's hand, the purchase is not complete (and the figs are exempt) unless the purchaser actually gathers the figs into his possession. If he does not do so, he may even eat one fig at a time from the owner's hand without tithing (HY; MR, M. 2:5).

2:7

- A. One who hires a worker to harvest (*lqḡwt*)²⁵ figs for him--
- B. 1) [If the worker] said to him, "On condition that I eat figs [as part of my pay],"
- C. he eats [figs during the harvest] and is exempt [from tithing them].
- D. 2) [If the worker said to him,] "On condition that I and my dependents (*bny byty*; thirteen MSS. read: *bny*, "my son") eat [figs as part of my pay],"

- E. or [if he said, "On condition] that my son shall eat [figs] as [part of] my pay,"
- F. he [i.e., the worker] eats [figs during the harvest] and is exempt [from tithing them],
- G. while (*w-*) his son eats [figs during the harvest] but (*w-*) is required [to tithe them].
- H. 3) [If the worker said,] "On condition that I eat [figs as part of my pay both] during and after the harvest"--
- I. during the harvest he eats and is exempt,
- J. while (*w-*) after the harvest he eats but is required [to tithe],
- K. for [in the latter case] he [is granted] no eating privileges by the Torah (*'ynw 'wkl mn htwrh*).
- L. This is the general principle:
- M. One who [is granted] eating privileges by the Torah is exempt [from tithing what he eats], while (*w-*) one who [is granted] no eating privileges by the Torah is required [to tithe what he eats].

M. 2:7 (A-G: cf. b. B.M. 92a-b;
M-N: cf. M. B.M. 7:2)

Not all purchases involve an exchange of money. Workers, for example, who barter their labor for produce, are deemed to have purchased that produce, just as if they had acquired it with coins in a market. Consequently, they must tithe any untithed produce acquired in payment for their labor. The present pericope examines an important qualification of this assumed principle. L-M, which glosses and explains the entire pericope, points out that field-workers, who are granted by the Torah the right to eat freely of produce during the harvest (M. B.M. 7:2),²⁶ need not tithe such produce. Since it is theirs by right, it cannot be deemed a purchase, and since they eat by right of Torah *only* during their labor (M. B.M. 7:4),²⁷ whatever they eat is deemed a random snack.

The cases themselves are straightforward. A sets the context for the triplet (B-C, D-G, H-J + K), in which each case adjudicates the tithing responsibilities of those who eat produce earned by the worker's labor. The problem in each case is raised by the worker's stipulation that produce to which he is entitled by the Torah is to be included in his wage. At B-C the worker continues to enjoy the privilege of eating the produce without tithing. Even though he identifies the figs as his pay, his prior right to eat them exempts him from tithing what he himself regards as a purchase.²⁸ The privilege accorded by the Torah, in other words,

overrides any contractual obligations incurred by the worker. At D-G we distinguish between the privileges of the worker himself, and the privileges of those whom he stipulates shall eat in exchange for his own labor. While the worker remains under the privilege of the Torah, his non-laboring dependents do not, and therefore must tithe whatever they eat. His contract is inapplicable to the figs he eats, but applies to all figs eaten by his dependents. As a purchase, such figs must be tithed. H-J, the third and final case, assumes with M. B.M. 7:4 that the worker's privilege is limited to produce eaten while he is actually working on the harvest. Any produce eaten thereafter under the terms of the contract is therefore deemed a purchase, for the Torah no longer deems such produce to be his by right (K). All such produce, consequently, must be tithed.

2:8

- A. [If] he was working on [*hyh* ^{*c*}*wsh* *b-*] cooking-figs (*lbšym*);²⁹ he shall not eat white figs (*bnwt šb*)³⁰ [without tithing them: Maim., *Tithes* 5:12].
- B. [If he was working on] white figs, he shall not eat cooking-figs [without tithing them].
- C. To be sure (*'bl*), he [may] restrain himself [from eating altogether] until he reaches the area [in which] the high-quality [figs] grow, and [then may] eat.
- D. One who exchanges [figs] with his fellow--
- E. [If] his [figs] are for eating and his fellow's are for eating,
- F. [or if] his [figs] are to be dried and his fellow's are to be dried,
- H. he is required [to tithe what he acquires].
- I. R. Judah says, "One who exchanges [his figs for figs] which are for eating is required [to tithe],
- J. "but (*w-*) [if he exchanges his figs for figs] which are to be dried, he is exempt [from tithing until the figs are dried]."

M. 2:8 (A-B = b. Ned. 50b;
 A-C: cf. M. B.M. 7:4, Sifre Dt.
 266; D-J = b. Bes. 35b)

While independent of M. 2:7, A-B+C carries forward the latter's thesis that a worker's privilege to eat produce he is harvesting exempts him as well from the obligation to tithe what he eats. A-B makes an important clarification. Should the worker eat one type of produce while harvesting another, his privilege

no longer extends to the produce eaten. He must therefore remove tithes from such produce, for it is deemed to have been acquired in exchange for his labor. The gloss at C is irrelevant to the issue of tithing. It simply adds that the worker may refrain from eating poorer produce on which he happens to be working until he begins work on the better produce. He may then eat his fill of the latter without fear that he will be overstepping the privilege accorded to him by the Torah.

The irrelevance of C to A-B is solely a function of the context within which A-B+C has been redacted. In fact, the entire unit appears, with minor changes, at M. B.M. 7:4,³¹ where it qualifies a list of workers who are entitled by the Torah to eat produce with which they are engaged (M. B.M. 7:2). The point of M. B.M. 7:4A-B (= M. 2:8A-B) is that the worker, entitled by the Torah to eat produce which he is harvesting, may eat only that produce. If he interrupts his labor to cross the field and eat another type of produce, he is deemed responsible for reimbursement. C now adds a plausible, if obvious, afterthought. The worker may refrain from eating poorer produce while he is harvesting it, and fill up on the finer once his work brings him into that area of the field. The point is perfectly appropriate to A-B in the context of M. B.M. 7:2ff., but is ill-suited to M. 2:8A-B, once we have read into the ruling the contextually-required issue of tithing.

D-H + I-J returns us to the basic task of the chapter, the enumeration of transactions which impose upon the recipient of untithed produce the obligation to tithe. Exchange of produce for produce, like the exchange of produce for labor, involves the actual transfer of ownership over the produce. It is therefore equivalent to a monetary purchase, obliging the new owner to tithe what he has received in exchange for his own produce. The basic ruling is at D+H, into which E-G, which introduces a separate issue, has been interpolated. This interpolation then generates Judah's qualification at I-J. The point of E-G is that barter, as an act of appropriation, obliges the recipient of produce to tithe it, even if the produce requires further processing (F-G). This position is analogous to that established by the glossator of M. 1:5-6. There, we recall, unprocessed produce must be tithed if the owner stores it away, the act by which he effects acquisition of the produce. Judah disagrees with this general position. He holds that despite the appropriation of the produce its unprocessed condition permits the assumption that it is undesirable as food to its new owner. Since he is assumed to

desire it only after processing, it remains permitted to him as a snack until that time. According to Judah, then, the simple fact of appropriation is insufficient to oblige the owner to tithe. The essential condition is that whatever has been appropriated is first useful and desirable as food (cf. M. 3:1A-B).

- A. 1) [If] he said to him, "Go pick figs for yourself from the tree"--
- B. [the one who picks] makes a random snack of them,
- C. and tithes them [as he would tithe] produce which is certainly-untithed [should he make a regular meal of them: cf. M. 2:1].
- D. 2) [If] he said to him, "Go and fill this basket for yourself"--
- E. [the one who fills his basket] makes a random snack of [the figs],
- F. and tithes them [as he would tithe] produce which is doubtfully-tithed [should he make a regular meal of them].
- G. "Under what circumstances [does he tithe them as he would tithe produce which is doubtfully-tithed]? When [the owner of the figs is an] *am ha'areš* [i.e., someone who cannot be trusted to keep the laws of uncleanness and tithing].
- H. "But [if the owner is a] *haber* [i.e., someone committed to keeping the laws of uncleanness and tithing], he eats [freely] and need not tithe"--the words of Rabbi.
- I. Rabban Simeon ben Gamaliel says, "Under what circumstances [does he tithe them as he would tithe produce which is doubtfully-tithed]? When [the owner of the figs is an] *am ha'areš*.
- J. "But [if the owner is a] *haber*, he shall not eat [at all] unless he tithes [the produce as if it were certainly untithed],
- K. "for *haberim* were not suspected of separating heave-offering [from one batch of produce in the name of a second batch which was] not in the same vicinity (*šl' mn hmqp*)."
- L. Said Rabbi, "I prefer my opinion to the opinion of Rabban Simeon ben Gamaliel. It is preferable that *haberim* separate heave-offering [from one batch in the name of a second which was] not in the same vicinity, for [thus] they do not supply the *amei ha'areš* with forbidden produce (*tblm*)."
- T. 2:5
- M. 3) [If] he said to him, "Go and pick figs for yourself³² from the tree"--
- N. [the one who picks] eats [the figs]
- O. and is not apprehensive [that the owner might consider his eating] to be robbery (*w'yn hwšš mšm gzl*).

- P. 4) [If he said to him,] "Go and fill this basket for yourself"--
- Q. lo, this one is apprehensive [that the owner might consider his eating] to be robbery.
- R. In either case, he removes, on their behalf, heave-offering and tithes from [other produce] belonging to the householder,
- S. and is not apprehensive [that the householder might consider the act of removing heave-offering and tithes to be robbery].
- T. 5) [If] he said to him, "Go and pick twenty figs for yourself from my [figs], and I shall eat my fill of yours"--
- U. the one who picks a specified quantity (*bmnyyn*) is required [to tithe],
- V. [but] the one who eats his fill is exempt [from tithing] [cf. M. 2:8D-H].

T. 2:6

- W. R. Eleazar b. R. Şadoq (E reads: b. R. Simeon³³) says, "One who combines (*hmšrp*) three figs [together] in his mouth is exempt [from tithing],
- X. [but if he combines] four, lo, this one is required [to tithe] [cf. M. 2:5C]."
- Y. [If] he said to him, "Go and pick a large basket [of figs] for yourself,"
- Z. [the quantity he picks] is at least a *še'ah*.³⁴
- AA. [If he said,] "a medium-sized [basket],"
- BB. [the quantity he picks] is at least three *qabs*.
- CC. [If he said,] "a small [basket],"
- DD. [the quantity he picks] is at least two *qabs*.

T. 2:7

T. 2:5-7 (pp. 232-33, ls. 20-33)
 (A-L = b. Erub. 32a; D-L: cf. y. Ma. 2:1[49c]; K: cf. b. Erub. 30b, b. Git. 30b, b. Hul. 7a; M-Q: cf. y. Ma. 2:1[49c]; T-V = y. Ma. 2:1[49c]; W-X: cf. y. Ma. 3:8[50d])

T. concludes its discussion of M. Chapter Two with an autonomous formulation consisting of five substantially glossed cases. Each case--and the final gloss at Y-DD--is built upon the identical protasis, '*mr lw š' wlqṭ/wml' lk*.'

A-C and D-F return us to the problem of M. 2:1, determining the status of a gift of produce, the growth and processing of which one has not personally supervised.³⁵ In the first case, the owner of a fig tree gives a friend permission to eat figs from his tree. The recipient makes a random snack, as he does at M. 2:1A-C, for the figs have been picked right from the tree and

clearly have not been rendered liable by processing, passage through the donor's home, or sale. It follows that, should the recipient take the figs home or make a regular meal of them elsewhere, he tithes the figs in the certainty that the owner had removed none of the required offerings (M. 2:1D-E). Since the figs have come directly from the tree, the owner had neither reason nor opportunity to tithe them. D-F offers a complementary case in which the friend is now told to fill a basket of figs for himself, presumably from figs which are harvested. The man makes a random snack under these circumstances as well, for even if the processing is complete, the figs have not been rendered liable either by passage through the donor's home or by sale. This time, however, if he himself renders the figs liable, he tithes them as if they were doubtfully tithed. Since he filled his basket from figs which were already harvested, the possibility exists that the owner might have already tithed them before giving them to his friend.

G-L glosses F with a debate concerning the tithing procedures likely to be practiced by *haberim*. Rabbi (G-H) says that the recipient of a basket of figs tithes them as doubtfully-tithed only if the owner of the figs is an ^o*am ha'areṣ*, who is expected to be careless about proper tithing. However, if the owner is a *haber*, the recipient assumes that the figs are already fully tithed, and eats them freely. The assumption is that a *haber* will not permit any of his produce to be eaten unless he has properly tithed it, whether or not it is liable (b. Erub. 32a, s.v., *d'mr rb ḥnyn' ḥwz'h*). Simeon b. Gamaliel agrees with Rabbi that the case of F must refer to an owner who is an ^o*am ha'areṣ*, but differs concerning the disposition of the produce should the owner be a *haber*. In the latter case, the recipient assumes that the figs are fully liable and have yet to be tithed. As K suggests, the owner is not expected to have tithed the figs before they become liable, nor is he expected to remove tithes from another batch of produce outside the immediate vicinity on behalf of those which he has just given away (M. Bik. 2:5, cf. b. Erub. 32b, s.v., *bm'y qmḥlgy*). Rabbi (L) is given the victory in the debate. He reasons that a *haber* is likely to separate heave-offering (and tithes) from a separate batch of produce for that which he has given away, rather than risk the possibility that one who is not scrupulous about tithing might acquire the produce and eat it before it is tithed.³⁶

M-O and P-Q share the protases of A-C and D-F, but discuss an issue tangential to M. The rulings are, in fact, more appropriate

to M. B.M. 7:2-4, the source of M. 2:7-8's discussion of the rights of the worker to eat produce without being accused of theft. If a man receives permission to pick figs from someone's tree, he may eat as many figs as he pleases without fear that the owner will accuse him of robbery (M-O; cf. T. Ter. 1:5). Since the owner did not specify a particular amount, he has indicated that the man is free to eat an unlimited quantity (MB). However, if the owner specifies a particular amount, such as a basketful, as his gift, matters change (P-Q). Now, should the recipient eat any figs other than those in the basket, he may be suspected of robbery, for the owner has specified that he may eat only what he can fit into the basket. Judah (R-S) glosses M-Q, returning us to the theme of M. If the recipient removes offerings from a separate batch of the owner's produce on behalf of those which he has been given, he need not fear that the owner will consider the offerings to have been stolen. MB, HY and Lieberman (*TK*, II: 681.29) explain that the owner would not want to diminish his gift by requiring the recipient to remove the offerings from the gift itself. Therefore, he intends the recipient to remove the offerings from other produce in his possession on behalf of the gift.

The last case, T-V, qualifies M. 2:8E-H's ruling that an exchange of produce is considered a sale, rendering the produce liable. Now we are told that only exchanges which involve specific quantities are considered purchases. A man gives twenty figs of his own for the right to eat as many of his friend's figs as he pleases. The man who accepts the twenty figs must tithe them, for they are rendered liable by the exchange, as M. 2:8E-H would lead us to expect. However, the one who receives the right to eat as much as he wants need not tithe. He has not received a specific quantity, and further, at no point has his purchase before him, for he has agreed to purchase only what he has already eaten. In effect, he has made no purchase at all.³⁷

W-X breaks the formal unity of the pericope, and is clearly an interpolation. The rule states that the purchaser may place as many as three figs in his mouth without tithing them, a significant rejection of the idea that he may only eat one at a time (M. 2:5C). Y-DD returns to the formal traits of the preceding cases, but changes the topic to a definition of the capacities of various sizes of baskets. Presumably the information would be important in a case such as P-Q, where one who is told to fill a small basket, for example, might be suspected of robbery if he placed three *qabs* or more in the basket.

CHAPTER THREE

MAASEROT CHAPTER THREE

The first unit of Chapter Three, M. 3:1-4, continues and brings to a close Chapter Two's discussion of transactions involving untithed produce. Of interest are further problems regarding produce eaten in exchange for labor, a topic familiar from M. 2:7-8C. M. 3:5-10, the chapter's second unit, stands entirely on its own. Although it is clearly a composite construction, the unit as a whole offers a coherent and thorough discussion of a single thesis--that the courtyard surrounding a home is deemed to be an extension of that home. It follows that produce brought into such a courtyard, like produce brought into the home, is immediately rendered liable to tithing. While the chapter's units are thematically unrelated, each performs a similar task--the application of familiar principles to new cases.

M. 3:1-3, a unitary construction of five cases, is conceptually dependent upon M. 2:7's notion that workers in the course of their harvesting are entitled by the Torah to eat the harvested produce. M. now inquires about produce eaten by workers who are not engaged in harvesting. We recall that such workers have no special privilege to the untithed produce. The problem now is to determine whether produce eaten by such workers has been taken in exchange for their labor, and, therefore, ought to be tithed. If, as in M. 2:7, the employees receive board as part of their wage, they indeed must tithe what they eat, for their labor is the medium of exchange by which the produce becomes theirs. Workers earning a cash wage, however, are permitted to snack on produce during their labor without tithing. We assume that it is in the employer's interest to be generous with the workers, and that whatever they eat will be written off as a gift. Since gifts are not deemed to have undergone transfer of ownership until the recipient brings them home (M. 2:1), produce eaten by cash earners during their labor remains exempt from the law. M.'s entire unit on the transfer of title over untithed produce, begun at M. 2:1, concludes at M. 3:4, a pericope only tangentially relevant to the unit as a whole. The heavily glossed triplet is concerned with the tithing of abandoned produce. While such produce is normally exempt from the law (y. Ma. 1:1[48d]), M. argues that if the produce was processed before being abandoned, the finder must take upon himself the loser's obligation to tithe.

An entirely fresh topic, the tithing of produce brought into the courtyard of a private home, occupies M. 3:5-10. The basic principle informing the unit has already been anticipated by M. 2:3. There, we recall, it is argued that any dwelling in which a traveller is made to feel at home is deemed a surrogate for his own home. Untithed produce which he brings into such a dwelling is therefore rendered liable to the removal of tithes. The present unit assumes and develops this principle in regard to the domestic courtyard, an extension of (rather than a surrogate for) the home itself. M. 3:5 introduces the unit with a fundamental conception. The five authorities cited in M. 3:5 all agree that, insofar as a courtyard affords the sense of privacy characteristic of the home, such a courtyard is considered an extension of the boundaries of the home. All produce brought into such a courtyard, it follows, is rendered liable to tithing. The notion that privacy is defined by analogy to the home is further investigated at M. 3:6. Its two rulings define areas within the courtyard itself to which the analogy of the home, and therefore the liability of produce stored there, is problematic. Rooftops (M. 3:6A), for example, are above the space of the courtyard and are deemed a domain separate from the courtyard itself (M. Erub. 9:1). Produce placed on the rooftop in order to dry is therefore exempt even after it has dried, for while processed, it is outside the confines of the courtyard. Produce placed in the courtyard's gatehouse or portico, on the other hand, need be tithed only if the courtyard itself affords privacy (M. 3:6B-D). These structures, unlike houses, are not independent dwellings, but rather serve the courtyard itself and are deemed part of it. Thus they share its status regarding the law (cf. M. Erub. 8:4).

After a brief digression concerning the suitability as surrogates for the home of other non-domestic structures--such as field-sheds (M. 3:7)--M. returns to the law of the courtyard. A triplet at M. 3:8-9 demonstrates that principles of acquisition, familiar from M. 2:5-6's discussion of commercial transactions, apply as well in the quite different setting of the courtyard. M. 2:5-6, we recall, argues that a purchase of untithed produce need be tithed only after the purchaser gathers the produce into his possession. Prior to the gathering, the purchaser may eat single pieces of fruit without tithing, for he is not yet deemed to be in possession of the produce. This logic is applied, at M. 3:8-9, to the problem posed by a tree or vine growing within a domestic courtyard. Clearly, as soon as the householder harvests the produce, he must tithe it before making any use of it.

The reason is that since the produce is in the courtyard it is deemed appropriated the moment it has been harvested. M. points out, however, that as long as the produce is unharvested, it may be eaten without the removal of tithes. The fruit on the tree, like the fruit in the purveyor's bin, is not yet the possession of the householder, even though it is technically within his domain (or, in the case of the customer, is already paid for). Like the purchaser, therefore, the householder may pick and eat a single piece of fruit from the tree without tithing. Neither the customer nor the householder need tithe produce which is not yet his own.

M. 3:10A-G adds a fourth case to M. 3:8-9, but indeed addresses a different problem. The question is whether the liability of produce is determined by the laws applicable to the place in which it grows or by those which apply to the place in which it is actually picked. We have a tree growing in a courtyard, with a branch extending beyond the courtyard into the neutral area of the garden (A-C), and a matching case (D-G) in which the location of tree and branch are reversed (i.e., tree/courtyard + branch/garden vs. tree/garden + branch/courtyard). The principle is that the status of the produce *vis a vis* the law of tithes is determined by the laws of the place in which the produce is actually harvested. The problem of M. 3:10A-G, but not its substantive concerns, is carried forward by the chapter's concluding set of materials, a series of four formally unitary cases at M. 3:10H-P. A tree grows in one legal domain, while its branch extends into a second domain within which different laws apply. The problem, as above, is whether in adjudicating the diverse legal issues raised in the cases, the location of the roots or the branch is the key factor in determining the status of the tree or its fruit.

T. to Chapter Three requires little comment. Although T. provides a relatively large amount of materials to M.--fourteen pericopae in all--these materials offer no unified perspective upon M.'s law, and simply offer random observations and clarifications of relatively minor points.

3:1-3

- A. 1) One who brings (*hm^cbyr*) figs through his courtyard in order to spread them out for drying (*lqšwt*)¹--
- B. his sons and his dependents eat them and are exempt [from tithing].
- C. 2) [As for] the workers who are [working] for him--

- D. should (*bāmn š-*) they have no claim upon him for their board (*'yn lhm ^clyw mzwnt*),² they eat and are exempt from tithing .
- E. But (*'bl*) if they have a claim upon him for their board (*yš lhm ^clyw mzwnt*), lo, these shall not eat without first removing tithes .

M. 3:1 (A-B: cf. b. Bes. 34b, 35b)

- F. 3) One who brings (*hmwšy'*) his workers out to the field--
- G. should they have no [claim] upon him [for their] board, they eat and are exempt [from tithing].
- H. But (*w-*) if they have [a claim] upon him [for their] board, they eat one by one from the tree (*t'nḥ*),
- I. but (*'bl*) not from the basket, or the bin, or from the pile in which the figs are being dried (*mwqšh*).³

M. 3:2

- J. 4) One who hires (*hšwkr*) a worker to work among olives [but not to harvest them: y. Ma. 3:3 (50c)]--
- K. [if the worker stipulated,] "On condition that I eat olives [as part of my pay]," he eats one by one [from the tree], and is exempt [from tithing].
- L. But if he gathered [them] together, he is required [to tithe].
- M. 5) [One who hires a worker] to weed among onions--
- N. [if the worker] stipulated (*'mr lw*), "On condition that I eat shoots (*yraq*) [as part of my pay]," he plucks (*mqrṭm*) a leaf at a time (*^clh ^clh*) and eats [without tithing].
- O. But if he gathers [the leaves] together, he is required [to tithe].

M. 3:3

The five rulings before us resume M. 2:7's discussion of produce eaten by workers. The rulings fall into two formal groups, identified by the formulaic peculiarities of their apodoses. In the first group (A-B+C-E, F-I), the apodoses depend upon the *'yn/ yš* contrast (D-E, G-I) while the apodoses of the second group (J-L + M-O) repeat the direct discourse familiar from M. 2:7 (*^cl mnt...*). The whole is unified by the protases at A, F and J, which establish the identical formulary pattern for all cases (*h* + participle). The imposition of a single pattern upon the diverse materials stresses the fact that a single theme is addressed in all five cases. As the contrast between A-B and C-E makes clear, at issue is the distinction between the tithing obligations of a householder's dependents, who share his food by right, and his hired

hands, who may establish by contract their dependence upon his board. Only untithed produce eaten by the latter need be tithed, for the workers' contract defines produce eaten by them as a purchase. Assumed at C-E, F-I, J-L, and M-O is the fact that the workers in question, who are not engaged in the actual harvesting or processing of the produce, are accorded by the Torah no special privileges to eat the produce (see p. 185, n.26). Their obligation to tithe, therefore, is determined solely by whether or not their contract stipulates board as part of their wage.

While the courtyard of A-B is considered part of a person's home (M. 3:5), unprocessed figs brought into it are not rendered liable to the removal of tithes. Since the figs are not yet desirable to the owner, he may continue to make a snack of them without tithing, despite having brought them home (cf. Judah, M. 2:8J). The householder's dependents, who share all the householder's privileges regarding the consumption of untithed produce, may also eat the untithed figs until the processing has been completed. Matters are more complicated regarding the workers who actually bring the figs into the courtyard (C-E). We assume that some have contracted with the householder to eat at his table in exchange for their labor, while others simply earn a cash wage. The latter (D) need not tithe any snack they take from the produce, for they are understood to benefit from the householder's generosity (T. 2:10b, T. 2:13). Whatever they eat, in other words, is deemed a gift (cf. M. 2:1), and is not liable to the removal of tithes. The former (E), however, who have a contract for board, are deemed to have purchased the produce, and must therefore tithe even a snack (MR).⁴

At F-I, the concluding case of the first group of rulings, workers are brought out for field work. The principles of C-E apply as well to produce eaten by these workers. Those with no contract for board snack with the permission of the householder, while those with such a contract must tithe. H-I, which varies the formulary pattern of its formal mate at E, makes a point familiar from M. 2:5-6. As in more conventional purchases, produce eaten in exchange for labor is exempt from tithes if the worker picks and eats one piece of produce at a time. If, on the other hand, the produce is already gathered before him, e.g., in a basket, his purchase is already deemed to be consummated. Any produce he removes from the basket, even one by one, is therefore liable to the removal of tithes. The final two cases (J-L, M-O) make the same point. Since olives or onions eaten by the workers

certainly stand under the terms of his contract, they are tithable purchases, subject to all rules governing such purchases.

- A. One who brings figs from the field
- B. in order to eat them in a courtyard which is exempt from [the law of] tithes [e.g., it is not a private courtyard; cf. M. 3:5]--
- C. [if] he was careless (*škh*)⁵
- D. and brought them into his house,
- E. he removes them [from the house] to the courtyard,
- F. and makes a random snack of them.

T. 2:8 (A-F: cf. y. Ma. 3:1
[50 b-c])

- G. One who brings figs from the field
- H. in order to eat them in a courtyard which is exempt from [the law of] tithes--
- I. [if] he was careless
- J. and brought them up to the roof [in order to dry them]--
- K. even [while the figs are] within his house [prior to bringing them up to the roof],
- L. he makes a random snack of them.

T. 2:9

- M. One who brings figs from the field
- N. in order to eat them on the roof--
- O. [if] he was careless
- P. and brought them into another courtyard (*lh̄sr 'hrt*; *ed. princ.* and E read: *ltwk/lh̄sr h̄brw*, "into the courtyard of his fellow") [prior to bringing them up to the roof],
- Q. he shall not eat unless he tithes.
- R. R. Yose b. R. Judah says, "He brings them up to the roof and eats."

T. 2:10a (pp. 238-39, ls. 33-39)
(M-R: cf. y. Ma. 3:1[50b-c])

T. offers an important complement to M. 3:1A-B, investigating the relationship between actions and intentions with regard to the appropriation of untithed produce. The issue emerges from M. 3:1A-B, which has pointed out that the act of bringing produce into the courtyard reveals the intention to consume it *only* if the produce itself is processed, i.e., ready for consumption (cf. M. 4:1-5D).

The point of A-F, the first case of the triplet, is that an unintended act of appropriation may be reversed without imposing

liability to tithing upon the produce. A farmer who has unintentionally brought untithed produce into his home is indeed forbidden from eating them there unless he tithes. He may, however, remove them from the house and make a snack of them without tithing, just as if he had never brought them home in the first place. G-L is similar in its basic point. Since the farmer intends to bring his produce to the roof, a place in which produce is not made liable to the removal of tithes (cf. M. 3:6A), passage through the house is deemed of no effect. The man may even snack upon his untithed produce within the house since he intends to store them elsewhere. M-Q, the conclusion of the triplet, presents a case in which the man clearly demonstrates that he intends to appropriate the produce. He has gone out of his way by passing through his neighbor's courtyard prior to bringing his produce home (KM, *Tithes* 4:13; PM, y. Ma. 3:1, s.v., *hby' t'ny*).⁶ We assume therefore that there is no inadvertance at all, but rather that the householder intended to bring the produce to a location where they would become liable. He may not eat the produce, therefore, unless he tithes. Yose b. Judah (R) argues that the case is no different from the others. The man's original intention prevails despite his suspect action.

- A. *One who brings his workers out to his field* [= M. 3:2F]
- B. may not (*'yn ršyy*) feed them [in exchange for their labor]
- C. unless he has indeed tithed [the produce which he gives them].
- D. And they may not eat [in exchange for their labor]
- E. unless they have indeed tithed [the produce which they receive].
- F. If the householder brought [produce] out and placed it before them as a gesture of generosity (*b^eyn yph*),
- G. they eat and need not tithe.

T. 2:10b (p. 234, ls. 39-41)

T. cites M. 3:2F at A and then proceeds to supplement M. by providing rulings relevant to the employer rather than to the employees. B-C prohibits the employer from providing the workers with untithed produce in exchange for their labor. Since the exchange of produce for labor is regarded as a sale, the owner must tithe that which he sells to the worker (cf. M. Dem. 2:2).⁷ D-E is the same law stated from the point of view of the worker. Since he purchases the produce with his labor, he must tithe this purchase as he would any other. F-G brings us outside the

framework of the above cases. Now the employer simply places the produce at the disposal of the workers as a gift. Since no sale is involved, the workers share the owner's right to make a chance meal, for he has offered them what is his.

- A. "One who purchases (*lʷqḥ*) dried figs [directly] from the pile in which they are being dried (*mn ḥmʷqṣḥ*),
- B. "shall not eat unless he tithes"--the words of R. Meir.
- C. Said R. Judah, "Under what circumstances [is this the case]? When he takes (*lʷqṭ*) [figs] from his own [pile].
- D. "But when he takes [figs] from his fellow's [pile],
- E. "he eats and need not tithe."

T. 2:12 (p. 234, ls. 44-47)

T. is autonomous of M., placed here because of M. 3:2I, which forbids workers to eat figs from the drying-pile. Meir says that if one purchases figs while they are drying, i.e., before their processing is complete, they are rendered liable. He has given a comparable ruling at T. 2:3 (cf. M. 2:5). Alternatively, the figs are liable because, having been purchased from the pile, they are already gathered into a batch before the purchaser (M. 3:2I). On either reading of Meir's reasoning, Judah's gloss is obvious. He states that Meir's ruling holds only for the figs in the pile which has been purchased. The purchaser may, however, eat other figs freely, for he has not purchased them (cf. Lieberman, *TK* II:685.44-45).

- A. Workers who were weeding (*mnkš̄yn*) in the field,
- B. or hoeing (*m^eḏryn*)⁸ in the field,
- C. shall not eat [olives] from the olive tree or [figs] from the fig tree,
- D. unless the employer (*b^el ḥbyt*) has given them the right (*ntn lhn ... rš̄wt*).
- E. Therefore, if the employer has given them the right,
- F. they eat, and gather [more than one olive or fig] together [at a time], and are exempt [from tithing] (*wpṭwryn*; E reads: *whybyyn*, "and are required [to tithe]").
- G. Under what circumstances [is this the case]? *In a case in which they have no [claim] upon him [for their] board* [= M. 3:2G].
- H. *If they have [a claim] upon him [for their] board* [= M. 3:2H],
- I. they eat [one by one] and are exempt [from tithing].
- J. But if they gathered them together (*šyrpw*, following E), they are required [to tithe].

T. 2:13

- K. Workers who were hoeing (^c*wdryn*; Lieberman emends to: *'wryn*, "who were picking") figs,
 L. or cutting down (*gwdryn*) dates,
 M. or harvesting (*mwšqyn*) olives,
 N. eat [while they work] and are exempt [from tithing],
 O. for the Torah has given them the right (*ršwt*) [cf. M. 2:7].
 P. He [i.e., the worker] shall not take a slice (*yšpyt*) [of fruit dipped] in salt, and eat [without tithing],
 Q. unless the employer has indeed given him the right [to do so].
 R. And he shall not eat his bread (*ptw*) with them [i.e., the fruit],
 S. unless the employer has indeed given him the right [to do so].
 T. 2:14 (K-S: cf. b. B.M. 89b)

- T. *One who hires a worker to weed among onions--*
 U. [the worker] plucks one leaf at a time and eats [without tithing] [= M. 3:3M-N].
 V. He shall not grab an [entire] shoot (*qlḥ*) in his hand and eat [it].
 W. Rather (*'bl*), he plucks [single leaves] while [the onion itself] is joined to the ground, and eats [one by one].
 T. 2:15

- X. Workers who were digging up (^c*wqryn*) onions,
 Y. or tying [bunches] (*'wgdy*) of onions,
 Z. eat [while working], and are exempt [from tithing],
 AA. for the Torah has given them [*ed. princ.* adds: *ršwt*, "the right"] [cf. M. B.M. 7:2].
 T. 2:16 (pp. 234-35, ls. 47-56)

T. is an extended commentary to M. 3:2-3, exploring the worker's tithing obligations in relation to variable factors such as the type of work he is performing and the conditions of payment established by the employer. There are four distinct cases, A-D + E-F (glossed by G-J), K-O (glossed by P-Q + R-S), T-W and X-AA.

The workers at A-D are not involved in harvesting or processing the produce. Thus they have no right to eat produce with which they are working unless the employer specifically grants it to them. In that case (E-F), they gather the produce in convenient quantities and make a snack of it without tithing, for, as we know from M., the owner's permission is like a gift which extends his rights of eating to those whom he designates as recipients. G-J clarifies the case, in light of the specific conditions established at M. 3:2.

K-O's workers are in the field harvesting produce.⁹ The rule repeats what we already know from M. 2:7 and M. B.M. 7:2--that the Torah grants workers the right to eat produce which they are harvesting. Important qualifications, however, are introduced at P-Q + R-S. While the worker is permitted by the Torah to eat produce he is harvesting, he may do so only if he eats it in its natural condition, without the accompaniment of salt (P) or bread (R).¹⁰ The use of either salt or bread removes the repast from the category of a "snack," and indicates that the worker is making a regular meal (cf. M. 4:1, 3). This is forbidden in all circumstances unless tithes are removed. If, however, the owner expressly consents to either of these modes of eating (Q, S), we assume that he will have tithed the produce before offering it to the workers (cf. T. 2:10b).

T-U repeats M. 3:3M + O, excluding M.'s establishment of specific contractual conditions. Since the worker is not harvesting, whatever he gathers together is a purchase which is liable to tithes. V-W explain the precise meaning of this "gathering together" (M. 3:30) which renders the produce liable. The worker may not take the entire onion shoot in his hand and pick the leaves off, for their attachment to the uprooted shoot combines them into one batch in his hand. Rather he must pick one leaf at a time from the shoot while it is still attached to the ground (cf. M. 3:2H-I, M. 2:6). X-AA tells us nothing new. The workers are either harvesting the onions (X) or completing the processing (Y), both of which activities place the worker under the category of those to whom the Torah has extended the right to eat.

3:4

- A. 1) [If he] found harvested figs (*qṣyṣwt*)¹¹ in the road--
- B. even [if they were found] beside a field [full of] harvested figs--
- C. and [this] also [holds true for] (*wkn*)
- D. a fig tree which over-arches the road, and he found figs beneath it--
- E. [the figs] are permitted under the law [which defines] stolen property (*mwtṛwt mšm gzl*),
- F. and they are exempt from [the law of] tithes (*wṭṭṛwt mn hm^csṛwt*).
- G. But (*w-*) [in similar cases] concerning olives or carobs, they are subject [to the law of tithes] (*ḥybym*).

- H. 2) [If he] found dried figs--
 I. if most people had pressed [their figs by that time],
 J. he is required [to tithe those he found] (*hyb*);
 K. and if not [i.e., if most people had not pressed their figs],
 L. he is exempt [from tithing those he found].
 M. 3) [If he] found sections of a fig-cake (*plhy dbylh*),
 N. he is required [to tithe them] (*hyb*),
 O. since they obviously (*šydw^o*) come from a finished product
 (*mđbr gmwr*).
 P. And [as for] carobs--
 Q. as long as he has not piled them on top of the roof, he brings
 [some] of them down for the cattle (nine MSS. add *w-*, "and")
 is exempt [from tithing it],
 R. for he returns the surplus.

M. 3:4 (A-F: cf. b. B.M. 21b;
 P-Q: cf. y. Ma. 3:1[50b])

The pericope consists of two autonomous units. The triplet at A-O concludes M.'s discussion of the liability of untithed produce which undergoes a change of ownership (M. 2:1-3:4), while P-R provides a transition to M. 3:5-10's discussion of untithed produce brought from a public place onto the householder's private property. If there is a redactional reason for juxtaposing the units, it is a superficial similarity of substance; i.e., the produce in each unit is exempt from the law because of its location in what M. deems to be a public place--a road or rooftop. Problems arise only after someone takes possession of it, by either picking up the lost produce (A-O) or by bringing the produce into a space analogous to his own home (P-R).

Informing each case of A-O is the principle that produce which is irretrievably lost is deemed to be abandoned (cf. M. B.Q. 10:2, M. B.M. 2:1-2).¹² As such it is exempt from the law of tithes (cf. M. 1:1B). The problem before us is to determine whether the lost produce is likely to have been processed by the owner prior to his losing it. If so, the produce is liable to the removal of tithes despite the fact that it is ownerless, for it became liable before it was lost. The intervening period of ownerlessness is disregarded, and the finder incurs all obligations presumed applicable to the loser.

The first case, A-F+G, is formally the most difficult and substantively the most interesting. The basic ruling is at A+E-F, which assumes that harvested figs found in the road are deemed abandoned. The finder may therefore carry the figs off, without

fear of prosecution by the original owner (E), and, accordingly, need not tithe (F). B glosses A, stressing the fact that the location of the figs in the road is the salient consideration in determining that they are abandoned.¹³ Even if the figs were found next to a field of harvested figs, there is no assumption that those in the road belong to the owner of the field. C-D, an interpolation, depends upon the point stressed at B. Even if we can assume that the figs fell from the tree of a known farmer, the fact that they are in the road permits the supposition that the owner has given up hope of retrieving them. Thus E-F applies to C-D as well. Such figs may be taken without fear of accusation, and may be eaten as ownerless property without the removal of tithes. The foregoing offers little guidance for the interpretation of G, which states that olives or carobs lying in the road remain subject to the law of tithes, and presumably are to be considered stolen property if carried off by the finder.¹⁴ As the Amora, Raba, sees matters (b. B.M. 21b), interpretation of G depends upon E. Carobs and olives are hard and unlikely to be crushed in the road. For this reason the owner of the tree is not likely to have written the fallen produce off as a loss. Since it is not yet considered ownerless, it remains subject to laws concerning theft and tithing.

The problem of H-L, the triplet's second case, is to determine whether or not the figs, which have already been dried prior to loss, have also been pressed (i.e., processed). Two contrastive apodoses (I-J, K-L)¹⁵ provide the alternatives, both of which depend upon the practice of local farmers. If the figs are found after the local farmers have pressed their dried figs, those found in the road are assumed to be fully processed as well, and liable to the removal of tithes. If, on the other hand, the majority of the farmers have yet to process their figs, those in the road are deemed unprocessed as well. As ownerless property they are permitted for use without tithing. M-N, a simple declarative sentence, concludes the unit with an obvious third case. Anyone finding fig-cakes must tithe them without question, for as O explains, fig-cakes are clearly fully processed produce.

The *w-* at P suggests that it is intended to carry forward the problems of A-O. Nevertheless, Q-R addresses entirely new matters. The ruling assumes two principles: 1) untithed produce on a rooftop is deemed to be outside the householder's home, and is therefore not yet liable to the removal of tithes (M. 3:6); and 2) a householder's courtyard is deemed part of his home, such that

produce brought into it is rendered liable to the removal of tithes (M. 3:5). At P-Q a farmer has brought carobs up to his roof and spread them out for drying. Before piling them up, i.e., before the processing is complete (M. 1:6N), he brings some down to his courtyard to feed his cattle. We have no reason to expect the carobs to be liable to the removal of tithes (Q). In the first place, unprocessed produce is not made liable in the courtyard (M. 3:1A-B). Secondly, the carobs are to be eaten by cattle, not human beings. Since the law of tithes applies only to human food (M. 1:1B), there should be no question about tithing the carobs fed to cattle. The addition of R, however, presents a problem.¹⁶ It assumes that if the householder does not return part of the carobs to the rooftop for further drying, that which he has brought into the courtyard is liable to the removal of tithes. The reason must be that if the householder keeps the uneaten portion of the carobs inside the courtyard, we assume he intends to use it himself at some later date. Although it is technically unprocessed, we assume that it is desirable to him in its present condition. It therefore must be tithed before the householder may make any further use of it (cf. M. 4:3).

- A. 1) [If he] found small sheaves (*krykwṭ*) [of grain lying] in the private domain (*ršwt hyhyd*),¹⁷
- B. it is forbidden (*'šwr*) under the law [which defines] stolen property,
- C. and they are subject to [the law of] tithes (*hyybwṭ bm^csrwt*).
- D. 2) [If he found them] in the public domain (*ršwt hrbym*),
- E. *they are permitted under the law [which defines] stolen property,*
- F. *and they are exempt from the [law of] tithes [= M. 3:4E-F].*
- G. 3) But large sheaves (*'lwmwt*),
- H. whether [they are found lying] in the private domain or in the public domain,
- I. are forbidden under the law [which defines] stolen property,
- J. and they are subject to [the law of] tithes.
- K. 4) [If he] found grain [which had been] smoothed over--
- L. that which is piled up (*h^csyh kry*) is forbidden under the law [which defines] stolen property.
- M. [That which has become] strewn about is permitted under the law [which defines] stolen property.
- N. In either case, he designates it (*^cwsh 'wth*; Lieberman, following E, emends: *mwšy' ^clyhn*, "he removes on their

- behalf") heave-offering and tithes for (^cל; E reads: *mšl*, "from") produce belonging to the householder,
- O. and need not be apprehensive [that he be considered a thief].
- P. 5) [If he] found a covered basket,
- Q. it is forbidden under the law [which defines] stolen property,
- R. and it [i.e., its contents] is subject to [the law] of tithes.
- S. How does he proceed [when tithing the fruit in the basket]?
- T. He reckons the cash value [of the produce and pays the owner the entire amount, minus the value of the produce removed as tithe] (^c*wsh 'wth dmyh*).

T. 2:17 (p. 235, ls. 57-63)
 (A-N; cf. T. B.M. 2:5-6,
 b. B.M. 22b-23a; K-N: cf. y. Ma.
 3:3[50c]; P-T: cf. y. Ma. 3:3
 [50c])

The five cases of our pericope, each of which is modeled upon M. 3:4A-B + E-F, fall into three groups, A-J, K-O and P-R. The operative principle in each case is identical to that of M.: if produce appears to be abandoned it is exempt from the law of tithes. The finder may, in addition, make free use of it without being liable to any indemnity should the owner return and make a claim against the finder.

Each case within A-J is dependent for its sense upon A, which sets the context. A man has found small sheaves lying in the private domain; that is, an enclosure at least ten hand-breadths high and four square (T. Shab. 1:1). All objects found within such an enclosure are considered private property insofar as they may not be moved outside of the private domain on the Sabbath (M. Shab. 1:1-3; T. Shab. 1:3-5). It follows that the sheaves found within the private domain are assumed to belong to someone. Thus if the finder consumes the grain, he will be liable to the owner's claim for compensation (B). Since the grain is assumed to be under someone's ownership, it is also subject to the law of tithes, as we would expect (C). If, however, the sheaves are found in the public domain (D), such as an encampment or other large enclosure (T. Shab. 1:2), they are considered ownerless goods. As M. has already told us, use of such property is not considered robbery, and the produce itself is exempt from the law of tithes (E-F).¹⁸ Matters change if one finds large sheaves, for in either domain they are considered private property (G-J), and are subject to all restrictions appropriate to such property. b. B.M. 23a (s.v., *rb' mtrš lt^cmyh*) explains that large sheaves are heavy and remain where they fall. Thus the owner will not

despair of recovering them until he returns to the place where he lost them and confirms that they have been carted away.¹⁹

The issue of ownership is also at the heart of K-O. A man has come across grain which has been smoothed over, i.e., completely processed (M. 1:6Q) and subject in principle to the law of tithes. If the grain remains stacked up after smoothing, the assumption is that the owner intends to return for the stack, for its neat condition indicates that it has not been abandoned. Thus, one who uses it is liable to pay reimbursement (K-L). But if the grain has become strewn about, this indicates that no one intends to retrieve it. The finder, therefore, is not required to reimburse the owner who returns for the stack (M: cf. M. B.M. 2:1-2). The introductory formula of N ("in either case") prepares us for a ruling applicable to both K-L and M. In fact, N ignores M entirely,²⁰ for if the property is ownerless, there is no reason to require the finder to offer the produce as heave-offering and tithes on behalf of produce belonging to the householder (N). Nor is there any reason for the finder to be worried that his actions be misinterpreted as robbery (O). The point of N-O, then, is that the finder (K-L) may offer the piled-up produce as heave-offering or tithes on behalf of other produce belonging to the householder. In this way the finder gains no benefit from his disposition of the other man's produce. It should be noted that M. Ter. 1:1 denies that one may offer heave-offering from another's produce. Such heave-offering is deemed to be of no consequence, and the produce remains forbidden until heave-offering is properly removed.²¹

P-R is clear. The covering on the basket indicates ownership (y. Ma. 3:3[50c]), for we assume that the owner has intentionally avoided leaving the basket open to the public. Thus it is within the category of things which may be considered stolen property, and is subject to the law of tithes. The gloss of S-T provides a loophole for the finder who wishes to make use of produce which is not technically his. He fixes the market value of the produce and then separates the required offerings, using the remainder as he wishes. Should the rightful owner return and make a claim, the finder returns the cash, less the value of the produce removed as heave-offering and tithes.

A. [*If*] *he found harvested figs* [= M. 3:4A],

B. he shall not grab (*qwšš*) [some] and continue [on his way] (*whwlk*) with them,

C. for most people are suspected [of petty-theft] regarding them.

T. 2:18 (p. 235-36, ls. 63-64)

A's incomplete citation of M. is meant to signify the entire case presented at M. 3:4A-B, i.e., a man has found figs in the road next to a field of figs. T. stipulates the conditions under which M.'s ruling--that the figs are not stolen goods--is applicable. The finder must not take these figs from the spot where he finds them, for such an act may be interpreted to mean that he stole the figs from the field itself and is now making off with them. Rather, he eats in the road next to the field, demonstrating by his proximity to the field that he has nothing to hide, for he is merely eating what he found in the road (cf. Lieberman, *TK*, II.689.63 and HD against GRA).

- A. [If] he had a stack
- B. of onions,
- C. or of dried figs,
- D. or of carobs
- E. on top of his roof,
- F. he selects [onions from the stack] and eats [without tithing];
- G. he selects [dried figs from the stack] and places them on the table [without tithing];
- H. he selects [carobs from the stack] and throws [them into the courtyard] for his cattle [without tithing][cf. M. 3:4P-Q].
- I. R. Simeon b. Eleazar says, "Cattle do not make a random snack [of processed produce] in the courtyard [unless the owner has tithed it]."
- J. And any of these which he brought from the field into town [without tithing]--
- K. he shall not make a random snack of it,
- L. for he does not finally return the surplus [to the field] [cf. M. 3:4R].

T. 2:19 (p. 236, ls. 64-67)
(J-L: cf. y. Ma. 3:1[50b])

T. supplements M. 3:4P-R with independent materials appropriate to M.'s theme. A-H, however, flatly contradicts M., which has told us that unstacked produce may be brought from roof to courtyard as cattle fodder, without incurring liability to tithes, as long as the owner intends to return the unused carobs to the roof. The items of A-D have all been stacked, at which point

their processing is complete (cf. M. 1:6/O). On the basis of M., we would now expect them to be rendered liable if brought into the house or courtyard. F does not address this issue, for it merely permits the owner to take some items from the stack and eat them on the roof. Since roof-tops are an exempt area (M. 3:6A), the produce, eaten as a snack, is not rendered liable. G-H, however, permits the owner to bring the produce to his table, or to his cattle in the courtyard, without incurring liability. This, as we have seen, is prohibited by M. Apparently, T. assumes that the owner intends to return the surplus to the roof (M. 3:4R). If so, T.'s theory is that, since the larger quantity of processed produce remains in an exempt area, the portion removed shares its status, *unless* the owner intends to use all he has removed. At this point it becomes a separate quantity of produce in its own right (cf. M. 4:3). Since it is processed, it is rendered liable in the owner's courtyard (for differing views see Lieberman, *TK*, II:689.69 and *KM*, *Tithes* 3:20).

I is an independent ruling which the redactor has introduced as a gloss of H. The point of stating that cattle may not eat untithed produce in the courtyard after processing is to argue that the tithing laws appropriate to human food apply as well to cattle fodder (cf. T. 2:20a). If we read I as the framer of the unit intends us to read it, the ruling disputes A-D + H. Cattle may not eat processed produce in the courtyard whether or not the principle is in an exempt area.

J-L refers us back to A-D. It confirms our inference that A-H assumes the owner's intention to return the surplus to the roof, for now we have a case which specifies that no such intention is operative. If the owner brings a portion of his stacked produce from the field to town, he may not make a snack prior to tithing, for he is not expected to return the surplus such a great distance.

A. Under any circumstances ($\mathcal{L}^c \omega lm$) he may feed [his cattle] bunches of sheaves ($p q y^c y^c m y r$: so Jastrow, p. 1209, s.v. $P Q Y^c$)

B. unless he ties them into bales.

T. 2:20a (p. 236, ls. 67-68)

T. assumes that, should cattle be fed produce which is suitable for human consumption, such produce remains subject to all laws regarding proper tithing. The man need not tithe bunches of sheaves which he feeds his cattle, for their processing is not complete until he ties the bunches into bales.

3:5

- A. What type of courtyard is subject to [the law of] tithes (*ḥybt bm^csrwt*) [i.e., what kind of courtyard renders liable to tithes produce brought within it]?
- B. R. Ishmael says, "A Tyrian courtyard,
- C. "for household wares are kept [safely] within it."
- D. R. Aqiba says, "Any [courtyard] (*kl š-*) which one [householder] opens, but another locks up is exempt [from the law of tithes]."
- E. R. Nehemiah says, "Any [courtyard] in which a man eats unself-consciously (*š'yn 'dm bwš ml'kl btwkh*) is subject [to the law of tithes]."
- F. R. Yose says, "Any [courtyard] into which [one] enters and no one inquires, 'What do you want?', is exempt [from the law of tithes]."
- G. R. Judah says, "[If there are] two courtyards, one within the other,
- H. "the inner [courtyard] is subject [to the law],
- I. "while (*w-*) the outer [courtyard] is exempt [from the law]."

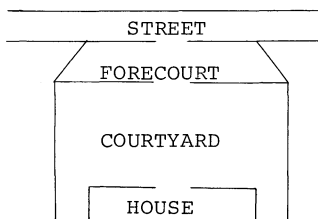
M. 3:5 (A-I: cf. b. Nid. 47b;
E = y. Ma. 2:1[49c]; G-I: cf.
y. A.Z. 1:10[40b])

M. begins a new unit, M. 3:5-10, which refines and applies the principle that courtyards are deemed to be extensions of the home. M. 3:1A-B and M. 3:4P-R, we recall, have already assumed the possibility that produce which a householder brings into his courtyard has been appropriated thereby and, it follows, is liable to the removal of tithes. Of concern at A is to define which kinds of courtyards are deemed to be extensions of the home such that the householder must tithe what he brings into them. All authorities cited at B-F assume that, in order to be considered an extension of the home, a courtyard must be analogous to the home in some concrete way. The fundamental analogy, upon which all rulings depend, is privacy, i.e., control over one's personal space (cf. Maim., *Comm.*, *et al.*). A courtyard renders produce brought within it liable to the removal of tithes if it exhibits those characteristics which, in the home, ensure the householder's privacy and security. While all parties accept this fundamental analogy, the pericope itself appears to be a composite of three formally distinct units (B-C, D-F, G-I) brought together under the organizing rubric of A.²² Only B-C, a verbless clause, is appropriately formulated in answer to A, or even depends upon A for its sense. The lemmae at D-F, sharing a common formulary pattern

(*k̄l š- ... ḥybt/pṭwrh*), simply offer three distinct rulings regarding different types of courtyards. G-I as well could certainly stand alone (cf. MS, citing Joseph Ashkenazi).

The pericope's unity of principle is apparent in all lemmae, with the possible exception of Ishmael's (B-C). B stands on its own as an adequate, if terse, answer to A. C's gloss, which explains the relevant characteristic of the Tyrian courtyard, can have been added in order to bring Ishmael in line with the authorities with whom his saying has been redacted.²³ Archaeological knowledge concerning Tyrian courtyards is insufficient to determine whether they in fact are distinguished by the protection they afford to utensils or other items stored within them.²⁴ In contrast to B-C, all lemmae at D-F are manifestly dependent upon the analogy of privacy. For Aqiba (D), if more than one householder of a shared courtyard has control of access, the courtyard affords absolute privacy to neither.²⁵ Either householder, therefore, may bring untithed produce into the courtyard without obligation to tithe until he enters his home, which is accessible to him alone. Privacy is the main concern of Nehemiah (E) as well. He argues that the courtyard is like the home only if the householder is comfortable eating within it (cf. Judah, M. 2:2N-0). Laws, therefore, which apply to the place where a man eats his meals (i.e., to the home), apply as well only to a courtyard which affords the same domestic privacy. The principle of home-like privacy appears again in Yose's lemma (F). If no one requires an intruder into the courtyard to state his business, the courtyard is deemed a public place, and fundamentally unlike the home. Naturally, such a courtyard is of no interest to the law of tithes.

Judah's case (G-I) concludes matters by applying M.'s amply stated principle to a problematic example. Presumably, we have a house which opens into a courtyard, which itself opens into a fore-court in the following way:



The fore-court leading into the public thoroughfare is easily accessible to passers-by, who may enter and leave without the knowledge or consent of the householder. The fore-court, therefore,

is considered part of the public thoroughfare, and is of no account regarding the law of tithes.²⁶ Matters are different with the courtyard adjacent to the house. We assume that the owner of the house will take pains to ensure that those entering the forecourt will not enter his own courtyard without permission (TYY). Since he considers this area his private property, any produce he brings within it is rendered liable to the removal of tithes.

- A. R. Simeon b. Eleazar says in the name of R. Aqiba,
- B. "Any [courtyard] which one [householder] opens but another locks up [= M. 3:5D]--
- C. "for example (*kgwn*), [either] two neighbors owning homes which share the same courtyard (*šwtpyn*)²⁷
- D. "[or] two tenants [who do not own the homes which share the same courtyard] (*dywryn*)."

T. 2:20b (p. 236, ls. 68-69)
(Cf. y. Ma. 3:6[50d])

Simeon b. Eleazar cites and glosses M. 3:5D. We originally assumed that the ruling referred only to two householders who hold the keys to a common courtyard. Since neither has absolute control of access, the courtyard affords privacy to neither party, and does not render produce liable. C confirms this conception, but D states that the ruling holds even if neither inhabitant owns his home. This addresses a very different issue, for now the courtyard remains under the jurisdiction of a single landlord, and may be thought to constitute his private space. However, since people with no property rights over the courtyard have access to it, the courtyard no longer affords privacy to the landlord alone, even though it remains his property. Such a courtyard does not render produce liable.

3:6

- A. Roofs are exempt [from the law of tithes], even though [the houses upon which they are constructed] are situated in a courtyard which is subject [to the law of tithes].
- B. A gate-house (*byt š^ar*),²⁸ a portico (*'kšdrh*),²⁹ or a balcony (*mrpšt*)³⁰--
- C. lo, these [share the status] of the courtyard [in which they are situated].
- D. If [the courtyard] is subject [to the law], they are subject [to the law], but if [the courtyard] is exempt, they are exempt.

M. 3:6

M. 3:6 further refines the principle that, in regard to the obligation to tithe produce, courtyards are deemed extensions of the home. The topic now is areas within the courtyard which appear to constitute domains independent of it. A's discussion of roof-tops is relevant to any area above the surface of the courtyard (cf. M. 3:8E), while B-D, a formally independent ruling, discusses enclosed structures found within the courtyard. To be determined is whether produce placed in elevated or partitioned areas is governed by the rules which apply to produce placed anywhere else in the courtyard.

A argues that roof-tops are in principle exempt from laws applicable to houses and courtyards. The analogy of privacy, which unites houses and courtyards into a single legal domain, breaks down in the case of roof-tops, for the householder has no direct control over that space. It is outside the walls of his home and above those of his courtyard.³¹ It follows that produce stored on the roof is not rendered liable to the removal of tithes until the householder brings it down into his house or courtyard (cf. M. 3:4P-R, T. 2:9-10, 2:19).

B-D addresses a separate but related issue. While all the structures named at B are within the space of the courtyard, each is distinct from that space by virtue of some kind of permanent enclosure. Should these structures, therefore, constitute domains within which laws governing the courtyard do not apply? C-D assumes that walls, in and of themselves, do not transform the space contained within them into a separate domain. Since all structures at B are structurally integral to the courtyard, they share whatever status the courtyard itself enjoys, as this status is established by the relative privacy afforded by the courtyard.³² Produce brought into such structures, therefore, is rendered liable only if the courtyard itself is of the type deemed analogous to the home (M. 3:5). If not, these structures themselves are of no consequence in determining the liability of produce found within them.

- A. *Roofs are exempt [from the law of tithes].*
- B. *Even though [the houses upon which they are constructed] are situated in a courtyard which is subject [to the law] [= M. 3:6A-B],*
- C. *he carries them [e.g., his carobs, etc.] to the rooftop and eats [without tithing].*

T. is composed of two citations--A-B, which cites M. 3:6A-B, and C, which cites Yose b. Judah's opinion at T. 2:10a(R). Here C glosses A-B, forcing us to read T. as two sentences, A and B-C. The resulting rule tells us that the intention to bring one's produce up to the exempt area of the roof permits one to bring it through a private courtyard without rendering the produce liable. The case is substantially identical to that upon which Yose b. Judah rules at T. 2:10a.

3:7

- A. Storage huts (*šrydyn*),³³ watch-turrets (*bwrgnyn*),³⁴ and field-sheds (*'lqṭywt*)³⁵ are exempt [from the law of tithes].
- B. A hut [such as those used in the area of] Gennesar (*šwkt gnwšr*).³⁶
- C. even though it contains millstones and poultry,
- D. is exempt [from the law of tithes].
- E. A potter's hut--
- F. the inner part is subject [to the law]
- G. and the outer part is exempt.
- H. R. Yose says, "Any [structure] which does not [serve] as [both] a summer dwelling and a winter dwelling (*dyrṭ ḥmh wdyrṭ gšmym*)³⁷ is exempt.
- I. A festival hut (*šwkt ḥḥg*) during [the week of] the Festival [of Tabernacles]--
- J. R. Judah declares it subject [to the law during that week],
- K. but Sages declare it exempt [for that week].

M. 3:7 (E-G: cf. b. Suk. 8b;
I-K = b. Yom. 10a)

We have learned at M. 3:6B-D that walls are not sufficient to transform an enclosed space into a home. The present pericope, while independent of M. 3:6B-D, simply adds that it is the function of that enclosed space which determines whether it is deemed a home. The important principle is attributed to Yose (H): in order to be deemed a dwelling of consequence for the law of tithes, a structure must serve as a dwelling the year round. Produce brought into a building which serves only as an occasional dwelling, therefore, is not rendered liable to the removal of tithes, even if it is presently in use as a home.

Yose's principle explains both A and B-D. Storage huts, watch-towers and field-sheds (A) are designed for non-domestic purposes, and are unsuited for use as permanent dwellings. The

owner of the hut or shed, or the soldier in the tower, may therefore eat untithed produce in these buildings without incurring liability for eating *tebel*. Owners of Gennesar huts (B-D) enjoy the same privilege. According to Maimonides (*Comm.*), such huts are used by the residents of the area during the harvest months alone. Even though accoutrements of home-steading, such as milling stones and poultry, are found within the hut, its temporary nature prevents it from entering the category of "home." Inhabitants of such huts, it follows, eat untithed produce within them, even during the season in which the huts are in use.

Although Yose's lemma immediately follows E-G, the principle is hardly relevant to the case of the potter's hut. Such huts are divided into two sections, the potter's permanent living quarters, and a storage area for the display of finished work.³⁸ Untithed produce brought into the inner living area is rendered liable to tithes, while that brought into the display area is exempt. The reason, despite Yose, has nothing to do with the permanence of either area as a dwelling. The logic, rather, follows that of M. 3:5G-I, a formally identical ruling which discusses the case of two courtyards, one within the other. Since the public has access to the outer area of the hut in order to view the potter's wares, it is not considered his private space, and, like the forecourt of M. 3:5G-I, is of no account in rendering produce liable to the removal of tithes. The inner living quarters, to the contrary, like the inner courtyard, are deemed private and fall within the scope of the law. The exemption of the display area would surprise M. 2:2J-L, which assumes that places of business are deemed analogous to the businessman's own home. One may argue, therefore, that Yose's gloss at H is intended to harmonize M. 2:2J-L and F-G by imposing a different principle upon the latter. Now the display area is exempt because it does not serve as a shelter.

In the concluding dispute at I-K Sages stand with Yose against Judah, who claims that a temporary shelter renders produce within it liable to tithes as long as it is in use as a home. The disputants take up the case of huts erected for use as dwellings during the week of Sukkot, the Festival of Tabernacles (M. Suk. 1:9). Since such huts are used for eating and sleeping during the Festival, Judah argues that produce brought within them during this period is rendered liable to the removal of tithes. Although temporary, they are deemed homes. Sages concur with Yose's principle. Since the hut serves as a home only during the Festival, it is of no concern to the law of tithes.

- A. A house of assembly (*byt hknst*) or a house of study (*byt htlmwd*)--
- B. if they include living quarters, one does not make a random snack [of untithed produce] within [the entire building].
- C. But if not [i.e., if there is no dwelling], one makes a random snack [of untithed produce] within them.
- D. Feed-sheds and granaries which are in the field:
- E. those utilized for storage--one makes a random snack within them.
- F. [Those which serve] as living quarters--one does not make a random snack within them.

T. 2:20d (p. 236, ls. 70-73)
(A-C: cf. y. Ma. 3:7[50d])

A-C and D-F supplement M.'s examples, but Yose's principle is of no interest here. The house of assembly and the house of study are not used as dwellings, and there is therefore no reason to expect that produce brought into either building is rendered liable. If living quarters have been designated, however, the produce of those living within the building is rendered liable (y. Ma. 3:7, s.v., *dtny byt spr*).³⁹ Feed-sheds and granaries do not render produce liable as long as they serve their normal function as storage areas (D-E). However, contrary to M. 3:7A, if someone does establish a dwelling within them, his produce is rendered liable upon entry (F).

- A. A potter's hut--
- B. others say in the name of R. Nathan,
- C. "*the inner part is subject [to the law]*
- D. "*and the outer part is exempt*" [= M. 3:7E-G].

T. 2:21 (p. 236, ls. 74-75)

T. attributes M. 3:7E-G to R. Nathan, a contemporary of Rabbi Judah the Prince, of the last generation of Mishnaic authorities.

3:8-9

- A. 1) A fig tree which is standing in a courtyard--
- B. [the householder] eats [the figs] one by one [from the tree], and is exempt [from tithing].
- C. But if he gathers [figs] together [before eating], he is required [to tithe them].
- D. R. Simeon says, "[If he has] one in his right hand, and one in his left hand, and one in his mouth [he is exempt from tithing]."

- E. [If] he climbed to the top [of the tree], he stuffs his pocket [with figs] (*mm' ḥyqw*), and eats [without incurring the obligation to tithe].
- M. 3:8 (D: cf. y. Ma. 3:8[50d])
- F. 2) A grapevine which is planted in a courtyard--
- G. "[the householder] takes the entire cluster of grapes [from the vine, and incurs no obligation to tithe].
- H. "And [this is] also [the case] (*wkn*) with a pomegranate [picked from a tree growing in a courtyard],
- I. "as well as (*wkn*) a melon [picked from a vine growing in a courtyard]"--the words of R. Tarfon.
- J. R. Aqiba says, "[The householder] takes one grape at a time (*mgrgr*) from the cluster [while it is on the vine, and incurs no obligation to tithe],
- K. "or splits a segment (*pwrt*) from the pomegranate [while it is on the tree],
- L. "or cuts a slice (*šwpt*) of the melon [while it is on the vine], [but if he takes an entire cluster, and so on, he incurs the obligation to tithe]."
- M. 3) Coriander (*kšbr*)⁴⁰ which is sown in a courtyard--
- N. [the householder] plucks one leaf at a time and eats [without incurring the obligation to tithe].
- O. But if he gathers [the plucked leaves] together, he is required [to tithe them].
- P. Savory, or sweet majoram or thyme which are [growing] in a courtyard--
if they were being cultivated (*šmrym*),⁴¹ they are subject [to the law of tithes] (*hybyn*).

M. 3:9 (F-I = y. Ter. 8:3[45b];
P = b. Nid. 51a)

The foundation of the pericope is the triplet at A-C, F-L, and M-O, into which rulings at D and E have been interpolated. P is a singleton, similar in form to the rulings of the triplet, but independent in substance. The triplet, for its part, skillfully weaves two separate but related issues into a single discussion. The primary issue, which accounts for the redaction of the pericope in M.'s unit on the courtyard, is the liability of produce picked from a tree growing in the midst of a courtyard (A-C). It would appear that produce picked within a courtyard must immediately be rendered liable to the removal of tithes, as would be any other harvested produce found within its walls.⁴² As C points out, however, produce picked within the courtyard is rendered liable only

if a batch is actually gathered together (i.e., harvested). If, on the other hand, the householder picks a single piece of fruit from the tree and eats it before picking another, he need not tithe (B). A single plucked fig, for example, is deemed part of the unharvested batch of figs remaining on the tree. Like that batch itself, the single fig is deemed unharvested and is therefore exempt from tithes (cf. M. 2:6/0). This resolution of the pericope's primary issue is itself the subject of a second inquiry, carried forward at F-L and M-O, the second and third cases of the triplet. If the householder picks and eats one piece of produce at a time without tithing, it becomes necessary to ask how the law applies to produce which is naturally divided into numerous edible segments. A-C, F-L, and M-O, therefore, define a progressively more subtle series of cases regarding the application of the pericope's basic principle.

A-C begins discussion with the simple case of figs. The fig is an indivisible piece of fruit, normally eaten whole in a single mouthful. In the case of figs, then, the householder conforms to the limitation of eating "one by one" if he picks and eats no more than one fig at a time. Application of this stricture to the produce under discussion at F-L is more problematic, for grape-clusters, pomegranates and melons are all large items divisible into conveniently eaten sections (cf. M. 2:6E-I). At issue between Tarfon and Aqiba is whether the privilege of eating such produce "one by one" extends to the entire fruit (Tarfon) or merely to that part of the fruit normally considered to be a single piece or section (Aqiba).⁴³ In regard to grape-clusters, for example, Tarfon permits the householder to pick the entire cluster from the vine and munch on the grapes without removing tithes, for he deems the entire cluster to constitute a single item of produce. Aqiba, on the other hand, restricts the householder to eating a single grape at a time while the cluster itself is attached to the vine. If the householder takes two grapes at once from a cluster on the vine, or plucks the entire cluster at once, he is deemed to have gathered a batch of produce before him, and must therefore tithe.⁴⁴ M-O's example of coriander, which concludes the triplet, is one with which both Tarfon and Aqiba will agree, although for different reasons. Coriander leaves grow in individual shoots from a central leaf.⁴⁵ The problem is whether one is restricted to picking a single shoot off the leaf, on the model of Aqiba's grapecluster, or whether one may pick the leaf in its entirety, following the reasoning of Tarfon. The ruling, which permits the householder to pick one whole leaf at a time, is calculated to

satisfy both parties. A single leaf of coriander is small enough to constitute a single portion, the matter of utmost concern to Aqiba, and is at the same time a single whole unit of produce, the unit to which Tarfon holds the law to apply.

The interpolations at D and E, to which we now turn, do not advance the discussion. Simeon (D) offers his own definition of the maximum quantity of figs one may have in his possession and still be free of the obligation to tithe. The point of E is that as long as the householder remains in the tree any produce on his person is deemed outside the courtyard and is therefore exempt from the removal of tithes. The concluding ruling at P is also tangential to the concerns of the triplet, but makes an important point regarding produce grown in a courtyard. Produce which is not intentionally sown and cultivated is considered a wild growth, and is exempt from the law of tithes (M. 1:1B), even if it happens to grow in a courtyard. Such produce is subject to restrictions appropriate to cultivated produce only if the householder actually tends the plant.

3:10

- A. A fig tree which is standing in a courtyard,
- B. but (*w-*) [one of its boughs] extends into the garden [beyond the courtyard's walls]--
- C. [a person standing in the garden] eats as he pleases [from that bough], and is exempt [from tithing].
- D. [If the tree] is standing in the garden,
- E. but [one of its boughs] extends into a courtyard--
- F. [a person standing in the courtyard] eats one by one [from that bough], and is exempt [from tithing].
- G. But if he gathers [figs] together, he is required [to tithe them].
- H. [A tree] standing in the Land [of Israel] with (*w-*) [its bough] extending outside the Land [of Israel, e.g., in Syria],
- I. [or one standing] outside the Land [of Israel] with [its bough] extending into the Land [of Israel]--
- J. [the status of] all [fruit on the tree] is governed by [the laws which apply to] the place in which the roots are located (*hkl hwlk 'hr h^cqr*).
- K. And concerning [the sale of trees belonging to] houses within walled cities--
- L. all [matters regarding the re-purchase of such trees by their

- original owner] are governed by [the laws which apply to] the place in which the roots are located [i.e., trees sold with the houses of walled cities may be re-purchased along with the houses within twelve months, as long as the trees are rooted inside the wall].
- M. And concerning [trees in or near] cities of refuge--
- N. all [matters regarding the legitimacy of the tree itself as a place of refuge] are governed by [the laws which apply to] the place into which the bough extends (*hkl hwlk 'hr hnwp*) [i.e., one guilty of involuntary manslaughter finds refuge at the root of the tree even if only the bough extends into the city of refuge].
- O. And concerning [trees growing] in Jerusalem [the fruit of which is designated as second tithe-produce]--
- P. all [matters concerning the sale of such produce] are governed by [the laws which apply to] the place into which the bough extends [i.e., if only the bough extends inside the city, the fruit of the entire tree must be eaten within Jerusalem, and may not be redeemed for coins outside of it: T. M.S. 2:12].

M. 3:10 (D-E = b. B.M. 88a;
 K-N = b. Mak. 12b: cf. M. Mak.
 2:7; O-P: cf. M. M.S. 3:7,
 T. M.S. 2:12, T. Arakh. 5:14)

The pericope concludes the discussion, begun at M. 3:5, of laws applicable to produce brought within a courtyard or specific locations therein. The contrasting doublet of A-C+D-G carries forward the interests and language of M. 3:8-9, applying an obvious principle to a complication in M. 3:8-9's case. We are well aware that a batch of produce picked from a tree growing in a courtyard is deemed to have been brought into the courtyard, and is therefore rendered liable to tithes. The point of A-G is that the location of the tree itself has no bearing upon the liability of its fruit; rather, all depends upon the location in which the fruit is actually picked. The fruit of a tree growing within the courtyard remains exempt from the removal of tithes if the householder can pick the fruit while standing in the garden, an area beyond the courtyard wall which is deemed no different from an open field (A-C). While the tree is rooted in a "liable" domain, its fruit has been picked in an area outside the farmer's home, and therefore has not been rendered liable. If, however, a bough of such a tree extends into the courtyard, and the householder picks the fruit while standing beneath the bough (i.e., within the courtyard), all laws applicable to the produce of M. 3:8-9 apply to

the present produce as well. The householder must tithe it unless he picks and eats one piece of produce at a time (D-G).

The problem of the foregoing, the status of produce growing from a tree which extends into legally distinct domains, is superficially carried forward at H-P--an entirely independent unit of four formally identical rulings. At issue in each case is whether the legal status of a tree is determined by the laws applicable to the place in which it is rooted or whether, to the contrary, its status is determined by the place into which its bough extends. The problem, of course, is different from that of A-G, for in the latter the law depends only upon the location of the person who makes use of the tree, the location of the tree or its parts being immaterial in determining the status of its fruit. In theme, as well as in principle, the present unit is somewhat out of phase with its context. Only the first (M-J) and last (O-P) rulings are at all relevant to tithing issues. K-L and M-N, on the other hand, are interested in matters more appropriate to the orders of Holy Things and Damages, within which laws bearing upon their interpretation are to be found. On the whole, H-P must be termed a redactional conclusion to M. 3:5-10, signalling by its formal and conceptual independence of context the end of a distinct thematic unit.

H-J is the only ruling which addresses an issue of crucial importance to the topic of our tractate. Despite the importance of the issue, however, it is never discussed in the remainder of M. The ruling assumes that produce grown in the Land of Israel is subject to the law of tithes by virtue of the holiness of the land from which it grows. Produce grown from a tree standing across the border of the Land is exempt from the removal of tithes, therefore, even if a bough extends into the Land and its fruit is picked within the Land. Fruit, in other words, shares the character of the soil from which it draws its nourishment. If that soil is holy, the produce can become holy; if the soil is profane, the produce can never become holy (cf. T. 2:22).⁴⁶

K-L, the second in the present series, shares the apodosis of H-J: *hkl hwlk 'hr h^cqr*. The ruling itself presupposes Lv. 25:29: *"If a man sells a dwelling house in a walled city, he may redeem it [i.e., re-purchase it] within a whole year after its sale; for a full year he shall have the right of redemption* (cf. M. Arakh. 9:3). K-L simply adjudicates the status of trees sold along with the house. If they are rooted within the walls of the city, any boughs extending over the wall do not affect the right of the seller to repurchase the tree within a year. The tree is deemed

to share the status of the house, and is subject to all rules governing the house itself. The ruling accords with M. Arakh. 9:5, which states that any real estate within the walls of the city is deemed to be like a house with regard to re-purchase within the year (see Neusner, *Holy Things* IV). Presumably, if the tree were rooted beyond the wall, one who re-purchases his house would have no ownership over boughs extending over the wall onto his property.

The location of the bough of the tree, rather than that of the roots, determines matters in M-N and O-P, the remaining rulings of the unit. The cities of refuge referred to at M-N are established by Mosaic legislation (Nu. 35:9-28; cf. M. Mak. 2:4-8) as legal refuges for persons who, through carelessness, are responsible for the death of another. While in such a city, the guilty party is protected from the blood vengeance of the deceased's relatives. The problem before us is whether a tree growing outside the limits of such a city, of which a bough extends into the city, offers refuge to the manslayer. M-N rules that, in such a case, the entire tree, by virtue of its bough, is deemed to be within the city limits. A manslayer reaching the trunk of the tree, therefore, is protected from vengeance, even though he is technically outside the city limits.⁴⁷

O-P, which concludes matters, assumes knowledge of the basic strictures regulating the disposition of produce designated as second tithe.⁴⁸ Such produce is to be taken by the farmer to Jerusalem, where he is commanded to eat it as an offering to God (Dt. 14:22ff.). In order to spare the expense and inconvenience of transporting his produce to Jerusalem, however, the farmer may instead bring to Jerusalem currency equal in value to the produce designated as second tithe. Once in the holy city, he then purchases produce with this money and eats the produce as second tithe, in place of the produce he originally designated as the offering. The problem of O-P is the disposition of produce designated as second tithe, which happens to be growing on a tree near the wall of Jerusalem. We learn that if only as little as a single bough is within the wall the entire tree is considered to be within the city. Once the fruit of such a tree is designated as second tithe, therefore, it cannot be exchanged for coins outside of Jerusalem, where the tree is actually growing. Even though the produce may have been picked outside the city, it is deemed to have grown within the city, and may not be "removed" from within its walls (cf. M. M.S. 3:5). All such produce must be brought into Jerusalem and eaten there.⁴⁹

- A. R. Nehemiah says, "A hoed courtyard--lo, it is considered to be a garden, in that [he] (*w-*) makes a random snack [of processed produce] within it [and need not tithe]."

T. 2:20e (p. 236, l. 73)
(= y. Ma. 3:10[50d-51a])

T. supplements M. 3:10A-G. Hoeing a courtyard turns it into a garden (y. Ma. 3:10 51a , s.v., *whhy' ylp' mn hd'*). Gardens, like fields in general, do not render liable produce brought within them. Therefore, just as the farmer may make a snack of processed produce in the field until he enters his courtyard, so may he do so in his own courtyard once it has been turned into a garden. His privilege continues, presumably, until he enters his home.

- A. A fig tree which *is standing in a garden*,
 B. *but [one of its boughs] extends* through a window [cf. M. 3:10D-E]--
 C. he eats as he pleases [from the bough], and is exempt [from tithing].
 D. If he plucked [figs] and placed [them] on the table, even one [fig placed on the table] is liable.
 E. A tree, part of which is rooted in the Land [of Israel], and part of which is rooted outside the Land [of Israel]--
 F. "since part of it is rooted in the Land [of Israel], it is as if all of it is rooted in the Land [of Israel]"-- these are the words of Rabbi.
 G. Rabban Simeon b. Gamaliel says, "The side (*hṣd*, following Lieberman's emendation of V's *hṣr*, "a courtyard") rooted in the Land of Israel--lo, it [i.e., the produce] is deemed [produce of] the Land of Israel; the side rooted outside the Land of Israel--lo, it is deemed [produce grown] outside the Land of Israel" [cf. M. 3:10H-J].

T. 2:22 (pp. 236-37, ls. 75-79)
(E-G: cf. y. ^cOrl. 1:1[60d],
b. Git. 22a, b. B.B. 27b)

A-D is modeled upon M. 3:10D-E, but contradicts its principle, applying instead the ruling of M. 3:10H-J.⁵⁰ The status of produce picked from a bough which extends from the garden into a window is determined according to the location of the tree's roots. At C, therefore, we disregard the fact that the man has picked the produce while standing in his house. Since the tree itself grows in the exempt area of the garden, the householder may eat as he pleases without the removal of tithes. D adds that if the

householder places even one piece of fruit on his table, it may not be eaten unless tithes are removed. The householder, by placing the produce on the table, indicates his intention to make a regular meal of it, an intention which imposes upon the householder to tithe his produce whether or not it has been rendered liable in some other fashion (cf. M. 4:1).⁵¹

E-G, a dispute, presents a second application of the principle behind M. 3:10H-J. Now the roots themselves extend into each side of the border of the Land of Israel. Rabbi says that in this case the entire tree is considered to be growing inside the Land of Israel. y. Orl. 1:1's gloss of the rule, in the name of Rabbi, explains that the roots draw nourishment from each other. It follows that even the roots outside the Land are sustained by the holy soil. According to M.'s principle, therefore, all the fruit of the tree--no matter where it is picked--is subject to the law, and must be tithed before one eats the processed product at home. Simeon b. Gamaliel objects to Rabbi's botanical theory, not M.'s principle. He denies that roots draw nourishment from each other. Rather, each side of the tree is independent of the other, and only produce of the side growing in the Land is subject to the law of tithes.⁵²

CHAPTER FOUR

MAASEROT CHAPTER FOUR

Chapter Four offers a sustained discussion of a problem which thus far has received only episodic attention in M., namely, the role played by human intention in establishing the liability of produce to the removal of tithes (cf. M. 1:1D-F, 1:5L-M, 2:2, 3:1A-B). The chapter's primary datum is the familiar notion that untithed produce may be eaten as a snack without the removal of tithes, but is rendered liable to tithing if its owner appropriates the produce for his daily use, e.g., in a meal (M. 1:5-8). To this M. now adds a simple but far-reaching proposition. If we can establish that a householder has decided to use a specific batch of produce for use in a meal, that produce may no longer be used even as a snack unless it is first tithed. In other words, once the intention to make a meal of produce has been formulated, we interpret all subsequent acts of eating as expressions of that original intention. The produce, now deemed to have been appropriated by the householder, must be tithed before it is consumed. The task of Chapter Four is to introduce and apply this single conception through a series of cases and problems. The coherence of the chapter's discussion is remarkable in light of the fact that each of its six pericopae is formally and substantively autonomous of the others. It is the skill of the redactor alone which binds these diverse materials into a single inquiry into the logic and purpose underlying human actions.

The issue is cogently drawn at the very first pericope. Untithed produce which is subjected to boiling, pickling or other procedures normally associated with the preparation of a meal is rendered liable by those procedures to the removal of tithes, even if the produce is still lying unprocessed in the field (M. 4:1). We assume that the produce, prepared as if it were to be part of a meal, will indeed be so used. The householder's actions, which permit reasonable access to his actual intentions, therefore serve as a reliable guide in determining whether he has imposed upon himself the obligation to tithe. The relationship between intentions and actions is subject to more subtle scrutiny by the Houses, in a dispute at M. 4:2D-F. Produce which is set aside for a future meal, but which has not as yet been subject to preparation (e.g., produce designated during the week to be eaten on the Sabbath), is declared by the Hillelites to be liable the moment

the owner designates its intended use. Consequently, according to the Hillelites, produce is forbidden for consumption during the entire period between its designation for use as a meal and the actual time of the meal--unless, of course, it is tithed. The point is that the formulation of the intention itself effects the liability of the produce, independent of any actions on the part of the householder. What he actually does, i.e., making a snack, is no longer of consequence once he has intended to do otherwise.

Reflection on the role of actions as signals for underlying intentions is resumed at M. 4:3-5D. We are offered a general criterion for determining a person's intentions in cases where his actions are ambiguous. If a householder, for example, removes a small quantity of untithed produce from a larger batch, and offers no indication as to how he intends to use it, we are apparently at a loss to determine whether he must tithe. According to Eliezer (M. 4:3D-F) and Sages (M. 4:4E), however, the person's intentions may be inferred from the likelihood that he will return any leftovers to the original batch. If he alters the condition of the produce so as to make it impossible to return it, e.g., by rendering unclean a batch of olives removed from a bin of clean olives, we assume that he intends to remove the produce permanently. His original purpose, then, was to make a meal of it. The produce, obviously, must be tithed.

M. 4:5E-6, the final unit of the chapter, approaches the issue of intention from an entirely fresh perspective, and indeed seems to introduce M. 5:1-2's discussion of produce harvested before its time. The power of a person's intention to determine the liability of his produce is not limited to produce which has already been harvested. Rather, from the moment the crop is sown the householder's intentions determine whether it shall be deemed a food at its harvest. If, for example, an edible crop such as coriander is sown not for its leaves, but for its agriculturally useful seeds, the entire crop--inedible seeds as well as edible leaves--is exempt from the removal of tithes (M. 4:5E-F). A related issue is raised by Eliezer, Gamaliel, and Aqiba (M. 4:5G-6L). Assuming that a plant yielding edible fruit or leaves in addition to rarely-eaten stalks or flowers is sown for food, our authorities wish to know which parts of the plant must be tithed as food. Eliezer and Gamaliel argue that since the householder intends the crop to be harvested as food, even the rarely-eaten portions are deemed food as well. Aqiba, however, is given the last word. Only the fruit, i.e., the part normally used as food, is subject to the law. Thus Aqiba challenges the main thrust of the unit, arguing that

the householder's intention has no power to contravene customary distinctions between the edible and the undesirable.

4:1

- A. 1) One who pickles, boils, [or] salts [produce] in the field¹ is required [to tithe].
- B. 2) One who buries [produce] in the ground is exempt [from tithing].
- C. 3) One who seasons² [produce] in the field is exempt [from tithing].
- D. 4) One who crushes olives so that the bitterness will exude is exempt [from tithing].
- E. 5) One who squeezes [the oil of] olives onto his body is exempt [from tithing].
- F. If he squeezed [the oil] and placed it in [the palm of] his hand, he is required [to tithe].
- G. 6) One who skims [a ladle of wine for use]³ in a stew is exempt [from tithing].
- H. [If he poured the ladle of wine] into a pot [and then skimmed the wine], he is required [to tithe],
- I. since it is like a small vat.

M. 4:1

The pericope is in two parts, the four rulings at A-D and the formally related, but substantively distinct, couplet at E-H (+I). Uniting the two parts is a common interest in the intentions presumed to inform a person's consumption of untithed produce. We recall (M. 1:5ff.) that untithed produce is permitted for consumption as a snack only. If a householder, therefore, indicates by his actions a desire to use his untithed produce in a meal, he must tithe the produce forthwith. The basic agreement between A-D and E-H on this point obscures the fact that rather separate problems are addressed by each unit. At A-D the salient issue is whether the householder has prepared the produce in a manner normally employed in the preparation of a meal. E-H, on the other hand, is interested primarily in whether the liquid, at the moment it is consumed, can be deemed by the householder to be a food.⁴

Exegesis of A-D proceeds from the contrast between the apodosis of A (*hyb*: liable) and those of B-D (*pṭwr*: exempt). The procedures enumerated at A and B-D differ primarily in that the former--pickling, drying and boiling--are normally part of the preparation of produce for use in a meal, while the latter are at

best methods of improving the palatability of fresh produce. The point of the contrast, then, is that once a person's intentions to use the produce in a meal are clearly expressed, e.g., when he boils it, all further consumption of the produce is forbidden unless it is tithed. The householder incurs no obligation, however, if his preparation of the produce reveals no particular intentions one way or the other, e.g., if he buries produce to hasten its ripening (Maim., *Comm.*). Unless we have concrete evidence, we assume that the householder intends to eat the produce as a snack.

The exegetical route into E-H, as at A-D, lies in the analysis of contrasts--in this case, those at E vs. F and G vs. H. The only difference between the oil at E and that at F is that the former has clearly been squeezed for use as an ointment, while the latter, having been gathered in a cupped hand, is now capable of being used as food in its own right. Since the man has gathered the oil in his hand, we assume that he intends to use it for some purpose other than anointing, i.e., in some kind of dish. The oil, consequently, is forbidden for use unless it is tithed. Similar logic informs G-H. If a man takes a ladle of unskimmed grape juice from a vat and skims the juice in the ladle, he need not tithe whatever he pours into his stew.⁵ The liquid, which has not been skimmed in a fashion suitable for wine production, is not deemed wine, and is therefore permitted for use without tithing (cf. M. 1:7W-Y and discussion, pp. 47-48, and T. 1:9, pp. 58-59). Should the man pour the juice into a pot, however, and then skim it, he must tithe whatever he uses in his stew. As I points out, the skimming has now been performed in a proper vessel. The liquid, now deemed wine, must therefore be tithed before its owner uses it in a meal.

- A. R. Simeon b. Judah says in the name of R. Simeon,
 B. "One who parches [grain over a fire: y. Ma. 4:1] in the field--
 C. "lo, this one is required [to tithe]."

T. 3:1 (cf. y. Ma. 4:1[51a])

- D. "One who mashes garlic or cress in the field--
 E. "lo, this one is required [to tithe]."

T. 3:2a (p. 237, ls. 1-2)
 (cf. y. Ma. 4:1[51b])

T. supplements M. 4:1A-B with two further acts deemed to constitute preparation of produce for use in a meal.

4:2

- A. Children who hid [untithed] figs away [intending to eat them on] the Sabbath,
- B. but forgot to tithe them [by Sabbath Eve],
- C. shall not eat [the figs] at the close of the Sabbath unless they tithe.
- D. A basket [of untithed produce designated for] the Sabbath (*kḵkḵt šbt*)--
- E. the House of Shammai declare it exempt [from the removal of tithes] [i.e., one who snacks on the produce prior to the Sabbath need not tithe].
- F. But the House of Hillel declare it liable [to the removal of tithes] [i.e., one who snacks on the produce prior to the Sabbath must tithe].
- G. R. Judah says, "Also ('p): one who gathers a basket [of produce] to send to his fellow [for the Sabbath] shall not eat [any of the produce] unless he tithes."

M. 4:2 (A-C = b. Bes. 34b,
 y. Ma. 4:2[51b]; D-F = M. Ed. 4:10,
 T. Ed. 2:4; G: cf. T. Ed. 2:4)

The point of the pericope follows neatly from M. 4:1. Once the intention to use produce in a meal has been formulated--in the present case, the moment during the week at which the untithed produce is designated for use on the Sabbath--the produce is liable to the removal of tithes regardless of when or how it is eventually consumed. The issue is framed most simply at A-C. Prior to the Sabbath, children have hidden figs and forgotten to tithe them. Certainly the figs may not be eaten on the Sabbath, for tithing of produce is forbidden on the day of rest.⁶ One might expect, however, that after the Sabbath the children may make a snack of the figs without removing tithes. Since the figs were designated to be eaten only on the Sabbath, it is plausible that with the passing of the Sabbath the original intention has been nullified by the failure to eat them at the appointed time. The failure, that is, to confirm the intention by the appropriate act, might lead us to regard the intention as non-existent. The figs, consequently, might return to the exempt status they enjoyed prior to being designated for the Sabbath. C clearly rejects this conclusion. Once the intention to make a meal of the figs has been formulated, the owner must tithe them even after his original intention can no longer be fulfilled. Thus one who wishes even a snack of the figs after the Sabbath must tithe them, for the original intention to use them in a meal is deemed binding.

The issue is carried forward by the Houses at D-F,⁷ although the brevity of the protasis of this dispute makes interpretation difficult. The Houses appear to go over the ground of A-C.⁸ If a basket of produce is designated for the Sabbath, but does untithed prior to that day, the Shammaites permit the householder to snack on the produce following the Sabbath, while the Hillelites require him to tithe before he takes so much as a bite. The Hillelite ruling thus accords with A-C, and appears to offer the latter the prestige of Hillelite precedent (cf. T. 3:2b-4). Judah's gloss at G, however, requires us to view the dispute from a different perspective (reflected in the bracketed portion of my translation of D-F). Judah argues that a farmer who sends a basket of Sabbath fruit⁹ to his neighbor must tithe the produce if he himself wishes to partake of it prior to sending the gift. The point is that the farmer's designation of the produce for the Sabbath immediately imposes upon it the status of food which has been set aside for a meal. The produce is liable to the removal of tithes from that moment on, no matter how it is used.

The connective 'p, which links G to D-F, proposes that the principle of G is at work in D-F as well. That is, the Houses dispute the point at which the designation of produce for the Sabbath first imposes upon it the status of *tebel*. The Shammaites hold that since the produce is intended for use on the Sabbath only, it remains exempt from the removal of tithes until then, and may therefore be eaten as a snack during the week without removing tithes. Any tithing during the week is solely to prepare the produce for the Sabbath. The Hillelites, however, argue that the designation of the produce for use on the Sabbath imposes liability upon the produce immediately. Once the owner designates produce for a meal all use of the produce is deemed for that purpose, regardless of the fact that the appointed time for the meal has not yet arrived. From this perspective, the Hillelite position appears to be an application of A-C rather than a precedent for it. Once we conclude that no actions are required to confirm a person's intention to make a meal of produce (A-C), it is a small step to conclude that such intention imposes liability upon the produce as soon as the intention is formulated.¹⁰

- A. *Children who hid [untithed] figs away [intending to eat them on] the Sabbath [= M. 4:2A]--*
- B. [if they hid] black [figs for the Sabbath], but found white [figs in their place after the Sabbath],

- C. [or if they hid] white [figs before the Sabbath], but found black [figs in their place after the Sabbath],
- D. doubt [concerning the identity of the figs renders them] forbidden [as a Sabbath meal],
- E. on the grounds that doubt [concerning] the preparation [of the figs specifically for the Sabbath renders them] forbidden (*špyqn 'šwr mṣny ššpq mwkn 'šwr*)¹¹ [i.e., since the identity of the figs is in question, there is doubt as to whether they have indeed been set aside for the Sabbath].
- F. *A basket [of untithed produce designated for] the Sabbath--*
- G. *the house of Shammai declare it exempt [from the removal of tithes].*
- H. *But the House of Hillel declare it liable [to the removal of tithes] [= M. 4:2D-F].*
- I. R. Judah says, "Hillel himself used to forbid it."
T. 3:2b (B-C = M. Bes. 1:4;
F-H = M. Ed. 4:10)
- J. *One who gathers a basket [of produce] to send to his fellow [for the Sabbath], shall not eat [any of the produce] unless he tithes [= M. 4:2G].*
- K. R. Judah says, "Hillel himself used to forbid it."
T. 3:3
- L. One who transports [untithed] figs from place to place [before they are rendered liable] [cf. M. 2:3A, T. 2:1A],
- M. and the Sabbath occurred [before the end of the journey] (*w^abrh c^elyhn šbt*)--
- N. at the close of the Sabbath, he shall not eat [even a snack] unless he tithes [cf. M. 4:2C].
- O. R. Judah says, "Hillel himself used to forbid it."
T. 3:4 (pp. 237-38, ls. 2-8)
(F-O = T. Ed. 2:4,
L-N: cf. b. Bes. 35a)

Two autonomous units, A-E and F-O, have been joined together so that their individual citations of M. 4:2 (at A, F-H and J) follow the sequence in which these appear in M. This gives the impression of a running commentary to M.--but the impression is false. Although A cites M., the case presented at B-E has little bearing on the problem of tithes.¹² Similarly, F-O's citations of M. are not intended to instruct us further in the logic or scope of M.'s law. T.'s only concern is to identify Hillel as the authority behind M. Thus, while T. cites M., it is completely uninterested in contributing to the analysis of M.'s problem.

A-F shows that the rules regarding the preparation and eating of produce on the Sabbath are identical to those governing Festival Days. On both days, it is forbidden to eat what has not already been set aside in preparation for that day (cf. Maimonides, *Comm.*, M. Bes. 1:1). The model for T.'s case appears at M. Bes. 1:4:

- A. [If before the Festival Day] he designated (*zmn*) black [pigeons as his Festival meal], but [on the Festival Day] he found white [pigeons in their place];
- B. [or if beforehand he designated] white [pigeons], but [afterward] he found black [pigeons in their place];
- C. [or if beforehand he designated] two [pigeons], but [afterward] he found three [pigeons in their place]--
- D. [those which he found on the Festival Day] are forbidden [for the Festival meal].

Aside from the operative verbs (*zmn* vs. *tmnw*), and the language I have interpolated in brackets, M. Bes. 1:4A-B = A-C.¹³ In both pericopae, white food items have been set aside in one place, while black food items have been set aside in another (so b. Bes. 5a, s.v., '*mr rb*'). On the Sabbath or Festival Day it is discovered that there has been a switch--black food items occupy the place formerly containing the white, while white food items are found where the black once stood. It is possible that someone has merely switched the two, setting white where the black were and *vice versa*. In this case, both sets of food items would be permitted on the Sabbath or Festival, since both were properly designated beforehand. Only their location has changed. However, it is also possible that entirely undesignated white food items have been substituted for the black, and so on. For this reason, M. Bes. 1:4D prohibits its pigeons for consumption on the Festival Day, for there is doubt as to whether they have been properly designated. Similarly, D of our pericope rules that the doubt regarding the identity of the figs prevents their preparation for use in the Sabbath meal. E, despite the uncertainty of its textual tradition, glosses D with the observation that since the identity of the figs is in doubt, there is doubt as to whether they have indeed been set aside for the Sabbath. The point appears redundant, and supports Lieberman's suggestion that D and E are conflation of two independent apodoses to A-C.

F-O is independent from the foregoing in both form and substance. The unit is composed of three elements: two citations of M. (E-H, J) and one case (L-N) employing a variant of M. 4:2C's apodosis. The whole is knit together by Judah's identical glosses

at I, K and O. The polemical character of the unit is evident in these glosses, which are uninterested in the substance of M., but rather seek to show that its laws derive from Hillel himself.¹⁴ T. argues that M.'s rulings are ancient--hence unchallengeable--positions. This polemic confirms our suspicion that the material in M. as well is hardly ancient at all, but rather is at issue among Ushan circles at the time of M.'s formulation and redaction.¹⁵

- A. Branches of a fig-tree with figs on them (*wbhn t'nyim*),
- B. [or] fronds of a date palm with dates on them (*wbhn tmrym*)--
- C. [if] children or workers brought them [into the house],
[the produce on the branches or fronds] is exempt;
- D. [if] the householder brought them [into the house],
[the produce on the branches or fronds] is liable.

T. 3:5a (p. 238, ls. 8-9)
(cf. T. Y.T. 4:2)

T. is formally independent of M., but assumes M.'s principle that intention to make a meal of unprocessed produce renders it liable. Branches with fruit attached to them have been brought into the house (A-B). M. 3:1A-B, which permits dependents and employees to make a snack of produce brought into the householder's courtyard for further processing, would lead us to expect that the fruit on these branches is also exempt from the law, until some form of processing takes place. C-D, however, does not address the issue of processing at all. It merely states that the produce is liable if the householder himself brings it into his house, but it is exempt if children or workers do so. The point can only be that the act of bringing the produce into the house demonstrates intention to make a meal of it, despite its crude condition. T., in this regard following M. 3:1A-B, claims that affective intention belongs to the owner of the produce alone. Children and workers, since their right of possession derives solely from their relationship to the householder, cannot render liable produce which still belongs to him (cf. M. 2:2). Therefore their intention to make a formal meal is null.¹⁶

4:3

- A. One who picks olives out of the softening-bin
- B. dips [them] one by one in salt, and eats [without tithing].
- C. If he salted [them] and placed [them] before him, he is required [to tithe].
- D. R. Eliezer says, "[If he picked them] from a bin [of olives

which were preserved in] cleanness (*mn hm^etn ht^hrh*), he is required [to tithe],

E. "but [if he picked them] from [a bin of olives which had been rendered] unclean (*mn ht^m'*), he is exempt [from tithing],

F. "because he returns the surplus [to the bin of unclean olives]."

M. 4:3 (A = y. Ned. 2:4, 6:3;
A-F = b. Bes. 35a)

A-C continues the unit's interest in explaining how a person's intended use of produce affects his obligation to tithe it. The olives in the bin are awaiting pressing for their oil. Since the owner views the olives primarily as a source of oil, they are not yet regarded desirable as food. As a non-food, therefore, they need not be tithed if a snack is made of some of them prior to the pressing of the remainder. Problems arise only if the owner of the olives removes some of them from the bin and salts them (C), for the salting prepares the olives for use as food in their own right. These olives, consequently, must be tithed, for they have been separated from the batch and prepared for a purpose other than pressing for oil (MR).¹⁷ A single olive removed from the bin, however, is permitted, even if it is salted (B). Like the fig plucked in a courtyard (M. 3:8A-C), the single olive continues to enjoy the status of its original batch, and may be eaten without the removal of tithes, regardless of further preparation.

Eliezer's gloss at D-E, explained at F, refines the problem of A-C.¹⁸ A person who simply picks olives out of the softening bin gives no indication of his intended use of them. On the basis of his actions alone, therefore, it is impossible to determine whether olives he eats must be tithed. Eliezer's point is that the householder's intentions may be inferred from factors which have little to do with the actions of removal and consumption. If, for example, the householder has prepared olives in strict observance of the laws of cleanness, we may assume that he has no intention of returning to the batch any olives he may remove. As he removes them, the olives are made unclean by his hands and if returned, will render unclean the entire batch in the bin.¹⁹ We may safely assume, then, that the householder has no desire to waste, by a single careless act, all the trouble he has invested in preserving the cleanness of the olives during their harvest and processing. Since the olives are removed permanently, we are therefore entitled to assume that they are no longer intended for use as oil, but instead are deemed set aside, e.g., for use in a meal. As such, they are liable to the removal of tithes before they may be eaten.

If, on the other hand, the olives in the bin are already unclean, we learn nothing about the householder's intentions when he removes a batch of them. Since they may be returned to the batch without waste, we must wait for some further action on the householder's part before the liability of the olives can be determined. Presumably, they remain permitted as a snack unless the householder salts them (A-C) or in some other way prepares them for use as a meal.

- A. They said before R. Eliezer, "Even though he does not (*š'yn*, following E) return them [i.e., the olives of M. 4:3A] to this bin, lo, he returns them to another bin."²⁰

T. 3:7a (p. 238, ls. 12-13)

T. glosses Eliezer's ruling at M. 4:3D-F. Sages point out that, according to Eliezer's own logic, it is impossible to determine the householder's intentions as he removes a batch of clean olives from the bin. Even though he will not return the now unclean olives to the bin from which he has removed them, he may nevertheless return them to another bin of unclean olives. Thus Sages argue that, in the case presented by Eliezer, the householder's actions remain ambiguous and offer no clue as to his intentions. The produce, therefore, remains permitted as a snack until the householder's intentions are clarified.

- A. Pits [filled with] arum--
 B. [and] he selects the thick [stalks] while permitting the thin [stalks] to remain [in the pit]--
 C. [if he keeps the stalks] in his hand (*btwk ydw*, following E, G), lo, this one is exempt [from tithing the stalks].
 D. [But if he places the stalks] on the ground or in a container, lo, this one is required [to tithe the stalks].
 E. Said R. Simeon b. Eleazar, "The House of Shammai and the House of Hillel did not dispute that one who selects [arum from the pit and places it] on the ground is exempt [from tithing], and that one who selects [the arum and places it] in a container is required to tithe.
 F. "Concerning what did they dispute? Concerning one who selects [arum from the pit and keeps it] in his hand, for
 G. "the House of Shammai require [him to tithe], but the House of Hillel exempts [him from tithing]."

T. 3:10 (p. 239-40, ls. 28-32)
 (F-H: cf. M. Bes. 1:8)

While the pericope has been redacted within T.'s discussion of M. 5:1-2, it clearly presents a case dependent upon the issues of M. 4:3. Arum, like the olives of M. 4:3A, has been left in pits to soften, but its processing remains incomplete, for some stalks remain hard and thin. The problem is to determine whether the householder, who removes the softened (i.e., thick) stalks, intends to use them in a meal. As M. 4:3B-C suggests, we assume he intends a snack as long as he eats only what his hand can hold. But if he places the stalks before him on the ground or in a container, he is required to tithe. By creating a separate batch of produce, the householder indicates intention to make a meal.

Simeon b. Eleazar, at E-G, revises an assumed Houses-dispute, which is not before us. He argues that the Houses differ concerning the arum which the man has kept in his hand. The Shammaites require the man to tithe, while the Hillelites exempt him from tithing. Apparently, the Shammaites consider the softened arum to be completely processed, regardless of the fact that the entire batch is not yet ready for use. Since the processing of the arum in hand is complete, even a snack is forbidden unless tithes are removed. The Hillelites, however, stand within the presuppositions of M. 4:3A-C. they hold that the processing of the entire batch is incomplete. Therefore, by taking one stalk, the man has not displayed intention to make a meal, and is therefore exempt from tithing until he actually appropriates the produce for that purpose.²¹

4:4

- A. "One drinks [wine] at the press (*šwtym ʿl hgt*)²²--
- B. "whether [it is mixed] with hot water or cold water--
- C. "(six MSS. add: *w-*, "and") he is exempt [from removing the tithes]--the words of R. Meir.
- D. R. Eleazar bar Sadoq declares [him] liable [to removing the tithes].
- E. But Sages say, "Concerning [the wine mixed with] hot water, he is liable [to removing the tithes], but concerning [the wine mixed with] cold water, he is exempt [from removing the tithes]."

M. 4:4 (A-E = b. Shab. 11b,
b. Erub 99b; cf. M. Erub. 10:6)

Meir and Eleazar bar Sadoq dispute an issue far removed from the problem of intention (A + C-D). At issue is whether wine

drunk at the vat is processed, and therefore liable to the removal of tithes before it may be drunk (cf. M. 1:7W-Y). Only Sages' gloss at E, and the accompanying interpolation at B, brings the pericope within the wider range of M. 4:1-5D's interests. Now, as at M. 4:3F, at issue is whether the wine, once removed from the vat and mixed with water, is intended to be used as a separate batch of wine.²³

A-C's dispute concerns a matter already settled at M. 1:7W-Y which states that wine is liable to the removal of tithes when it is skimmed at the vat, for at this point its processing is complete. This is the position of Eleazar bar Sadoq (C), who forbids the owner to take a cup of wine as a snack from the skimmed vat unless he tithes the wine remaining in the vat. Meir, who objects, must hold that the skimming of wine is not its point of liability to the law of tithes. Wine, rather, becomes liable at some later point (e.g., when it is stored away in jars).²⁴ Wine drunk at the vat, therefore, remains permitted as a snack without the removal of tithes.

Sages (E) carry forward the position of Meir, for they assume that, all things being equal, one is permitted to sample untithed wine at the vat. Sages, due to the skill of our unit's redactor, simply point out that Meir's position must be modified in view of the householder's intended use of the wine. It is customary, for example, to thin wine with water before drinking (e.g., M. Ber. 8:2). According to Sages, who in this regard are precise followers of Eliezer (M. 4:3D-F: cf. b. Shab. 11b), the liability of the thinned wine to the removal of tithes depends entirely upon whether, after having been mixed, it can be returned to the vat without damaging the rest of the wine. As at M. 4:3, therefore, we assume that the householder intends his drink to be no more than a snack, after which he shall return to the vat whatever remains in the cup. The wine, it follows, need not be tithed. Wine mixed with hot water, however, cannot be returned to the vat without killing bacteria necessary for the fermentation of the wine. Since the householder has made it impossible to return the wine, we assume that he never intended to snack on it at all, but rather has a meal in mind. As we would expect, he is now required to tithe the wine before he uses it.²⁵

4:5-6

- A. One who husks barley (*hmqlp bs^cwrym*) removes the husks (*mqlp*) [from the kernels] one by one, and eats [without tithing].
- B. But if he husked [a few kernels] and placed [them] in his hand, he is required [to tithe].
- C. One who husks parched kernels of wheat (*hmwll mlylwt*)²⁶ sifts [the kernels] from hand to hand, and eats [without tithing].
- D. But if he sifted [the kernels] and placed [them] inside his shirt, he is required [to tithe].
- E. Coriander which [the farmer] sowed [in order to harvest its] seed [for future sowing] (*zr^ch lzar^c*)--its leaves are exempt [from the removal of tithes if they are eaten] (*yrqh ptwr*).
- F. [If he] sowed it [in order to harvest its] leaves [for use as an herb] (*zr^ch lyrq*)--[both] the seeds and the leaves are subject to the law of tithes (*mt^csrt zr^c wyrq*).
- G. R. Eleazar²⁷ says, "Dill is subject to the law of tithes [in regard to its] seeds, leaves and pods" (*mt^csrt zr^c wyrq wzyryn*).
- H. But Sages say, "Nothing is subject to the law of tithes [in regard to both its] seeds and leaves save cress and field-rocket²⁸ alone" (*'ynw mt^csrt ... 'l' ... blbd*).

M. 4:5 (A-D = b. Bes. 13b;
E-F = y. Kil. 3:6[28d],
y. Orl. 1:1[60c]; H = b. A.Z. 7b,
cf. T. Sheb. 2:7)

- I. Rabban Gamaliel²⁹ says, "Stalks of fenugreek, mustard plants, and fava plants (*pwł hłbn*)³⁰ are subject to [the law of] tithes" (*hybt bm^csr*).
- J. R. Eliezer says, "The caper-bush (*slp*)³¹ is subject to the law of tithes [in regard to its] stalks, berries and blossoms" (*mt^csrt tmrwt w'bywnwt wqprś*).
- K. R. Aqiba says, "No [part of the caper-bush] is subject to the law of tithes except the berries (*'yn mt^csr 'l' 'bywnwt*),
- L. "for they are the fruit [i.e., the part normally harvested for use as food]."

M. 4:6 (I = y. Ma. 1:1[48d];
J-K = b. Ber. 36a)

The present division of the pericope into A-H and I-L has been incorrectly imposed upon the text by copyists and is followed uncritically by subsequent printers.³² The natural divisions are the doublet at A-D, which continues the theme of M. 4:1ff., and E-L, a formally autonomous pericope which addresses a fresh issue entirely. Since formal difficulties internal to E-L require us

to have all of its elements before us, I have presented the two pericopae as a single unit. Discussion of its major parts, however, will proceed independently.

A-D concludes M.'s discussion of criteria for determining whether a householder intends to use untithed produce in a meal. While the formal balance of the doublet is an aesthetically satisfying conclusion to a thematic unit, the substance of the rulings offers little that is new or challenging. The point in both cases is that a man's consumption of untithed produce is deemed a snack, and is exempt from the removal of tithes, only if he removes whatever he eats directly from the unprocessed batch itself. At A-B, for example, the husker may remove an unhusked kernel from the batch, husk it and eat it without tithing. Should he husk a few kernels and set them aside, however, he must tithe that batch before eating a single kernel. These are deemed to have been designated for a specific use and are as a consequence liable to the removal of tithes (cf. M. 3:8A-C). C-D is slightly more sophisticated. The householder is winnowing the husks from the wheat by sifting the kernels from hand to hand. While sifting, he may eat one kernel at a time, for at no point are the kernels ever gathered into a separate container (i.e., his hand; cf. M. 4:1I). Should he collect some inside his shirt, however, he must tithe them before eating, for the husked kernels have been gathered into a distinct batch, separate from the kernels which remain in the midst of their processing (M. 4:3A-C).

The issue which we have identified as so crucial to M. 4:1-5D, the affect of a person's intentions, is carried into a new range of problems by E-L, an entirely autonomous set of materials. The primary assumption of E-L is that a farmer's intended disposition of his crop when he sows it determines whether or not it shall be subject to the law of tithes when he harvests it. Thus a crop shall be deemed food, and shall be subject to the law of tithes (M. 1:1), only if the farmer sowed the crop for food in the first place. Our pericope presents two conflicting applications of this assumption. E-J, while hardly a unitary set of materials, nevertheless proposes a single thesis, that all edible parts of a plant sown for food are subject to the law, even if some parts of the plant are not usually desired for their food value.³³ K-L, on the other hand, argues that the intention to use a crop for food subsumes under the law of tithes only that part of the plant which is normally eaten. Underlying these conflicting views is disagreement as to whether an individual's private intentions, on the one

hand, or normal public custom, on the other, determine the fact that a plant is a food.

Before proceeding to the details of E-L's two positions, a number of literary problems require our attention. On the surface, E-L is composed of two basic units, the paired rulings at E-F, and the formally identical disputes at G-H and J-K (+L), separated by a singleton at I. These materials are arranged according to the relevant realia, with E-H discussing, in general, seeds and leaves, and I + J-L concerned for the most part with stalks and berries. This evident concern for organizing materials according to realia, however, has created literary problems which substantially affect the sense of the pericope. We may begin with G-H, the dispute between Eleazar and Sages. Sages, we note, are not in conversation with Eleazar at all, for while he presents a thesis regarding "seeds, leaves and pods," Sages know only "seeds and leaves." Indeed, Sages' lemma (H) is a cogent response to E-F, which is likewise concerned only with seeds and leaves. H, then, appears to gloss E-F, and offers no dispute to Eleazar.³⁴ If so, the interpolation of G requires explanation. Such explanation emerges from the observation that J, attributed to Eliezer, is formally identical to G: $X mt^{c}sr/t A + B + C$. The formal identity and substantive similarity of the lemmae suggests that prior to redaction in the present context G + J comprised a matched pair, probably in Eliezer's name.³⁵ The pair, we may suppose, has been separated to conform to the substantive framework of the present pericope: seeds vs. leaves + stalks vs. berries. G has been interpolated between F and H to form a dispute with Sages,³⁶ while Aqiba's gloss to J (K-L) has been formulated in the pattern of H ('*yn mt^csr 'l'*). The redactional work now gives us two formally identical "disputes," G-H and J-K + L. The singleton at I, in turn, establishes the thematic separation desired by the redactor. Relevant to J-L alone, I distinguishes the disputes from one another and establishes I + J-L as its own substantive unit. As we turn now to the interpretation of E-L's law, our exposition will necessarily follow the proposed reconstruction of its constituent parts: E-F + H, I, G + J-L.

The issue is set at E-F. A farmer sows a crop which may be used either for its agricultural value as a seed-bearing plant, or for its food-value as an herb. According to E-F the inclusion of the crop under the category of tithable produce depends entirely upon the intentions of the farmer when he sows the seed for the new crop. If his intention is primarily to collect seed for future sowing, even the edible leaves are exempt from the removal

of tithes, for the plant itself is destined for use as a non-food (E). Should the farmer sow his seed in order to harvest the crop for its leaves, however, even the seeds must be tithed (F). Since these can be eaten, they share the status of the desired leaves, and are subject to all laws applicable to food crops. The Sages' objection at H concerns F's notion of the value of coriander seed, rather than the general principle, with which they agree. Sages assume that coriander seed is useless as food, and therefore can never be subject to the law. They argue that only the seeds of cress and field-rocket are edible and, therefore, tithable if the herbs are used for food.

Gamaliel (I) follows the principle of E-F as well. He holds that the stalks of fenugreek, mustard and fava plants may be useful as food if pickled (T. 3:7c) or boiled (y. Ma. 1:1[48d]). If such plants are grown for their berries, seeds or beans, it follows that their stalks as well are subject to the law.³⁷ The same point, of course, informs Eleazar/Eliezer at G + J. If dill is sown for its spicy leaves, all parts of the plant which carry that flavor must also be tithed (G). Matters are the same with caper, also used to spice food (J). Only Aqiba (K-L) stands against the prevailing theory of the pericope. He argues that no part of the caper-plant need be tithed except the berries themselves, for these alone are normally used for food.³⁸ The point must apply as well to dill, fenugreek, etc. Only that part of the plant which normally serves as food is subject to the law of tithes, even if the farmer chooses to eat a part of the plant which is normally uneaten. For Aqiba, then, food is decidedly *not* in the eye of the beholder. Only that which is normally desirable as food is deemed to be actually desired in all concrete circumstances. Caprice or perverse appetite have no bearing on the application of the law of tithes.

- A. [If the householder] brought kernels of grain into his house in order to process them into dough, he is exempt [from tithing].
- B. [If he brought them into his house] in order to eat them [as] parched grain (*mlylwt*),
- C. Rabbi (Lieberman deletes "Meir") requires [him to tithe].
- C. R. Yose b. R. Judah exempts [him from tithing].

T. 3:5b (p. 238, ls. 10-11)
 (Cf. T. Ter. 3:18, y. Ma. 4:1[51a],
 b. Bes. 13a)

T. is hardly relevant to M. 4:5A-D, but finds its place here because it discusses grain. The point of A is that the householder intends to eat the kernels as bread, not as nuts. Therefore, he need not tithe whatever kernels he may eat as nuts. The ruling may be interpreted either within the principles of M. 3:1A-B or those of M. 4:3A-C. If the former, the point is that the house, like the courtyard of M. 3:1A-B, does not render liable produce which is not yet desirable for consumption. If the latter, we rule that, since the householder wants as food the finished produce (bread, oil), we assume that the raw produce (grain, olives) is not deemed desirable for its food value in and of itself.

Under dispute at B-C is whether parching is necessary for the desirability of the grain. For Rabbi, who declares the grain liable upon entry into the house, the grain is perfectly palatable whether or not it is parched. He therefore obliges the householder to tithe it immediately. Yose b. Judah, on the other hand, claims that the produce need not be tithed until the intended processing is actually completed.

- A. *One who husks barley* [= M. 4:5A]--
- B. [if he husked] two [kernels at a time], he is exempt [from tithing],
- C. [but if he husked] three [kernels at a time], he is required [to tithe].
- D. But (*w-*) in [the case of] wheat [kernels]--
- E. [if he husked] three [kernels at a time], he is exempt [from tithing],
- F. [but if he husked] four [kernels at a time], he is required [to tithe].

T. 3:6 (p. 238, ls. 11-12)
(A-C: cf. y. Ma. 4:5)

T. cites M. at A, but then goes on to disagree with M. at B-C and D-F. A separate batch of grain, contrary to M. is constituted by three kernels of barley (C) and four of wheat (F). A person collecting fewer kernels at one time need not tithe them. I cannot explain why the quantities differ for barley and wheat.³⁹

- A. *Coriander which he sowed [in order to harvest its] seed [for future sowing]* [= M. 4:5E],
- B. but [before harvesting the seed] he decided [to harvest] the leaves (*ḥšb^c lyh lyrq*)--
- C. [both] the seeds and the leaves are subject to the law of tithes [= M. 4:5F].

- D. Mustard which he sowed [in order to harvest its] seed [for use as a condiment],
- E. but [before harvesting the seed] he decided [to harvest] the leaves--
- F. [both] the seeds and the leaves are subject to the law of tithes.
- G. "[In the case of mustard] they [i.e., Sages] treated its leaves as permissible" (*nhgw byrqw htyr*, following Lieberman's emendation)--the words of R. Eliezer.

T. 3:7b (p. 238, ls. 13-15)

(A-F: cf. T. Sheb. 2:7;

G: cf. y. Ma. 4:6[51c])

A-C and D-F form a doublet, with G glossing D-F. T. adds an important qualification to M. 4:5E-F's theory of intention. As A-C points out, if the householder does in fact harvest the edible coriander leaves prior to the harvest of the seeds, the entire plant--leaves and seeds--becomes subject to the law of tithes. Once the intention to use part of the plant as food is made clear, the entire plant becomes subject to the law, as if the plant had originally been sown for food (M. 4:5I-J). This, clearly, would surprise the authorities behind M. 4:1-5D, who assume that an intention, once formulated, governs the interpretation of all subsequent actions.

The formal similarity of A-C and D-F obscures the fact that D-F stakes out a very different case, based upon the ruling of Eleazar at M. 4:5G. Eleazar suggests that even if the householder intends to use only one part of a plant as food, other edible parts are subject to the law. This is precisely the point of D-F. Since one part of the plant is considered useful as food, all other edible parts are subsumed under the law whether or not they are actually destined to be harvested. The gloss at G dismisses D-F entirely, for it claims that the leaves are exempt from the law once the householder sows the mustard for the seeds. Eliezer's point must be that once the householder determines to harvest a particular part of the crop, other edible parts are no longer subject to the law even if they are harvested. T., then, brings Eliezer into harmony with Aqiba, M. 4:6K-L.

- A. Said R. Joshua ben Qebusa:⁴⁰ "Never in my life did I presume (*mymy l' gś lyby*) to tell a man, 'Go and pick mustard stalks and pickle [them], and you shall be exempt from [removing] tithes.'"

- B. *Hemtalía* (*hmtly'*)⁴¹ was not treated by Sages as permissible (*l' nhgw bh hkmym hytyr*)--
neither [in regard to the removal of] tithes, nor [in regard to harvesting it] in the Sabbatical year.
- C. When he [i.e., the householder] separates heave-offering [from produce derived from any plant having two or more edible parts], he separates heave-offering from each [distinct part as heave-offering on behalf of other similar parts] (*twrm mkl 'hd w'hd*), for *they do not separate heave-offering from one kind* [of produce] on behalf of a different kind (*'yn twrmyn mmyn ol š'ynw mynw*) [= M. Ter. 2:4].⁴²

T. 3:7c (p. 238-39, ls. 15-19)
(A: cf. y. Ma. 1:1[48d])

T. concludes its discussion of M. 4:5-6 with three miscellaneous units. A, an independent lemma, is cited in support of Gamaliel's ruling (M. 4:6I) that mustard stalks are liable to tithes.⁴³ B is relevant to M. 4:5E-F's discussion of conditions under which seeds are subject to the law of tithes. According to b. A.Z. 38b,⁴⁴ *hemtalía* is a medicinal mixture of various seeds. Since the mixture is consumed, it may not be used unless it is tithed, and the seeds from which it is concocted may not be harvested in the Sabbatical year.

C makes an important contribution to M.'s discussion of plants having two or more edible parts. If one removes heave-offering (and tithes) from, e.g., the caper-berry, he is not permitted to eat from a separate part of the plant, e.g., the caper-blossom, unless he tithes the blossoms as well.⁴⁵ The point is that each separate part of the plant is regarded as a distinct kind of produce, even though the entire plant becomes subject to the law once a single part is designated as the intended food harvest (cf. M. 5:8H).

CHAPTER FIVE
MAASEROT CHAPTER FIVE

Chapter Five consists of three basic units, each of which is thematically linked, in inverse order, to a corresponding unit of Chapter One. The opening unit of the chapter, M. 5:1-2, addresses the basic contention of Chapter One's closing unit (M. 1:5-8),¹ that produce becomes *liable* to the removal of tithes only after it is harvested and appropriated by the householder. The basic proposition of M. 5:3-6 (+7), the chapter's second unit, is that of the second unit of Chapter One, M. 1:2-4, which rules that produce becomes *subject* to the law of tithes when it ripens and becomes edible. The final unit of the chapter, M. 5:8, which offers lists of produce exempt from the law of tithes, depends for its criteria upon those presented at M. 1:1, the opening pericope of the tractate. The chapter, obviously, is an excellent conclusion to M., balancing Chapter One's thematic sequence (a-b-c) with a complementary one of its own (c-b-a).

The chapter's law, as I have indicated, is largely derivative of and secondary to that of Chapter One. The primary point of M. 5:1-2 is made in its opening triplet (A-F). Actions which normally indicate the appropriation of produce, and which therefore render it liable to the removal of tithes, have no effect prior to the harvest of the crop. Shoots, therefore, which are uprooted prior to the normal harvest period, and unharvested produce which is sold or given away, remain exempt from the law of tithes, even though under normal circumstances produce subjected to such procedures would be deemed liable.

Central to M. 5:3-6 (+7) is the familiar notion that produce becomes subject to the law of tithes only when it is ripe or edible. M. 5:3-4, amplified at M. 5:6, prohibits the sale of ripened produce or other edible products to persons known to violate M.'s tithing regulations. Prior to the ripening, however, or if the products are inedible, there is no restriction on the sale. The reason is that the commodity is not deemed food and, by definition, is exempt from the law of tithes. M. 5:5 approaches the same problem from a different perspective. An Israelite who acquires a Syrian field need tithe that field's produce only if it ripens after he becomes the field's owner. The point is that the Israelite is responsible for tithing only that produce which becomes subject to the law under his jurisdiction.

The basic issue of the unit is augmented by a series of glosses at M. 5:3C, 5:4C-D, 5:5D+I and 5:6 F-H, which consistently introduce a single point. A mixture of exempt produce and produce subject to the law of tithes must be tithed according to the percentage of tithable produce present in the mixture. The assumption is that what is exempt from the law cannot be used to meet the requirements of the law (cf. M. Ter. 1:10). M. 5:7, which stands outside the main thematic concerns of its unit, complements the above series of glosses. It rules that produce, the liability of which is in doubt, must be tithed if it is adjacent to a batch of the same type of produce which is certainly untithed.

The chapter concludes, at M. 5:8, with lists of items which are exempt from the law either because they do not grow in the soil of the Land of Israel or because they are inedible (M. 1:1A-B). A gloss adds that the inedible seeds of produce which is declared heave-offering do not themselves enjoy the status of heave-offering. They may therefore be eaten by any non-priests who desire them. The point, superficially related to the glosses of M. 5:3-6, is that mixtures of edible and inedible produce are taboo as heave-offering with regard to the edible portion of the mixture alone.

The complementarity of Chapters Five and One consists of more than thematic interests and redactional structure. Fundamentally, Chapter Five completes Chapter One's partially-drawn description of the shared rights of God and the farmer to the produce of the land. Chapter One, we recall, portrays God and the farmer as joint-holders of a common stock of produce, with God entitled to his just share, the tithes, and the farmer entitled to his, the rest of the harvest. According to Chapter Five, however, the farmer is not simply the joint-holder of the produce with God. He is as well the custodian of God's share until such time as this share is properly removed from the produce held in common. The point emerges from the central unit of the chapter, M. 5:3-6 (+7). We are told in a variety of ways that produce which becomes subject to the law of tithes while under the ownership of the farmer must be protected from misappropriation until the tithes are removed. M. 5:3-4 + 6, for example, points out that the farmer must make sure that tithable produce which leaves his possession will be tithed by whomever eventually consumes it. The farmer, in other words, is responsible for ensuring that whatever comes under God's claim while under his proprietorship is eventually given over to God. Similarly, at M. 5:5, only that Syrian produce which ripens under Israelite ownership is deemed under God's ownership as well. Only such produce, therefore, must be reserved by the farmer for

the removal of tithes. In both instances, the point is clear: an Israelite who comes to possess produce which is in part owned by God, must preserve for God that portion which is due him.

T., for the most part, is unremarkable, except for T. 3:8. The pericope points out that M. 5:3-5 (+7)'s interest in the farmer's proprietary responsibilities may be read into M. 5:1-2 as well. While M. 5:1A-B permits a farmer to uproot shoots and transplant them without removing tithes, T. argues that this is the case only if the farmer transplants the shoots onto his own property. If the farmer, however, transplants the shoots to another's property, or transplants them outside the Land of Israel, or in any other way jeopardizes the eventual removal of tithes from the matured produce, he must tithe the shoots prior to transplanting. T., therefore, not only supports the conception of M. 5:3-6 (+7), but argues that it informs the entire chapter, a proposition which the thematic and redactional traits of Chapter Five certainly justify.

5:1-2

- A. 1) One who uproots shoots from his own [field] and transplants [them] within his own [field]
- B. is exempt [from tithing the shoots before replanting them].
- C. 2) [If] he purchased [produce] which [was still] attached to the ground,
- D. [the produce] is exempt [from the law of tithes until the harvest].
- E. 3) [If] he picked (*lqt*)² [produce] to send to his fellow [prior to the harvest],
- F. [the produce] is exempt [from the removal of tithes until the recipient processes it for his own use].
- G. R. Eleazar b. Azariah says, "If such as these are for sale in the market [at the time the produce is picked],
- H. lo, these are liable [to the removal of tithes before the donor sends them to his fellow].

M. 5:1

- I. One who uproots turnips or radishes from his own [field], and replants [them] within his own [field]
- J. in order [to harvest] the seeds [for planting],
- K. is required [to tithe the produce before transplanting],
- L. for this [uprooting] is their harvest (*grnn*).³

- M. Onions which have taken root (*bšlym ššryšw*)⁴ in the attic are insusceptible to uncleanness (*ṭhrw mlṭm'*).
- N. [But if] debris [from fallen beams] collapsed about them, and they were exposed [to the sky],
- O. lo, these are deemed planted in the field [and are therefore subject to the law of tithes].

M. 5:2 (M: cf. M. Ter. 9:7)

The pericope's two units, A-L and M-O, are in fact independent pericopae, and must therefore be discussed separately.⁵ A-L is composed of a couplet, A-B + I-L, into which has been interpolated a second couplet, C-D + E-F, the latter bearing a gloss at G-H. Both couplets identify and adjudicate ambiguities in the application of generally-accepted principles. At issue in A-B + I-L are the conditions under which agriculturally necessary transplanting is deemed to constitute a harvest, i.e., an act of acquisition which renders the produce liable to the removal of tithes (cf. M. 1:5ff.). The problem of C-D + E-F is quite separate, for at issue here is the liability of produce which is subjected to an act of acquisition (sale, plucking) prior to the general harvest of the field in which the produce grows (cf. M. 2:5-6). The fact that each couplet is concerned with produce which is taken before its proper harvest explains the redactor's interest in bringing them together into a single pericope. He has done so, however, in a way which obscures their formal and substantive differences, while stressing what is common to both. A-B, C-D and E-F now constitute a triplet exemplifying the simple proposition that unharvested produce cannot become liable to the removal of tithes. I-L, concerned with harvested produce, now appears to gloss the completed triplet with a complementary clarification. M-O, formally and substantively autonomous of the foregoing, is tacked on. It adds to A-B and I-L yet a third case in which we must determine the liability of uprooted produce which has been returned to the field.

Once the pericope's formal units are sorted out, its substance presents few difficulties. The interpretive crux of A-B + I-L is the contrast between shoots, which are inedible, and radishes and turnips, which may serve as food. Since the shoots are of no value unless replanted for further growth,⁶ their uprooting is not deemed a harvest. As unharvested produce, no tithes need be removed from them (even, one supposes, if the farmer nibbles on them). The uprooted radishes and turnips (I-K), on the other hand, must be tithed before transplanting, for the period during

which they are uprooted is the only point in their growth at which they are both edible and available for use as food. The uprooting, in other words, is the only harvest the roots will undergo. Even though the farmer has no plans to eat them, he must tithe them before transplanting, just as if the roots were harvested as a food crop.⁷

Despite the formal identity of the stichs of the second couplet, C-D and E-F, each ruling makes its own independent point. C-D states that produce purchased while it is still growing is exempt from the law of tithes. This is obvious, for an assumed datum of M. is that the purchaser of untithed produce need not tithe it until he takes possession of it (cf. M. 2:5-6). Since the purchaser cannot do so until after the harvest, the produce remains exempt until that time. The couplet's second ruling, E-F, illustrates a problem relevant to the laws concerning *dema'i*-produce, i.e., produce concerning which there is doubt as to whether or not the tithes have been removed.⁸ The farmer has picked some of his pre-harvest produce (MR) as a gift for a friend. Normally, produce sent as a gift must be tithed by the sender, as a precaution on behalf of the recipient. The latter, thinking the produce has been tithed, might unwittingly consume produce which is indeed *ṭebel* (cf. M. Dem. 3:3, T. Dem. 3:14). Produce taken from an unharvested field, however, requires no such precautions. We assume that the recipient, who knows the harvest is not yet in, will presume the produce to be untithed. The sender, therefore, need not tithe the gift, for he can expect the recipient to do so before he consumes the produce. Eleazar b. Azariah adds a useful observation at G-H.⁹ He points out that if produce of the type sent as a gift is already being marketed, then the gift must be tithed by the farmer before he sends it off. The recipient, Eleazar argues, is likely to assume that the gift has been purchased and, like all purchases, has already been tithed. In order to prevent the recipient from mistakenly eating the produce without tithing, the donor must remove the tithes on his friend's behalf.

The autonomous pericope at M-O is hardly appropriate to our tractate, but, as I said, is intended to offer yet a third rule regarding uprooted produce which has been returned to the earth. The pericope provides two different kinds of "replanting," each with appropriate consequences for the produce involved. The onions of M have been harvested, presumably tithed, and then stored away. If they resume their growth in the dirt floor of the attic, they are deemed to be attached to the ground, and like all produce

attached to the ground, are unsusceptible to receiving uncleanness (cf. M. Uqs. 2:9-10, M. Ter. 9:7). The important point for the present context is made at N-O, which assumes that the law of tithes applies only to field-planted produce. If the roof of the attic caves in and the sprouts of the onions are exposed, the onions are now treated as if they are planted in a field, with the earth of the attic beneath them and the open sky above. The point, unstated in M., is that the onions once again become subject to the law of tithes as if they had been replanted as a new crop. If the householder goes up into his attic to get some onions for dinner, he must tithe them before eating, for his uprooting of the onions is now deemed a new harvest.

- A. *One who uproots shoots from his own [field] [= M. 5:1A]*
- B. in order to plant them
 - 1) outside the Land [of Israel] or
 - 2) as a seed crop (*lʾsr^e*),
- C. or in order to
 - 1) declare [the uprooted shoots] ownerless, or
 - 2) to sell [the uprooted shoots] to a Gentile--
- D. lo, this one [i.e., the farmer] is required [to tithe the uprooted shoots],
- E. for [by his act] he removes them from the category of [produce subject to the law of] tithes (*mwšy' mydy m^esrwt*).
- F. R. Judah said in the name of R. Eleazar b. Azariah, "One who sends his fellow shoots, softened olives (reading with HD, Lieberman: *^etynyn*), or uncrushed flax (*hwšny pštn*)--
- G. "[the recipient] tithes them [as he would tithe] produce which is certainly untithed (*wdyy*),
- H. "for most people are suspect concerning [the proper tithing] of these [types of produce, since their processing is not complete]."
- I. But Sages say, "Lo, these are considered [in the same category] as all [other] produce, and [the recipient] need tithe them only as produce which is doubtfully tithed."

T. 3:8 (p. 239, ls. 19-23)
(F-H: cf. y. Ma. 5:1[51c])

A-E, an important supplement to M. 5:1A-B, makes its point at E. Once produce has become subject to the law of tithes, the householder must see to it that it will eventually be tithed. If, therefore, he uproots shoots from his land, he may neither transplant (B) nor relinquish ownership of them (C) if this entails the possibility that the produce will be consumed in an untithed

condition. T.'s point, as we shall see, is basic to our interpretation of M. 5:3ff.

In the dispute at F-I, Judah assigns to Eleazar the logical consequence of the latter's position at M. 5:1G-H. That is, if a gift of produce is obviously unmarketable, the recipient must assume that the sender has not removed the tithes (= M. 5:1E-F). Sages (I), to the contrary, hold that the condition of the produce allows us to assume nothing regarding its tithing status. The produce, therefore, is tithed in the manner prescribed for doubtfully-tithed produce (cf. T. Dem. 3:14).

- A. *Onions which have taken root* among each other in a bin [cf. M. 5:2M]--
- B. lo, they are in their [prior] status (*bḥzqtn*) regarding [the removal of] tithes and [laws restricting the use of produce grown in] the Seventh Year.
- C. If they were unclean, they have not left their unclean status (reading with E, *ed. princ.*: *l' ḥlw ydy ṭwm'tn*).
- D. And it is permitted to pick them on the Sabbath.
- E. [If] they have taken root among each other in the dirt (*qrq^c*) of an attic [cf. M. 5:2M],
- F. lo, they are in their [prior] status regarding [the removal of] tithes and [laws restricting the use of produce grown in] the Seventh Year.
- G. But if they were unclean, they have left their unclean status.
- H. And it is forbidden to pick them on the Sabbath.
- I. But if he picked them [anyway], he is exempt [from punishment as a violator of the Sabbath].
- J. [*If debris collapsed about them and they were exposed [to the sky], lo, these are considered planted in the field*] [= M. 5:2 N-O].
- K. [And they are] forbidden [from being tended] in the Seventh Year, and are liable to tithes [if they are picked during the six years of the Sabbatical cycle].

T. 3:9 (p. 239, ls. 23-28)
(A-I: cf. y. Ma. 5:2[51d])

T. offers a pericope worthy of M. Building upon the obscure foundations of M. 5:2M-O, the pericope shows that the full complement of laws regarding the tithing of agricultural produce applies only when the onions return entirely to the status of a field-planted crop. The onions at A have sprouted in a bin, and in no way are to be viewed as having received nourishment from the earth. They therefore remain in the status of picked onions, and their

disposition is governed by all laws appropriate to plucked produce. If they had already been tithed, they need not be tithed again; or if they had been harvested in the sixth year and sprouted in the Seventh Year, Sabbatical restrictions do not apply to them (B). Similarly, if they had become unclean, they remain so, for they are not deemed to have returned to the earth (C). If follows as well that Sabbath restrictions against plucking produce do not apply (D: cf. M. Bes. 5:2).

E-I parallels M. 5:2M, which specifically addresses the problem of produce growing in the attic. The house itself is considered to be firmly attached to the ground. The onions taking root in the dirt of the attic, therefore, share that status. Thus they become free of their former uncleanness (G), as M. has said, and may not be plucked on the Sabbath (H). I, a gloss, points out the ambiguity of the case. Its point is simply that even though the onions may be technically rooted in the ground, they are in fact simply sitting in an attic. Therefore, even though the householder ought not pluck these onions on the Sabbath, he incurs no penalty if he does so. The important point is at E-F, which reproduces B. Although the onions are rooted in the earth, they remain in the status of produce growing in the house. Since the agricultural laws of tithes and the Sabbatical Year apply only to produce of the field, the onions remain in their former status regarding these laws.

J-K brings us to M. 5:2F-H. Once the roof collapses and the onions are exposed to the sky, they are in all respects like produce which has been growing in the field. If the householder picks them, he is required to tithe, even if they were tithed at their original harvest. Similarly, if it is the Sabbatical Year, the produce is subject to all appropriate restrictions regarding produce of the seventh year of the Sabbatical cycle.

5:3

- A. A man shall not sell [a field inclusive of]¹⁰ his produce which has reached the period of its tithing (*mšb'w l'ent hm^csrwt*) to one who is untrustworthy concerning [the removal] of tithes [i.e., an *am ha'ares*].
- B. And [he shall] not [sell a field of produce] in the Seventh Year to one who is suspected of [violating laws regarding the consumption or sale of] Seventh Year [produce].
- C. But if [some produce] ripens [prior to the rest of the crop],

he takes the ripe [produce for his own use] and sells the rest [to whomever he wishes as long as it remains unripened].

M. 5:3 (A-B: cf. T. Sheb. 4:5, 6:20)

The "period of tithing" referred to at A is the point at which produce has ripened in the field and is subject to the law of tithes (cf. M. 1:2-4). As we recall, this is the point at which the produce is deemed edible. The prohibition against selling a field of ripened produce to an *am ha'ares* is intended to ensure that all produce which becomes subject to the law of tithes will eventually be tithed. It follows that prior to the ripening of the crop, the field may be sold to whomever the farmer wishes. Since the produce growing in the field is not deemed food until it ripens, the farmer as yet bears no responsibility for preserving it for eventual tithing.

A similar restriction is imposed, at B, upon the sale of produce grown in the Seventh Year of the Sabbatical Cycle. During the Seventh Year, fields belonging to Israelites may not be worked, and all produce found in them is deemed public property, to be enjoyed by all passers-by (Lv. 25:1-7). Landlords, it follows, may not harvest their produce in quantity, nor may they market it in commercially profitable fashion (cf. M. Sheb. 7:3, 8:3). B simply points out that the sale, in the Seventh Year, of a field inclusive of its produce, is permitted only if the customer is known to respect the restrictions regarding the consumption and sale of such produce.

C refines A, pointing out that the whole field of produce is not subject to the status of its part. If the crop is unripened, with only a small amount of early-ripening produce, the latter alone may not be sold with the rest of the field. If the farmer wants to sell the whole field, he must first pick the ripened produce, taking care to tithe it as he normally would. We may note at this point that C begins a series of formally independent, but conceptually related, glosses (M. 5:4C-D, M. 5:5I, M. 5:6F-H) which consistently raise problems regarding the disposition of fields or mixtures containing various proportions of liable and exempt produce.

- A. One who [publicly] relinquishes ownership of his field (*hmpqyr 't sdhw*)--
- B. [within] two or three days he may retract [his declaration]¹¹ [and the field remains in his possession].
- C. If he said, "I hereby declare my field ownerless (*hry sdy*)

- mwpqrt*) for one day, for one week (*šbt*), for one month, for one year, for one Septennate (*šbw^c*)"--
- D. before [the field] is claimed,
 - E. either by himself or another (*bynw lbyn 'hr*),
 - F. he may retract his declaration [and the field remains in his possession].
 - G. Once [the field] is claimed,
 - H. either by himself or another,
 - I. he may not retract [his declaration] [and the field is considered to have been appropriated while ownerless, regardless of the claimant].

T. 3:11 (p. 240, ls. 32-35)
 (A-I = b. Ned. 43b; cf. y. Pe'ah
 6:1[19b], y. Ned. 4:10[38d])

The apparently simple ruling at A-B generates C-I, which explores unforeseen issues arising from the former. Substantively, T. bears no connection to our tractate, for its interest is the elucidation of ambiguities regarding both the status of land which has been declared ownerless, and the rights of the former owner himself once he has made such a declaration.¹² Thus, T.'s sole point of contact with M. 5:3 is that, like the latter, T. regulates the householder's rights regarding the disposition of his field.¹³

A-B establishes a grace-period of three days for retracting a declaration that one's field is henceforth considered ownerless. On the surface, the law is straightforward. However, as C-I will show us, the law raises some interesting problems. In effect, it gives the householder the right to evict the claimant of the abandoned field within three days of the original declaration. Yet, if the householder does *not* do so within the stipulated period, the claimant is considered to have acquired an abandoned field from the moment he takes possession--even a day after the original declaration--and may not be evicted by the former owner thereafter. Paradoxically, then, for a period of three days after the declaration of ownerlessness, the field is both abandoned *and* the property of the householder, *if* he chooses to exercise his right of retraction. After three days, of course, the householder loses all rights to the field, and it is abandoned in all respects. If it remains unclaimed, the former owner may claim it himself.

This latter point is where C-I joins the issue, for its primary assumption is that the former owner of a field acquires the rights of any other passer-by to claim the field, once it has been abandoned. The issue, however, is made more complex. The householder has declared the field ownerless for a limited time only,

after which the field shall revert to his possession if it remains unclaimed. He is, then, in an unusual position. On the one hand, as at A-B, he is the owner of the field as long as it remains unclaimed; yet, at the same time, he has the rights of the passer-by to claim the same field during the period for which it has been declared ownerless. The problem is to adjudicate his use of conflicting rights, for one man cannot act as passer-by and householder at the same time. D-F states that if the former owner has not acted as a passer-by in claiming the field, he may exercise his owner's right to retract the declaration of ownerlessness, provided that no one else has claimed the field in the interim. If the field has already been claimed by a passer-by, the new claimant is understood to have acquired the field while it was ownerless, and the former owner's subsequent retraction is ineffective. G-I presents the second logical possibility within the limits of the case. If the former owner has acted within his rights as a passer-by and claimed the field for himself, he loses the owner's prerogative of retracting the declaration which rendered the field ownerless. This loss is meaningless, however, for in all events, the man has regained possession of his field. His only risk is that some other passer-by will lay claim to the field before he himself has the opportunity. In that event, as at D-F, the first claimant has the right to the field. In sum, then, C-I makes the simple point that as long as the field is unclaimed, the former owner can exercise *either* the rights of the passer-by or those of a householder, but *not* both. Once the field has been claimed by a second party, however, the problem evaporates, for the field is now firmly in the possession of another.

- A. (G omits: *w-*) He tethers his beast in the vicinity of (^{*l*} *gby*) [produce which has been declared] ownerless,
- B. but not in the vicinity of gleanings, forgotten sheaves, or [produce left unharvested in] the corner of the field, [for these are the property of the poor: Lv. 19:1, Dt. 24:19-22].
- C. Yet he uproots [produce to which the poor are entitled], and casts it before her [i.e., the beast], [for now he is disposing of what he himself has gathered].
- D. [If] late-ripening figs [remained on the trees] (^{*l*} *'šypt t'nyim*),¹⁴ but [the householder] was tending his field for [its] grapes,
- E. [or if] late-ripening grapes [remained on the vine], and [the householder] was tending his field for [its] greens--
- F. if workers were passing among them [i.e., the late-ripening fruit],

- G. [and] if the householder scrutinizes their [activities while they are in his field] (*mqqyḏ e'lyhm*)--
- H. lo, these [late-ripening fruit] are liable [to the removal of tithes].
- I. But if not [i.e., if the householder does not scrutinize the workers' activities], lo, these [late-ripening fruit] are exempt [from the removal of tithes].

T. 3:12 (p. 240, ls. 35-39)
 (D-I: cf. y. Dem. 1:1[21d],
 b. Pes. 6b)

A-C adds to T.'s random observations concerning ownerless produce, but reveals no interest in M. The distinction between ownerless produce (A) and produce which is considered the property of the poor (B) is that the former is deemed the property of whoever happens to consume it--including beasts (cf. T. Pe'ah 3:1)--while gleanings, etc., are specifically designated for the use of the poor. It follows that a man may tether his beast near abandoned produce, for whatever the beast eats is considered hers by right. But the beast, for obvious reasons, does not qualify as a "poor man." Her owner is therefore forbidden to tether her where she might by chance nibble at the offerings which belong to the poor. HD adds that even if the beast's owner is himself a poor man, he is robbing his fellow paupers by permitting the beast to consume its fill. C qualifies the above. If the owner--in this case, certainly a pauper--wishes his beast to eat of the offerings of the poor, he simply gathers the produce himself and then feeds the beast. Once he has taken possession of the produce as a poor man, he may do with it what he wishes.

D-I is autonomous of both A-C and M., but at last shows some interest in relating the question of abandoned property to the tithing matters which preoccupy M. The problem is whether late-ripening produce, which is normally of poor quality and allowed to rot on the vine after the harvest (cf. Rashi, b. Pes. 6b, s.v., *whṭny'*), is considered to be ownerless once the field itself is being cultivated for a new crop. As we would expect, all depends upon the intentions of the householder. If he scrutinizes the activities of workers among the late-ripening fruit, he clearly demonstrates his intention to maintain control over the disposition of the produce. Thus the produce remains subject to the law of tithes, for the householder has not relinquished possession of it. It follows that if he ignores the worker's actions, he no longer has any interest in the late-ripening produce, and intends to let it rot untended. Despite its presence in a tended field, the fruit

in question is considered ownerless, and no longer subject to the law.

5:4

- A. A man shall not sell his straw, olive-peat or grape-pulp to one who is untrustworthy concerning [the removal of] tithes,
- B. [if the purchaser intends] to extract the [potable] liquid [remaining in the olive-peat or grape-pulp].
- C. And if [prior to the sale the householder] extracts [edible produce from the above waste-products, the extract] is liable to [the removal of] tithes, but is exempt from [the separation of] heave-offering.
- D. For one who separates heave-offering has in mind [the edible produce found among] that which is improperly threshed, and that [found] along the edges [of the pile], and that which is [found] in the straw.

M. 5:4 (C-D: cf. T. Ter. 3:6)

A carries forward the formulary pattern of M. 5:3A, an apodictic prohibition (*l' ymkx 'dm*), and, according to B, makes the same point. The manufacturer, like the farmer, must ensure that all edible produce over which he has control is eventually tithed. A-B is clear that the liability of a product to the law of tithes depends upon whether or not its owner deems it to be a food. This must be borne in mind by anyone seeking to turn a profit from the sale of agricultural or manufacturing wastes (e.g., for use as fodder). While straw or mash may indeed be of no use as food to the processor of grain, wine or oil, he must nevertheless be sure that anyone to whom he sells these wastes is reliable in the matter of tithing, for kernels remaining in the straw, or liquid remaining in the mash, may be used as food by the purchaser himself (cf. M. 5:6). Should the latter consume these without tithing, the seller will have caused forbidden produce to be consumed as if it were common food.

A secondary development of A-B, C-D points out that the seller has the option of extracting the edible substances from the straw or mash before the sale. Presumably, he may then sell the waste to whomever he pleases. The problem now, however, is the method of tithing the edible extract. Since the grain, for example, has presumably had its heave-offering and tithes removed as soon as it was piled on the threshing-floor (cf. p. 181, n. 3), we want to know how to tithe the kernels now removed from the straw, for these

may be considered a separate batch of produce. C's claim, that *only* tithes need be removed from the second batch, is explained at D (cf. M. 1:6U). Heave-offering was separated from the entire batch of grain--including what is mingled with the discarded straw--at the time the processing of the batch was completed. The result is that the heave-offering of the present batch (removed from the straw) has already been removed on its behalf, and may not be removed a second time (cf. M. Ter. 3:1). The tithes, however, are a separate problem. While tithes have been removed from the original batch of grain, we assume that the householder intended his tithing to release for use only that batch of grain which he intended to use as food. Now that he has designated a second batch of grain for use as food, however, he must remove tithes from this batch as well.

- A. One who winnows his straw without special concern [for removing edible kernels] (*štm*),
- B. and another purchased it--
- C. even [if he purchased the straw] in order to extract [edible kernels] from it,
- D. he is exempt [from tithing the extracted kernels].
- E. Said R. Simeon b. Gamaliel, "The House of Shammai and the House of Hillel concur that a man shall not sell a stack of grain, or a basket of grapes, or a vat of olives unless [he sells it] to a *ḥaber* or (*w-*) one who prepares [his food] in cleanness."
- F. He [i.e., a *ḥaber*] sells him [i.e., an ^{*am*} *ha'ares*] wheat, even though [the *ḥaber*] knows that [the ^{*am*} *ha'ares*] does not knead his dough in cleanness.
- G. And similarly, a man shall not give his neighbor a dish [of food] (*tbšyl*) to cook [E, G add: for him], or dough to bake for him, unless he indeed knows that [the neighbor] removes the dough-offering for him (*qwšh lw ḥlh*), and prepares [the food] in cleanness.
- H. And similarly, a Levite [shall receive no tithes unless it is known that he prepares his food in cleanness: Lieberman] (*wkn bn lwy*).
- I. (Lieberman emends: Lo,) he [i.e., a *ḥaber*] acquired (*ntmnw lw*) tenant-farmers [who were ^{*amei*} *ha'ares*], and they were preparing olives--
- J. lo, this one [i.e., the *ḥaber*] removes a tenth of the [untithed] olives and of the untithed oil from [the produce belonging to] his household
- K. (Lieberman emends: "and says,") "Whatever these olives [of the

tenant-farmer] are capable of producing, its tithe is in the southern [portion of the olives which I have separated from my own produce], and its heave-offering of the tithe is in the southern-most [tip of the same batch]."

T. 3:13 (pp. 240-41, ls. 39-46)
(E-F: cf. y. Dem. 6:7[25c])

A-D, E-H, and I-K offer materials supplementary to M. 5:3-4's prohibitions of trade with those who are untrustworthy regarding tithes. The three units are autonomous of each other, and only A-D exhibits any literary relationship to M. The case at A-D differs from that of M. 5:4A-B only in that here the householder has not winnowed the straw with great care. The consequence, that perfectly good grain will remain trapped in the straw, indicates that the householder is unconcerned that the grain will be sold at the same low price as the straw. In other words, he makes no distinction between the grain and the straw. Therefore, when someone purchases the straw *as straw*, the law takes no account of the grain purchased along with it. It follows that whatever grain the purchaser happens to extract is not considered food, and may be eaten without tithing. T., it appears, takes issue with M. for we have seen that M. considers the waste products subject to the law as long as the purchaser intends to derive food from them. T. argues, to the contrary, that only the intentions of the householder determine the status of the edible produce found within discarded materials. Since the seller of the straw takes no note of the grain, the purchaser, regardless of his own evaluation of the grain in the straw, need not tithe.¹⁵

The rulings at E-H control the transfer of produce between those who eat their tithed food in a state of priestly cleanness (*haberim*) and those who neither tithe nor observe the laws of cleanness (*amei ha'areš*). While not directly relevant to the law of tithes, the rulings nevertheless supplement M. 5:3-4's interest in relations between *haberim* and *amei ha'areš*. The concern of E is that the *haber* permit none of his produce to leave his possession unless he can ensure that it will be prepared in cleanness. The point is parallel in principle to that of M., even though it is under dispute between the Houses at M. Dem. 6:6. F certainly contradicts E, for it permits precisely what E forbids. I cannot explain the contradiction.¹⁶ The point of G is that one must supervise the preparation of one's meals unless the person doing the preparation can be trusted to preserve the food's cleanness.¹⁷ The text of H is corrupt, and I have simply supplied, in brackets, Lieberman's suggested interpretation.

I-K assumes the responsibility of a householder to make sure that all produce of his fields is properly tithed. The problem at hand is simply the means by which the householder makes sure that produce earned by his tenant-farmers is properly tithed. Since they themselves harvest the produce and take their own portions, the householder has no opportunity to tithe the produce himself, for he cannot remove the tithes from what has already become theirs. He solves the problem by tithing from his own produce on behalf of the produce belonging to the tenant-farmers. He separates a quantity of produce from his own stock which is equal to one-tenth of the quantity taken by the tenant-farmers, and then designates a portion of it as tithe and heave-offering of the tithe on behalf of the produce earned by the tenant-farmers. After removing the sanctified portion, he may consume the rest.¹⁸

5:5

- A. One who purchases a field of greens in Syria--
- B. if [he purchased it] before [the produce] reached its period of tithing, [he] is required [to tithe the entire harvest],
- C. but [if he purchased the field] after [the produce] reached its period of tithing, he is exempt [from tithing the entire harvest].
- D. And he gathers [late-ripening produce] as he pleases.
- E. R. Judah says, "Also: let him hire workers to pick [the produce for him]" (*lqqt*, following O²).
- F. Said R. Simeon b. Gamaliel, "Under what circumstances [must he tithe produce of a Syrian field which he purchased prior to the crop's period of tithing]? When (*bzmn š-*) he acquired the land [along with the produce].
- G. "But when (*'bl bzmn š-*) he did not acquire the land--
- H. "if [he purchased the produce even] before it reached its period of tithing, he is exempt [from tithing the harvest]."
- I. Rabbi says, "Also: [if he purchased the field after most of the produce reached its tithing season, he tithes] according to the percentage [which ripens after his purchase]" (*'p lpy ḥšbwn*).

M. 5:5 (A-F = y. Ma. 1:4[49a])

Produce of fields in Syria is subject to the law of tithes only if the field is owned by an Israelite.¹⁹ A-C assumes this postulate, but adds an important refinement based upon M.'s notion that produce becomes subject to the law of tithes only when

it ripens (M. 1:2-3, cf. M. 5:3). An Israelite who acquires a field in Syria need tithe the produce of that field only if the produce was unripe at the time of purchase and later ripened under his ownership (B). Produce ripening before the Israelite acquires the field (C) need never be tithed, for at the time at which it could have become subject to the law it was beyond Israelite jurisdiction.

The series of glosses to this ruling may be grouped into three independent units, D+I, E, and F-H. D+I offers a dispute concerning the purchaser's obligation to tithe late-ripening produce, which reaches maturity after the field of ripe produce at C has been purchased (so T. 3:14). D permits the purchaser to make tithe-free use of the late-ripening produce, even though it has ripened under his ownership.²⁰ The point seems to be that the status of the smaller percentage of the produce is judged by the status of the field as a whole. This notion is disputed by Rabbi (I), whose opinion, unaccountably, has been placed at the end of the pericope. Rabbi holds to the literal meaning of A-C, that Syrian produce ripening under Israelite ownership must be tithed. He maintains, therefore, that the purchaser of a field containing both ripe and unripe produce must tithe that percentage of the crop which was unripe at the time of the purchase.

Of the remaining glosses, E and F-H, only E presents a difficulty. I cannot determine what is at stake for Judah, for I do not know why someone would object to the hiring of workers to harvest either the crop of B or that of C (but cf. MR).²¹ Simeon b. Gamaliel's gloss of A-C (F-H) is obvious. If the crop alone was purchased, but not the land, the produce remains exempt regardless of when the purchase took place, for it is the ownership of the land which imposes liability upon the crop.

- A. *One who purchases a field of greens in Syria--if [he purchased it] before [the produce] reached its period of tithing, [he] is required [to tithe the entire harvest] (hyyb, following Lieberman). [If he purchased it] after [the produce] reached its period of tithing, he is exempt [from tithing the entire harvest] (ptwr, following Lieberman) [= M. 5:5A-C].*
- B. *"He gathers [late-ripening produce] as he pleases, and is exempt [from tithing]"--the words of R. Aqiba [cf. M. 5:5D].*
- C. *But Sages say, "Also: [if he purchased the field] after [the produce] reached its tithing season, he is required [to tithe] according to the percentage [which ripens after the purchase]" [cf. M. 5:5I].*

D. Sages concede to R. Aqiba that if he [i.e., the Syrian] sold to [the Israelite] grain [ready] to reap (*lqšwr*), or grapes [ready] to harvest (*lḥšwr*), or olives [ready] to pick (*lmšwq*), he [i.e., the Israelite] gathers as he pleases and is exempt [from tithing that which ripens after the harvest].

T. 3:14 (p. 241, ls. 46-50)
 (D: cf. y. Ma. 5:4[51d], b. Hul. 136a)

T. not only makes important formal improvements of M. 5:5, but, further, attributes to Aqiba the basic position of M. After citing M. at A, B-C recasts, as a dispute between Aqiba and Sages, the disconnected stichs of M. 5:5D and I (attributed in M. to Rabbi).²² Formally, the fact that Sages, D, concede to Aqiba indicates that Aqiba emerges the victor in the dispute. Yet, substantively, the concession is no concession at all, but simply points out a case in which none of the concerned parties would have reason to disagree. Sages state that if the Israelite buys produce ready for the harvest, he is exempt from tithing that which he harvests, and may pick late-ripening produce as he pleases thereafter. This is simply an exemplification of the point made by Simeon b. Gamaliel at M. 5:5 F-H.²³ Since the Israelite has bought the produce, *not* the land, the harvest is by definition exempt, for it is grown from land owned by a non-Israelite. Note that T. accounts for all of the positions cited in M., except the obscure gloss of Judah (M. 5:5E).

5:6

- A. One who steeps grape-pulp in water [to form a beverage] (*hmtmā*),²⁴
 B. and added a fixed measure of water,
 C. and [then] found the same measure [of liquid in the tub after pressing the water from the pulp]--
 D. [the liquid] is exempt [from the removal of tithes].
 E. R. Judah declares [the liquid] liable.
 F. [If] he found more [liquid] than the measure [of water he originally poured over the pulp],
 G. he removes [tithes] on behalf of [the beverage] from another batch (*mmqwm 'ḥr*)
 H. according to the percentage [of the liquid which exceeds the original quantity of water].

M. 5:6 (A-E = y. Ma. 5:5[52a],
 y. Dem. 1:1[21d], y. M.S. 1:3[52d],
 b. Pes. 42b, b. Hul. 25b)

The pericope carries forward M. 5:4, sharing the latter's assumption that potable liquid extracted from the waste of wine production is deemed food and must be tithed. Under dispute at A-D+E is whether such liquid has indeed been extracted from the pulp. A-D argues that since the liquid pressed from the pulp is equal in volume to the water poured over it, we assume that the water has simply passed through the pulp without carrying any of the pulp's liquid with it. The beverage is deemed to be water and, like water, is exempt from the removal of tithes.²⁵ Judah's point is that, even though the volume of liquid is equal to the original volume of water, the liquid has absorbed both the color and the flavor of the grape-pulp. Since the householder, having gone to the trouble of steeping the pulp, clearly wants the water to absorb the flavor, the liquid must be tithed as if it were wine (cf. M. Ter. 10:1, 3).²⁶

F-H must be interpreted in light of A-D. The water in the mixture is distinct from the liquid extracted from the pulp, and may not be removed as tithe on behalf of the liable liquid (cf. M. Ter. 1:10). It follows that tithes for the pulp-liquid may not be removed from the mixture before us, for exempt water will inevitably be removed on behalf of the liquid. Rather (G), the householder removes tithes on behalf of the pulp-liquid from another batch of untithed liquid which has not been mixed with water. Secondly (H), the quantity of liquid removed as tithe from the second batch will be only a percentage of that quantity of liquid which exceeds the original quantity of water. If, for example, the owner poured a gallon of water over the pulp and extracted five quarts of liquid, only one quart of the liquid is subject to the law of tithes, for we assume that the quart represents the actual quantity of liquid pressed from the pulp. The owner, then, removes tithes from another batch in a quantity equal to that required from a quart of liable liquid. From Judah's perspective, the problem so carefully worked out at F-H could never arise. Judah, who holds that the water is indistinguishable from its flavoring agent, will have no difficulty in determining how to tithe liquid exceeding the original quantity of water added to the pulp. Tithes are simply removed from the mixture itself, just as if it were a new batch of wine.

5:7

- A. Ant-holes which remained overnight beside a stack [of grain] from which tithes had yet to be removed (^c*rymh hhybt*)--

- B. lo, these [i.e., kernels found in the ant-holes] are liable [to the removal of tithes],
- C. for clearly [the ants] have been dragging [grain] from a processed batch (*dbr gmr*) all night long.

M. 5:7 (A-B = y. Ma. 5:6[52a],
y. Hal. 1:8[58a])

C explains A-B. The stacked grain has been processed and is therefore liable to the removal of tithes (M. 1:6Q-R). Any grain found in adjacent ant-holes is also assumed to be liable, for we suppose that the ants have taken the grain from that very pile.

5:8

- A. Baalbekian garlic,²⁷ onions of Rakhpa,²⁸ Cilician split-beans,²⁹ and Egyptian lentils³⁰--
- B. R. Meir says, "Also: *qirqaš*";³¹
- C. R. Yose says, "Also: *qotnym*"³²--
- D. are exempt from [the law of] tithes, and are purchased from anyone in the Seventh Year.
- E. The seeds of the higher pods of arum (*lwp*),³³ the seeds of leeks, the seeds of onions, the seeds of turnips or radishes,
- F. and all other garden seeds which are not eaten,
- G. are exempt from [the law of] tithes, and are purchased from anyone in the Seventh Year.
- H. For (*š-*) even though the plants from which they were gathered (*'byhn*: lit., "their fathers") [were designated as] heave-offering, lo, these [seeds] may be eaten [even by non-priests, for they are not considered food].

M. 5:8 (A-B = y. Dem. 2:1[22b];
E-F: cf. Sifra Beḥuqotai 12:9,
Sifre Dt. 105c, y. Ma. 1:1[48c],
y. Ma. 5:7[52a]; H = y. Ma. 5:7
[52a])

The rulings at A+D and E-G share identical apodoses, each giving examples of produce which, for reasons based upon M. 1:1A-B, are exempt from the law of tithes. The items of A+D are exempt from the law because they do not grow in the Land of Israel (cf. M. 5:5). They may therefore be imported into the Land and consumed there without removing tithes. It follows that Seventh Year prohibitions do not apply either, for these prohibitions apply only to produce grown in the Land. The interpolated items of B-C are unidentified, but presumably refer to types of produce which are exempt from the law by virtue of being foreign to the Land of

Israel. The items at E-G, as F makes clear, are exempt because they are not used as food (M. 1:1B1). H carries forward the point of E-G. Since only food may be designated as heave-offering, the inedible seeds of plants which have been so designated remain permitted for the use of non-priests, even though the plants themselves are permitted only to priests. The ruling stands within Aqiba's assumption (M. 4:6K-L) that only the part of the plant which is normally eaten can become subject to the law of tithes, even if a secondary part of the plant is in fact consumed. So here, the status of heave-offering is conferred only upon that part of the plant which is normally used as food.

- A. What is [considered] *garlic of Baalbek* [cf. M. 5:8A]?
- B. Any [garlic] which has only a single corolla (*dwr*) surrounding the central stem [rather than individual cloves: Lieberman].
- C. What is [considered] *onion of Rakhpa* [cf. M. 5:8A]?
- D. Any [onions] the stalks of which are not disintegrated within the [bulb].
- E. Rabban Simeon b. Gamaliel says, "Any [onions] which have only a single husk."
- F. What are [considered] *Cilician split-beans* [cf. M. 5:8A]?
- G. (following E:) These are large and square.
- H. Rabban Simeon b. Gamaliel says, "There has never been a square bean since the six days of Creation [i.e., such beans receive their shape during processing: Lieberman].
- I. What are [considered] *Egyptian lentils* [cf. M. 5:8A]?
- J. Those which are pointed on top.
- K. Rabban Simeon b. Gamaliel says, "Any [lentils] which have no seeds in them.
- L. *R. Meir says, "Also qilqaś, for their stalks are small and their seed-pods (hlqṭ: Jastrow, p. 346) are numerous [cf. M. 5:8B].*

T. 3:15

- M. *R. Yose says, "Also the qantyn³⁴ which are beneath them [cf. M. 5:8C].*
- N. Such as these [i.e., the items of A-K], Sages stipulated, should be clearly marked (*kgwn 'lw ṣrkw ḥkmym: following E*),
- O. for no similar types [are found] in the Land of Israel.
- P. But [in regard to] hazelnuts, and peaches, and cedar nuts [imported from outside the Land of Israel], [Sages] did not stipulate that they be clearly marked.
- Q. for similar types [are found] in the Land of Israel.
- R. [Regarding the tithing status of mixtures of foreign and

- domestic] produce, Sages ruled neither according to taste, nor fragrance, nor appearance, nor price, but solely according to [the geographical origin of] the major portion [of the mixture].
- S. *And all other garden seeds* [= M. 5:8F]:
- T. for example (*kgwn*), seeds of cucumbers and gourds, and seeds of turnips and radishes.
- U. *And all other garden seeds which are not eaten are exempt from [the law of] tithes, and are purchased from anyone in the Seventh Year* [= M. 5:8F-G].
- V. R. Judah says, "They stated [the ruling with respect to] garden seeds only."
- W. R. Yose says, "Also: [they stated the ruling with respect to] seeds of the field, such as the seed of woad and vetch."

T. 3:16
 T. 3:15-16 (pp. 241-42, ls. 51-64)
 A-M: cf. y. Ma. 5:7[51d],
 H = y. Ned. 3:2[37d], y. Shebu.
 3:9[34d]; N-O: cf. y. Dem. 2:1
 [22b]; R = T. Dem. 4:11; T-O:
 cf. y. Ma. 5:7[52a])

T. concludes its tractate with a series of citations, glosses, and supplements to M. 5:8. A-K provides identifying characteristics of the foreign produce listed at M. 5:8A. L-M cites and glosses M. 5:8B-C, but the point of the added material is unclear. The characteristics of the stalks and seed-pods of *qilqas* do not explain why M. exempts it from the law, nor does the explanatory information added to Yose's lemma (M) add to our understanding. y. makes better sense of matters by recasting L-M into the form of A-K: "And what are [considered] *qryqaś*? Whatever has small stalks and numerous pods. And what is similar to it? Said R. Yose, 'For example, *qunyata*.'" Thus, at least on the surface, Meir and Yose are made to add to A-K's list of foreign produce receiving description, a position supported by N.

The point of N-Q is obscure as well. We are told that the foreign produce of A-K should be marked upon importation into the Land of Israel, for there are no similar types of produce grown in the Land. Further, produce which is grown on both sides of the border need not be marked when that grown abroad is imported. In the absence of further information, the first problem before us is to interpret the reason for marking the produce. If we assume, as have the copyists and commentators cited by Lieberman, that the point of marking the produce is to distinguish this non-tithable produce from tithable produce grown inside the Land, then we would like to correct the text to read that the items of A-K *should* be

marked, for produce similar to these in appearance *do* grow in the Land of Israel, while the items of P need *not* be marked, for these do not grow in the Land. By marking imported produce of a type which grows in the Land as well, we insure that heave-offering and tithes will be removed only from domestic produce, which alone can become sanctified. Similarly, failure to mark imported produce of a type which does not grow in the Land will result in no harm at all, for no one will assume that such produce needs to be tithed. The problem with this correction, as HD (followed by Lieberman) points out, is that T. 1:1c assumes that the items of P are indeed native to the Land, for it defines the point in their growth at which they become subject to the law. We must, then, deal with the text before us, for it shares assumptions attested elsewhere in T. The text says that precisely the produce which is in danger of being mistaken for tithable produce need not be marked. Clearly, if T. is to make sense, there must be some reason for marking foreign produce other than to distinguish it from domestic produce for tithing purposes. In absence of other information, however, the text remains unintelligible.³⁵

R is identical to T. Dem. 4:11, and clearly has been taken from a larger unit, T. Dem. 4:11-12, which discusses the status of mixtures including domestic and imported produce. The rule simply states that the status of such mixtures is determined solely by the status of the major portion of produce composing the mixture. If the major portion is domestic, the whole mixture is subject to the law, while if the major portion is imported, the entire mixture is exempt. The ruling does not help us interpret N-Q, for marking imported produce of a type also grown domestically would certainly facilitate determining which type constitutes the majority of the mixture.

S-T and U-W are independent citations and glosses of M. 5:8E-F. S-T simply provides examples of the kinds of seeds M. has in mind. At U-W Judah and Yose dispute the kinds of seeds which M. specifies as inedible, and therefore exempt from the law.

šlyq pyrq' wkwł' mškt bšyyt' dšmy'

NOTES

INTRODUCTION

¹The primary scriptural sources for Mishnah's law of tithes are Lv. 27:30, Nu. 18:8-13, 19-32, Dt. 14:22-27 and Dt. 26:12-15. There is little unanimity among the various sources regarding the precise names of the various offerings, or even to whom they are presented. The classic discussion of the problem is O. Eissfeldt, *Erstlinge und Zehnten im Alten Testament* (Leipzig, 1917). For more recent discussions, see Bunte, pp. 27-28, Guthrie, "Tithe," Weinfield, "Tithes" and Sarason, *M. Demai*, pp. 3-9.

²Whatever the difficulty of harmonizing Scripture's various notices, Mishnah is clear that the following six offerings are included among the taxes which must be removed:

- a. heave-offering--a sanctified offering of unspecified quantity which is designated for the use of priests (see Peck, *M. Terumot*)
- b. first tithe--a charity offering for the Levite, comprising one tenth of the crop remaining after the removal of the heave-offering
- c. heave-offering of the tithe--a tenth of the first tithe, sanctified by the Levite for the use of the priest (see Sarason, *M. Demai*)
- d. second tithe--an offering which the householder himself must sanctify and consume at the culmination of a pilgrimage to Jerusalem. This tithe consists of one tenth of what remains after the removal of first tithe (see Haas, *M. Maaser Sheni*).
- e. poorman's tithe--a final tenth, given to the poor in years in which the farmer is not obliged to make pilgrimage
- f. dough-offering--a sanctified portion of all dough used in the preparation of bread. The offering is for the priest alone (see Havivi-Eisenman, *M. Halah*).

The Division of Agriculture's main interest is in those offerings sanctified for the priests and pilgrim, for it is to these alone that it devotes tractate-length studies, i.e., *M. Terumot* (Heave-Offering), *M. Halah* (Dough-Offering), *M. Demai* (Doubtfully Tithed Produce [i.e., produce which contains heave-offering of the tithe]), and *M. Maaser Sheni* (Second Tithe). Neusner, *Judaism*, and Sarason, "Mishnah and Scripture" both point out that Mishnah's principle of selection is guided by the problematic of living according to holy rules in a Land which remains holy. My own analysis of *M. Maaserot*, which does not discuss any of the offerings in particular, entirely confirms the conclusions of Neusner and Sarason. I might add here that there is no basis to the oft-repeated suggestion that *M. Maaserot* is at all or even tangentially concerned with problems specific to first tithe (cf. Strack, p. 32, Schürer-Vermes-Millar I: 71). The opinion apparently is based upon the erroneous title of *T. Maaserot* in the Erfurt MS.: "First Tithe" (*m^csr r'^šwn*), Zuckerman, p. 81.

³Mishnah thus carries forward a notion of tithes which has deep roots in Near Eastern antiquity, particularly in the Temple-states of second-millennium Mesopotamia and Syria-Palestine. For discussions of ancient Near Eastern views on tithing, and their influence on those of Scripture, see Eissfeldt, *BZAW*, Eissfeldt, *RGZ*³, Oppenheim, "Temple," Wright, "Temple," and the articles cited in n. 1 above. The extent to which mishnaic law regarding

tithing reflects common structures of Mesopotamian mythic imagination remains to be explored.

⁴Cf. the recent formulation of Sarason, "Mishnah and Scripture":

God, as owner of the Land, has a prior claim on its produce. But man must acknowledge God's ownership and validate God's claim through actively designating and separating God's portion . . . Sacrilege thus is conceived as a violation of God's property rights.

My own formulation of matters, obviously, is indebted to Sarason, even though I differ regarding specific details. In general, however, Sarason's essay is a reliable and penetrating analysis of the dynamics of the tithing law in Mishnah.

⁵The notion that agricultural offerings are to be eaten in the meals of their recipients appears to emerge from a close reading of Dt. 26:1ff., in which first-fruits are contrasted with the tithes for the Levite. The former are eaten by priests after the offering is waved before the altar, i.e., in the course of a ritual, while the latter is eaten in daily, non-cultic surroundings. Similarly, offerings which Mishnah understands Scripture to assign to the priesthood (cf. Nu. 18:8-13, 15:17-21), for example, are not ritually consumed, but are rather eaten in the course of the priest's daily meals, as a privilege of his sacred office. The only tithe which in Scripture has any cultic overtones is the pilgrim offering of Dt. 14:22ff, which must be eaten "before the Lord" in the Temple. In Mishnah, however, which equates this offering with second tithe, the farmer is simply required to eat the produce within Jerusalem. M. Maaser Sheni, which is devoted to second tithe, prescribes no ritual for the consumption of the offering, simply stipulating that all produce designated as second tithe must be eaten as produce of that type is normally eaten (M. M.S. 2:1; see Haas, *M. Maaser Sheni*). In general, there is little in Tractate Maaserot or elsewhere in Mishnah which would indicate any interest in sacred or cultic meals.

⁶Mishnah comes to completion toward the end of the second-century A.D., some 60 years after the failed messianic uprising against Rome under the leadership of Bar Kokhba (132-135) and the persecutions which followed under Hadrian. On the devastating social and economic impact of this war during the subsequent decades upon the Jewish population of Palestine, see Allon, *History II*: 48-83 (esp. pp. 53-59) and Avi-Yonah, *Jews*, pp. 15-31. To be sure, by the turn of the century, the social and economic conditions of Palestinian Jewry under the patriarchate of Judah the Prince (Rabbi) appear to improve markedly (cf. Lieberman, "Palestine" and, more recently, Levine, *Caesarea*, pp. 61-79). Nevertheless, we cannot conclude that increased economic security carried with it solutions to issues of imagination which, in the course of time, remain pressing and unresolved. I argue that the details of Tractate Maaserot, as well as the structural and substantive outlines of Mishnah as a whole, are themselves important evidence that, despite material well-being, a significant sector of the Palestinian Jewish population continued to reflect upon the theological meaning of the disasters suffered by immediately preceding generations. For the most exhaustive formulation of this interpretation of the mishnaic evidence, see Neusner, *Judaism*, Chapters Five and Six. Thus one may well accept suggestions such as those of Applebaum, "Severan Empire," p. 36, that the efficient cause of Mishnah's compilation is a result of Severan encouragement of provincial peoples to formulate indigenous

codes of law. It remains necessary to acknowledge, however, that the *product* of this effort of compilation deeply reflects an attempt on the part of Mishnah's framers, undoubtedly the circle of the Patriarch, to achieve clarity on the nature and meaning of the Jewish future in a world--at least for the time being--without Temple and cult.

- ⁷Compare Bunte's dissection of M. into the following units:
- a. Zehntpflichtige Bodenerzeugnisse und der Termin ihrer Zehntpflichtigkeit (M. 1:1-8).
 - b. Beginn und Dauer des zehntfreien Genusses von Bodenerzeugnissen (M. 2:1-4)
 - c. Kauf und Verkauf zehntpflichtiger Bodenerzeugnisse und ihr Genuss (M. 2:5-6).
 - d. Bedingungen, unter welchen der Bodenerzeugnisse Bearbeitende und seine Familie Zehntfrei essen oder tauschen dürfen (M. 2:7-3:4).
 - e. Gebäude und Zehntpflicht (M. 3:5-7).
 - f. Pflücken, Kauf, Verkauf, Verpflanzen und sonstige Behandlung von Bodenerzeugnisse und die Zehntpflicht (M. 3:8-5:7).
 - g. Zehntfreie Bodenerzeugnisse (M. 5:8).

While Bunte's analysis is, on the whole, justifiable in terms of content, it does not reflect the formal divisions which the editor(s) of M. impose upon their units, nor do the topic rubrics lay open, as I have attempted to do, the logical unfolding of the tractate's issues. Bunte analyzes the tractate as if it were an encyclopedia; I approach it as if it were an essay. The reader may determine which is the more productive approach.

⁸For the original explication of this proposition, see Neusner, "Form and Meaning," anthologized in Neusner, *Method and Meaning in Ancient Judaism* (Missoula, 1979), pp. 155-181. My own exposition supplements Neusner's, for I attempt to describe the concrete exegetical processes by which meaning is brought forth from form.

⁹The argument has most recently been reformulated by Neusner in Neusner, "Redaction," pp. 2-7. Clearly, no one would assert that the text of Mishnah as we have it is in all respects identical to the "original." To the contrary, the text-critical work of Jacob Epstein has shown that the text of Mishnah remained relatively fluid for some time after its publication. The point is that the literary traits of the text, however much we allow for fluidity of content, are imposed upon Mishnah at the outset and remain unchanged.

¹⁰Green's remarks are made in the context of a discussion of the problem of rabbinic biography. See William S. Green, "What's in a Name?--The Problematic of Rabbinic 'Biography,'" in Green, *Approaches* I, p. 80.

¹¹For a full catalogue of Mishnah's repertoire, see Neusner, *Purities* XXI:196-246.

¹²More explicit examples may be found throughout Mishnah, particularly where materials attributed to pharisaic figures have been appropriated for the purposes of Mishnah. See J. Neusner, *Development of a Legend: Studies in the Traditions Concerning Yohanan Ben Zakkai* (Leiden, 1970), pp. 57, 61-64, and *idem.*, *Pharisees* III:89-119.

¹³My discussion of the construction of the pericope differs in some detail from that of Neusner, who proposes the theoretical construct of the "cognitive unit" as a means of defining Mishnah's smallest whole unit of meaning. For his latest formulation, see "Redaction," p. 10.

¹⁴Neusner, *Purities* XXI:165 defines a "form" as a word or words "which function in, but bear no meaning distinctive to, a particular cognitive unit." That is, a form adds no *content* to a pericope. Rather, it defines the terms in which the information of the pericope is to be grasped. The principal forms in Mishnah as a whole are identified by Neusner as the attributive (i.e., the ascription of an opinion to a named authority by the use of Authority + 'MR ["said"]), the dispute, the *ma^caseh* (a stock phrase introducing a precedent), and the list. For discussion see Neusner, *Purities* XXI:165-196. Below I discuss only the dispute and the list, the most prevalent of forms in Tractate Maaserot. The *ma^caseh* appears only once (M. 2:5) and the attributive, precisely because it is ubiquitous, loses true exegetical significance.

¹⁵Neusner, *ibid.*, p. 165, defines a "formulary pattern" as a "grammatical arrangement of words distinctive to their subject but in fixed syntactical patterns serviceable for a wide range of subjects." The principal formulary patterns of Mishnah are all variants of the declarative sentence (subject + verb + predicate). For discussion of the various patterns themselves and their functions, see *Purities* XXI:196-246 and "Form and Meaning," pp. 156-157.

¹⁶I should add, however, that at no point in my exegesis of the tractate have variant MS. readings solved any particular formal problem. In general, Mishnah's copyists are insensitive to its formulaic character.

¹⁷These formal-thematic units are the true "chapters" of the tractate. The present division of Maaserot into five chapters is the result of the work of copyists and printers, not the plan of Mishnah's editor(s). While the judgment of the former is often acute, there are important errors which confuse interpretation of the law. See my discussions of M. 4:5-6 and M. 5:1-2.

¹⁸For a preliminary discussion of rabbinic exegesis of Mishnah, see Joel Zaiman, "The Traditional Study of the Mishnah," in J. Neusner, ed., *The Modern Study of the Mishnah* (Leiden, 1973).

¹⁹On the work of particular individuals see the essays in *ibid.*

NOTES

CHAPTER ONE

¹On this point, see Introduction, pp. 1-2. Relevant literature is cited at p. 165, n. 1 and p. 166, n. 4.

²The core rulings of each catalogue conform to the following pattern: substantive + *mš-/ʕd š-* + imperfect. There is no effort, however, to balance the catalogues, either in number of stichs or in pattern of glossing.

³It is possible to argue (though, to my knowledge, no one has) that M. 1:2-3 and M. 1:5-8 present contradictory conceptions of the law. The former claims that produce must be tithed as soon as it is ripe, while the latter claims that produce must be tithed only after it is processed. Indeed, the two notions are somewhat out of joint, requiring efforts at harmonization such as I have provided. My solution is substantially in agreement with that arrived at in earlier commentaries, and recently reformulated by Lieberman in *TK*, II:666.1. If this harmonization is deemed artificial, it is important to note that not only has the redactor of Chapter One read the pericopae as complementary, but nowhere in M. do we find any indication that the harmonistic reading of Chapter One is ever questioned. The point, then, is that the Ushan notion of the law of tithes, reflected in Chapter One, is the presupposition of all pericopae in M. which address the same topic.

⁴So Samtner (p. 137), who translates "gehütet." Perhaps the best translation of *nšmr* would be "cared for" or "tended." This sense informs the discussions of b. Shab. 68a, s.v. *lmʕwtu ḥpqr* and y. Ma. 1:1 (48d), both of which exclude from the law of tithes all produce grown in untended fields.

⁵I discern three senses in the participle *ḥyyb* as it is used in M. The first defines a general class or status to which unharvested produce belongs. *ḥyyb* has this sense in M. 1:1 and M. 1:2A, where it indicates that a given batch of produce is "among those things to which tithing laws apply." The second use of the term, as at M. 3:4, refers to items which are already harvested. In these cases *ḥyyb* means that produce is "liable to" or "requires" removal of tithes forthwith before the produce may be eaten. The third usage, as in M. 2:2 and M. 4:1, refers to the man who owns the produce. That is, the owner of a given batch of produce is *ḥyyb*, "required to tithe" whatever he eats.

⁶Cf. Danby (p. 67): "Whatsoever is used for food either in its earlier or later condition (of ripeness)." I follow KM (*Tithes*, 2:5) and MR (M. 1:4) in interpreting *thltw* to indicate the point at which the fruit is recognizable as a member of its species.

⁷Failure to meet any one of the three criteria at B exempts the produce in question from the law. For example, produce growing wild is edible, but the fact that it is not cultivated by human beings means that tithes need not be removed from it. The *locus classicus* for determining the range of produce excluded from the law of tithes is b. Shab. 68a where M. is cited and glossed. The passage is the foundation for all later commentaries

to M. Cf. as well as Sifre Dt. 105 (translated and discussed, pp. 56-57) and y. Ma. 1:1(48c), which is based upon Sifre.

⁸Sarason, *M. Demai*, p. 9, observes that in any given year nearly 22% of the harvest is to be offered as heave-offering and tithes.

⁹Both of these criteria have clear precedents in Scripture's discussion of tithing rules. On the specification that tithes must be removed from all agricultural produce in particular, cf. Dt. 14:22: "You shall tithe all the yield of your seed which comes forth from the field year by year." On the notion that tithes are due from the land because the land itself is God's gift, cf. Dt. 26:14-15 which requires the farmer to remove his tithes and confess: "I have obeyed the voice of the Lord my God, I have done according to all that thou hast commanded me. Look down from thy holy habitation, from heaven, and bless thy people Israel and the ground which thou hast given us, as thou didst swear to our fathers, a land flowing with milk and honey." To be sure, B3 does not specify that, in order to be subject to the law, produce must grow from the earth of the *land of Israel*. Nevertheless, this notion is attested everywhere in Mishnah, and must be read as the meaning here as well. On the stipulation that tithes come only from the land of Israel, see M. 3:10, M. 5:5, M. Dem. 6:11, and, at length, Maim., *Heave-offering* 1:1-9.

¹⁰Lv. 25:23 is clear that the land is owned by God: "The land shall not be sold in perpetuity, for the land is mine." Lv. 27:30 is equally clear that the fruits of the land also belong to God: "All the tithe of the land, whether of the seed of the land or of the fruit of the trees, is the Lord's; it is holy to the Lord." We must note here that B entirely ignores the fact that, according to Lv. 27:32, cattle as well must be tithed as offerings for the Temple sacrifices. Mishnah's discussion of the cattle-tithe (M. Bek. 9:1-8) is found in The Division of Holy Things, in a tractate devoted to the problem of cattle offerings for Temple sacrifices. The tithe of cattle, then, is deemed to fall under problems relevant to the cult rather than those applicable to agriculture.

¹¹I translate *yrq* as "green vegetable" for lack of a better term, even though M. 4:5 uses the term to refer to the green leaves of herbs. More generally, the term is applied to anything which grows on a creeping vine or stalk (see p. 171, n. 17). M.-T.'s inclusive use of the term *yrq* to subsume a number of different species is paralleled in Theophrastus, for whom the term "herb" defines items such as marjoram and basil (*Enquiry*, VII.ii.1) as well as lettuce, cabbage, cucumber, or gourd (*ibid.*, VII.ii.9).

¹²Unless specified otherwise, M. assumes that seed will be used for planting instead of food (cf. M. 5:8 and T. 3:16).

¹³At y. Ma. 1:1 Yonah observes that vegetables kept for their seed become so hard that they are as wood regarding tithes, i.e., they are exempt (cf. M. Sheb. 2:10). But cf. White, *Roman Farming*, p. 187, who cites Theophrastus' opinion that seed must be taken from plants "in their prime."

¹⁴Sifre Dt.'s exegesis of Dt. 14:22ff. is important in the history of M.'s exegesis. Accordingly, I offer a translation and commentary to the relevant passages of Sifre Dt. 105, which I have divided into three units, b-d. Unit a, irrelevant to M., is not discussed, while units c and d are translated and discussed

in relation to their respective pericopae of M. For a quite independent version of Sifre Dt. 105, cf. y. Ma. 1:1 (48c).

¹⁵Cf. T. 3:16 where Yose exempts woad and vetch (*bqy'*) from the law. In M. Sheb. 7:1 woad and madder are designated "types of dye" which are subject to the laws of the Sabbatical Year.

¹⁶*Rubia Tinctoriosum* (Löw, p. 311), a plant yielding a red dye.

¹⁷In the technical vocabulary of M.-T. there are three general types of produce subject to the laws of tithe: *prwt* (fruit), *tbw'h* (grain) and *yrq* (greens). A fourth item, *qtnyt* (pulse), is normally categorized with grain. In general, *prwt* refers to anything which grows from a climbing vine, a tree or bush (M. 1:2-3). *Tbw'h*, according to M. Hal. 1:1, includes wheat, barley, spelt, rye, and oats. *Yrq*, as at T. 1:1b (see p. 170, n. 11) and M. 1:4, refers to produce which grows from a creeping vine or stalk (T. Uqs. 2:11). *Qtnyt* refers to a wide variety of items ranging from sesame to various types of legumes (M. Sheb. 2:7-8). The common characteristic of *qtnyt* is that all items in this class require hulling before they may be eaten.

Mishnah's classification of grains and pulses is closely parallel to that of Theophrastus, and indicates that Mishnah's authorities knew a common Hellenistic science of taxonomy. Theophrastus remarks (*Enquiry*, VIII, i.1): "There are two principal classes [of corn and corn-like plants]: there are the corn-like plants such as wheat, barley, one-seeded wheat, rice-wheat, and the others which resemble the first two; and again there are the leguminous plants, as bean, chick-pea, pea, and in general, those to which the name of pulses is given." On this passage and other parallels between Mishnaic and Hellenistic taxonomy, see S. Lieberman, *Hellenism*, pp. 180-193.

¹⁸C and M record the verb in the imperfect, *mšybhylw*. MSS. reveal no pattern in the use of perfect and imperfect forms in this pericope. Thus, while the forms change from *stich* to *stich* and MS. to MS., I consistently translate as future perfect.

¹⁹S reads *b'wšym*, "sickly grapes" (cf. Ribmaş, Lieberman, *TK*, II:667.5-6, Jastrow, p. 135, and Sacks-Hutner, p. 200). In light of M. 1:1B, which stipulates that only agricultural produce is subject to the law, S is to be preferred, for its grapes are domesticated.

²⁰On the meaning of *B'š* cf. y. Ma. 1:1(48d), Maim., *Tithes* 2:5 and Jastrow, p. 137.

²¹*Rhus Coriara* (Bunte, p. 57). According to Bunte, the fruit is used in pickling.

²²*Morus* (Löw, *Pflanzennamen*, p. 395).

²³*Punica Granatum* (Löw, *ibid.*, p. 312).

²⁴See Sacks-Hutner (p. 201) for the numerous MSS. traditions for this word. Bunte (p. 59) notes that all closely resemble the Greek word for peach (*persikon*).

²⁵So Jastrow, p. 234, s.v., *GVD*.

²⁶*Juglans Regia* (Low, *op. cit.*, p. 84).

²⁷S appears to have added "and almonds" in order to balance I with J. The addition, however, upsets the division of the

pericope into 10 items per unit, with J the dividing line. For discussions of the "original" reading, see Albeck, p. 394, and Lieberman, *TK*, II:668.7.

²⁸*Crustiminum pirum* (Löw, *op. cit.*, p. 208). Also known as "pippin."

²⁹*Pirus Cydonia* (Bunte, p. 61). I follow Löw, p. 144, and Bunte in translating "medlars," but see Danby (p. 67) and Blackman (p. 352) who translate "quince." Löw documents the error which led to the identification of *pryš* with quince.

³⁰*Crataegus Azarolus* (Löw, *op. cit.*, p. 288).

³¹The reference is unclear. TYY explains that the reference is to other tree-fruits which are neither red nor black.

³²*Trigonella Foenum Graecum* (Löw, *op. cit.*, p. 316).

³³The items at M. 13-16, we may point out, appear elsewhere in M.-T. in numerous contexts, yet always in the same order (cf. M. Uqs. 1:6, M. Kil. 1:4, T. Uqs. 3:7, T. Sheb. 7:16). Thus the list, "pears-crab apples" is a standard unit of material providing a fixed protasis for numerous apodoses. Only at T. Uqs. 3:7 is there any interest in the point at which these items are subject to the law. There we are told that the items in question impart food uncleanness from the point of their "tithing season" and thereafter. The point, that the produce imparts uncleanness as food only after it has become food, is congruent with the view of A, that edibility determines when produce is subject to the law.

³⁴Cf. M. Sheb. 4:7-9 which attests the fact that figs, grapes, grain and olives are all ripe enough to be eaten *before* they have reached the stages enumerated here at B-C and P.

³⁵See Q. Jones, "Fenugreek," *EB*, 9:176.

³⁶The meaning is obscure. T. Ter. 2:14 claims that grain which has not "reached a third," will not sprout if sown. This, however, does not explain the meaning of the term. I know of no sustained discussion of the term, but cf. the remarks of J. Feliks, *Ḥaqla'ut*, p. 125.

³⁷Maimonides' interpretation of M. 1:2-3 departs considerably from the clear intentions of the redactor. Maimonides ignores the issue of edibility entirely and stipulates that the signs all refer to the point in the growth of the produce at which its seeds are fertile. Thus, he reads the entire pericope in light of O. See *Tithes* 2:5 (tr. I. Klein, p. 189): "When is the season of tithing? When the produce reaches the stage that makes the seed thereof fit to be sown and to sprout"

³⁸See Lieberman, *TK*:667.5.

³⁹*Corylus Avella* (Löw, p. 48).

⁴⁰*TK*:667-68. There is no MS. evidence for Lieberman's suggestion, even though the context thoroughly supports it.

⁴¹Fruit of the cedar tree, *Pinus Cedrus* (Löw, p. 58).

⁴²The opinion is analogous to Yose's ruling about connection in regard to uncleanness in M. Toh. 8:8 (cf. Neusner, *Purities* XI:198-200 and XII:154-57), and we can therefore take Ishmael's

attribution as reliable. In M. Toh. 8:8, Yose holds that still water trapped between balls of dough--each of which is less than an egg's-bulk in size--is sufficient to join the balls together in a size requisite to receive food uncleanness (i.e., an egg's-bulk). Thus, the fact of connection renders parts which are exempt from the law of purities into a whole which is subject to it. In T. Yose's conception is perfectly complementary. The connective of the common stem renders the whole subject to the law which now applies to the part. On the general Ushan provenance of issues regarding connection in the transfer of uncleanness, see Neusner, *Purities* III:298-305, XII:196-97.

⁴³šy'h = *Satureia thymbra* (Löw, p. 135).

⁴⁴'zwb = *Origanum majorana* (*loc. cit.*). Also known as hyssop.

⁴⁵qwrnyt = *Calamantha officinalis* (*ibid.*, p. 330).

⁴⁶Theophrastus (*Enquiry*, VI, ii, 3-4) discusses the development of berries upon the herbs mentioned in A: "Savory, and still more marjoram, has a conspicuous fruitful seed, but in thyme it is not easy to find, being somehow mixed up with the flower; for men sow the flower and plants come up from it." Theophrastus further observes that "most herbs wither with the ripening of their seed" (VII, i, 7).

⁴⁷I translate following Jastrow, p. 2, s.v., 'B, 'YB, ('WB). *Aruch Completum*, I:3, s.v. 'B, derives the word from the Syriac 'b', "fruit."

⁴⁸y. treats T. 1:4 and T. 1:5a(A-B) as a single unit.

⁴⁹Lieberman (*TK*, II, p. 670, ls. 13-14) notes that a version of A-B appears in y. Sheb. 7:6 where it is joined to T. 1:4. This indicates that A-B was read as a statement about the herbs cited in T. 1:4.

⁵⁰In his discussion of T. Sheb. 2:6, Neusner (*Pharisees*, II:79) theorizes that "... the Houses serve as convenience names to which to attribute the two possible opinions on any intermediate or ambiguous stage of an issue. Simeon may on his own have fabricated the Houses-dispute, in conformity with a prevailing literary convention."

⁵¹In general, contrary to A-B, M.-T. seems clear that there is no single standard for determining the tithing year of produce. M. Bik. 2:6 is clear that green vegetables are tithed according to the year in which they are picked, and that only citrons are like them in this regard. T. Sheb. 4:20 says that the tithing year of fruit trees is established by the year in which the fruits first form (*HNT*), and does not mention harvest. M. Sheb. 2:7's discussion of pulse likewise ignores the harvest and says that pulse is tithed according to the year in which it takes root. I have found no clear statement in M.-T. regarding other types of fruit, but compare the *baraita* cited at y. Ma. 5:4(50d) in the name of Jonathan b. Yose, which indicates that grain is tithed according to the year in which it reaches a third of its growth. In light of all this, we may understand A-B in one of three ways. Either (1) it simply contradicts other rulings in M.-T. by claiming a single standard applies to all crops, or (2) the rule refers only to green vegetables (M. Bik. 2:6), or (3) it claims that the herbs of T. 1:4 are subject to the same criteria as are green vegetables (HD). As I shall argue, this latter view is probably

that of the redactor of T. 1:5a, but cannot be shown to be the original meaning of A-B.

⁵²Lieberman (*TK*, II: 670.16-17) argues that Simeon b. Gamaliel knows A-B. Further, Lieberman asserts that the dispute of D-F concerns the herbs of T. 1:4. He thus sees T. 1:4 + T. 1:5a as a unitary pericope which discusses at what point the tithing year of herbs is determined. As my analysis indicates, this view is correct only on the redactional level of meaning. But since T. 1:4 + T. 1:5a is a series of three formulaically independent units (T. 1:4 + T. 1:5a[A-B] + [C-F]), it is not likely that one tradent formulated the whole or even that a single conception of the law informs each unit.

⁵³Lieberman's emendation, which simply transposes the *w* and the *y* of the text's *'wbyn*, is highly plausible since the two letters are easily mistaken in MSS. Further the context of D calls for a stage of development between blossoming and maturity. The stage of sprouting recorded in the printed text does not qualify, while the point at which berries develop is such an intermediate point.

⁵⁴Concerning the question of whether a single phenomenon can establish both the onset of liability to the law and the year in which the produce must be tithed, see MR to M. Sheb. 2:7 and Maimonides, *Seventh Year and Jubilee* 4:9.

⁵⁵Kosovsky's concordances to Sifra, Sifre and Mekhilta d'Rabbi Ishmael contain no other references to the words *y'mr zh* in an exegetical context. The sense seems to be similar to the later Babylonian Amoraic term *ḡryk'* ("it is necessary"), which is used to show that a word or passage in a Tannaitic text is not superfluous and in fact contains a concept essential to the proper understanding of the law.

⁵⁶Löw, p. 102, gives no positive identification for *prgym*, except to say that despite the traditional identification of *prgym* as poppy seed, it is more likely a type of millet in the family *Panicum*.

⁵⁷Löw, p. 336, identifies pulse (*Hülsenfrucht*) as any type of plant whose edible part is a berry or bean found in a hull. The types of pulse listed at O all require some kind of preparation. P must have in mind items such as peas or lima beans, which can be eaten raw. See Krauss (*TA*, I:115) who asserts that many types of pulse were used as substitutes for grain in the baking of bread.

⁵⁸*Lupinus Termis*. Also known as Horsebean (Löw, p. 394).

⁵⁹*Ḥlyym* = *Lepidum Sativa* (Jastrow, p. 1548).

⁶⁰*Grgyr* = *Eruca Agrestis* (Jastrow, p. 264).

⁶¹Probably a reference to *Ficus Sycomorus*, a popular shade tree in the Middle East. Its fruit is edible only after the apex is cut open so that the insect which normally inhabits the fruit can no longer survive. See Löw, p. 176, Condit, and S. Klein.

⁶²Acacia pods are used in the tanning process. See Feliks, *Plant World*, p. 98.

⁶³As I have indicated at n. 55, *y'mr zh* is an oddity. Moreover, the particle *š-* never appears before the formulaic phrase "if so, I should say" insofar as I have been able to check these instances

in Kosovsky's concordances to Sifra, Sifre and Mekhilta d'Rabbi Ishmael. In fact, N-P appears to be a truncated exemplum of a rhetorical form frequently found in Sifra but which appears only here in Sifre (Kosovsky, *Sifra*, I:188 and *Sifre*, I:161-63). The form has four essential components: I. Scriptural citation; II. 'ynw dyn š- (isn't it logical that ...?); III. 'ylw kn hyyty 'wmr (if so I could say); IV. tlmwd lwmr (Scripture says). II is a faulty deduction from the Scriptural citation. III makes this clear by deducing a further implication from II which Scripture (IV) clearly contradicts. Sifre's version omits part II. M forces us to read L's citation of Scripture as the introduction to N. But this turns the Scriptural rule into a false proposition! As I have indicated in the translation, some MSS. try to remedy this by substituting 'lml' (if it were not) for 'ylw (if). While this is indeed the only way of making sense of what is before us, it is an obvious fabrication. The phrase 'lml' kn never appears in any Tannaitic midrash, insofar as I can see from a survey of the standard concordances.

⁶⁴ qšw'ym = *Cucumis Sativa* (Löw, *op. cit.*, p. 334).

⁶⁵ dlw^aym = *Cucurbita Pepo* (*ibid.*, p. 351).

⁶⁶ b'tyhyym = *Citrullus Vulgaris* (*ibid.*, p. 352).

⁶⁷ mlppwnwt = *Cucumis Melo* (*ibid.*, p. 351).

⁶⁸ trgyr = *Citrus medica cedra* (*ibid.*, p. 46).

⁶⁹ On these items, see Bunte, p. 66.

⁷⁰ Lieberman (*TK*, II:666.2), on the basis of y. Ma. 1:4, argues that A-B is understood by the Palestinian Amoraim as a gloss appended to M. 1:3P, yielding the following reading: "Olives and grain--when they reach a third of their growth. And among green vegetables: cucumbers, gourds, chatemelons, and muskmelons." Thus these green vegetables are subject to the law upon reaching a third of their growth, while all other greens mentioned in M.-T. (e.g., T. 1:1b) are subject to the law at all points in their growth. As Albeck points out (p. 394), Lieberman's solution fails to solve the literary problem, for A-B in its present form does not follow conventional glossing patterns common in M. See Albeck's discussion of M. 1:4 in the appendix of his commentary to the Division of Agriculture, p. 394.

⁷¹ F-G has in fact been excerpted from its original location in M. Hul. 1:6, where it appears in the midst of a catalogue of thematically diverse rulings sharing only a common, and striking, pattern of formulation. The contrast between the role of F-G in M. Hul. 1:5-6 and its present function in M. 1:4 is instructive in regard to the possible redactional principles available to M.'s formulators. In M. Hul. 1:5-6, formal criteria alone determine which materials are to be placed together. In M. 1:4, formal criteria are subordinated to content.

⁷² So Lieberman, *TK*, II, 669.9-10. Cf. Löw, *Flora* III:215, s.v. "Apfel," who indicates that the fruit, known in Greek as *melimela*, is the fruit of an apple tree grafted on to quince stock.

⁷³ Lieberman (*TK*, II:669.12) explains that Simeon exempts melons even after they have reached a third of their growth, as long as they have not yet become smooth. This interpretation follows from his analysis of M. 1:4A-B as a gloss of M. 1:3P (see my comment to

M. 1:4, p. 175, n. 70). Lieberman, however, ignores the formulary identity of A and M. 1:4E (... *p̄twr* ... *bq̄tnn*) which suggests that Simeon is indeed responding to a claim that melons are tithable whether large or small.

⁷⁴MS. Erfurt's version of A is cited anonymously.

⁷⁵I follow Lieberman and *ed. princ.* against y. Ma. 1:4, HY and HD. See *TK*, II:669.10-11.

⁷⁶Note, however, that B agrees with the anonymous rule of T. 1:1c(N), as PM suggests by his gloss of B with the explanatory remark of T. 1:1c(O). See PM, y. Ma. 1:4, s.v. *ʿd štrš qlyptn h̄yṣwnh*.

⁷⁷The *baraita* reads:

- A. *That which is subject [to the law] among bitter almonds is exempt among small sweet [ones]. That which is subject to tithes among sweet almonds is exempt among large bitter ones.*
- B. *tny*: R. Ishmael b. R. Yose in the name of his father: "Bitter almonds are exempt, and sweet ones are not subject until (*ʿd š-*) the outer shell separates."

A interpolates T. Hul. 1:24A-B's distinction between large and small almonds into its citation of M. B = T. 1:2, save for the substitution of "exempt" for T.'s "subject" (see note 75). Compare b. Hul. 25b which cites T. Hul. 1:24 in its entirety and adds a different version of Ishmael b. Yose's lemma.

⁷⁸Translated from Zuckerman, p. 501.

⁷⁹The translation is paraphrastic, for I can produce no literal translation of A which yields readable English. Literally, the passage reads: "What is the [stage in processing for] storage at which [the requirement to remove] tithes [is binding]?" Cf. Danby, "When is their tithing season?" (p. 68), and Cohen, "When are the fruits fixed to be tithed?" (p. 257). The key problem of translation is the word *goren*, which literally means "threshing floor" (cf. Nu. 18:27), the place where grain is threshed and winnowed in preparation for storage (cf. Maim., *Comm.*). On the semantic range of *goren* in M.-T. and the Talmuds, see Feliks, *Ḥaqla'ut*, p. 235. Feliks does not refer to our passage, and none of his citations is perfectly applicable to the use of the term in the present context. Following T. 1:5a, we may define *goren* as the point at which produce is processed for storage and is therefore rendered liable to the removal of tithes. Neither the suggestion of Jastrow ("harvesting season," p. 227, s.v. *GWRN*) nor that of Krauss ("completion of harvest," *TA*, II:575, n. 271; followed by Bunte and Samtner) is adequate to the present context, for the produce listed in our pericopae has already been harvested. At issue, as T. points out, is the completion of the processing and the storage of the produce.

⁸⁰O¹, O², B, G⁵ read *myšpqš*, "when he" For discussions of various readings see Lieberman (*TK*, II:670.18), Sacks-Hutner (p. 200, n. 69) and TAS (M. 1:5).

⁸¹Throughout M. 1:5-6 MSS. are indiscriminate in dropping or preserving the *w-* before 'm (see Sacks-Hutner, pp. 205-09). Therefore, I have translated Albeck's text without noting variant readings.

⁸²Seven MSS. read *cd š-* instead of *mš-*. Since the use of the particles is inconsistent in all MSS. and editions, I have simply translated Albeck's text. The meaning, in any case, is substantially the same; "Tithes are removed *after*" (*mš-*) or "Tithes need not be removed *until*" (*cd š-*). Cf. the discussion of this phenomenon, and its exegetical possibilities at b. B.M. 88b.

⁸³So Lieberman (*TK*, II:671.18) for *šLQ*. Cf. Albeck, pp. 394-95.

⁸⁴See Krauss (*TA*, II:197 and 581, n. 327) for the term *muqṣeḥ*.

⁸⁵So Danby, p. 67.

⁸⁶So Jastrow, p. 1358, s.v., *QYT^e*.

⁸⁷So b. A.Z. 56a: "Learn from this [i.e., M. 1:7B] that we are discussing the skimming [which takes place in] the vat [rather than the skimming which takes place in] a jar."

⁸⁸So Jastrow, p. 1106.

⁸⁹I follow the witness of eleven MSS. Albeck reads *wmbyn*, "and from between."

⁹⁰So Jastrow, p. 795.

⁹¹In M.T.Y. 1:1 the word *hmyth* refers to a kind of thin cake. Interpretations of the word as it appears at F generally follow this meaning. The context, however, and the evidence of T. 1:7b(C) and M. Shab. 3:5 both argue for the translation I have suggested. Cf. Maim., *Comm.* and Lieberman, *TK*, II:674.30.

⁹²So Maim., *Comm.* for *DWš*.

⁹³The etymology and original meaning of the term *tebel* are unknown. See Krauss, "TBL" for a review of Amoraic, medieval and modern philological research.

⁹⁴I cannot explain why G-H and J-K repeat the pattern twice, or why J-K simply cites G-H. The important stich in each case is the last, H and K, both of which repeat that at issue is the point at which the owner has stored enough produce for his own use.

⁹⁵Opinion is divided concerning the referent of L-M. Maimonides, *Tithes* 3:1-3 indicates that L-M applies to all the produce of M. 1:5-8, certainly a plausible interpretation. Nevertheless MS, following the observation of Joseph Ashkenazi, notes that the items of M. 1:6-8 are all glossed by qualifications specific to the types of produce enumerated in those pericopae. This yields the hypothesis that L-M refers back to B-K alone. As I argue below, Maimonides is probably correct, for L-M is placed in its present location for literary and substantive reasons relevant to the redactor's glossing agenda rather than to the meaning of the rulings at B, D, F and I.

⁹⁶b. B.M. 87b-88a understands matters differently. Yannai, basing himself upon Dt. 26:12 ("I have removed the holy thing [i.e. the tithes] from my house"), claims that the tithes become sanctified only upon entry into the householder's dwelling. Untithed produce, therefore, may be eaten prior to that point because the holy portion is not yet active. Yannai's point is well taken, but his exegetical basis is farfetched. Requiring explanation is why

the house functions as a terminus for the removal of tithes. M. itself is clear that this is the point at which the man is deemed to have effected final acquisition of the produce, i.e., the point at which God's claim to the tithes is provoked.

⁹⁷The only difficulty is that the ruling at N unexpectedly receives no gloss at all. This is due to the substance of the ruling itself. All items at N are dried, i.e., processed, before they can be used or stored. If N were cast in the pattern of the other rulings, it would yield an absurdity: "Dried split-pomegranates, etc.--when they are dried. But if he does not dry them, when they are stacked up." The absurdity is that if the pomegranates, etc., are piled without drying, they will rot.

⁹⁸Translated by Neusner, *Appointed Times* I. See his comments *loc. cit.* and in his introduction to M. Shab. Chapter Three, in the same volume.

⁹⁹Maimonides, *Uncleanness of Foodstuffs*, 12:2-3. See also Neusner, *Purities*, XVII:19-22 for the interpretation of M. Makh. 1:1 which I follow.

¹⁰⁰On the divisibility of intention regarding susceptibility to uncleanness, and Judah's position regarding the matter, see Neusner, *ibid.*, pp. 15-44, 60-63, 91-92, and 185-98.

¹⁰¹The reader will note that I have translated *grnn lmcswrt* differently than at M. 1:5. As at M. 1:5, my concern is to convey the sense of this untranslatable term in the context within which it is employed. In T., the term itself is simply cited and then glossed by the definitional remarks of B-C. Therefore I have provided, at A, the most literal translation. See M. 1:5-8, n. 79 (p. 176).

¹⁰²This is Maimonides' understanding of the rule, *Tithes* 3:8. But compare *Tithes* 3:4 where Maimonides says that if the melons were in the owner's house and only *then* did he begin to process them, they are all rendered liable with the completion of the first melon. Presumably, since they have already entered the owner's home the first indication of his desire to process them renders them all liable immediately. Cf. KM and RDBZ to *Tithes* 2:8 as well as the entirely different development of the matter at b. B.M. 88b. See also MH, y. Ma. 1:5, s.v. *hyh mqš*.

¹⁰³V lacks "he has not" (*šl'*), but the reading appears both in E and *ed. princ.* Furthermore, the context clearly requires the negative. Lieberman includes the words in brackets in his text of T., p. 228, l. 19.

¹⁰⁴Although T. specifies that this is the case only for the four items mentioned, M. Ter. 1:10 suggests that the rule is generally applicable: "They [may] not separate heave-offering ... from something which is not completely processed for something [else] which is not completely processed. But if they separated heave-offering [despite this], their separation of heave-offering is considered valid heave-offering (*trwmtn trwmh*). See Peck, *M. Terumot*, HD and HY.

¹⁰⁵See Lieberman's discussion of the rare term *mhpwrt* (TK, II, p. 672, l. 24).

¹⁰⁶Here I follow Lieberman's understanding of the case (*loc. cit.*, l. 23). But see HD who understands the ears to have fallen

from the pile onto the threshing floor. In his reading, T. contradicts M. rather than providing a further exemplification of the same principle.

¹⁰⁷For other interpretations of the matter, see y. Ma. 1:6 and Sirillo, s.v. *qwlṭ hw' mṭḥt ḥkbrh w'wkl*.

¹⁰⁸Lieberman (*TK*, II, pp. 673-74, l. 26) attacks the problem by arguing that the crucial difference between A-C and E-G is that at A-C the former owner has completed the manufacturing of the Temple's wine while at E-G the Temple treasurer himself performed the labor. While the observation is important, Lieberman can interpret its legal implications only by resorting to an Amoraic legal principle. Citing the opinion attributed to Simeon b. Laqish (y. Ma. 5:6), Lieberman explains that if a man completes the processing of another's produce without the owner's knowledge, then the processing does not effect liability to tithes. That is, since the owner had no intention of completing the processing at that particular time, the unauthorized act is null and void. The tithing status of the produce remains unaltered until the owner authorizes the processing explicitly. Lieberman applies this principle to A-C, surmising that the former owner has skimmed the wine without the knowledge of the Temple treasurer who represents the Temple as the wine's owner. The resulting situation is that the conditions required at H, which exempts wine processed under Temple auspices, do not apply to A-C. That is, the wine at A-C has not undergone a *legitimate* stage of processing while in a state of exemption from tithing regulations, and therefore cannot be considered in any sense to have been processed while exempt from the law. Unlike the wine of E-G, it remains subject to the law after it is redeemed, for the owner must then authorize the processing which will render the wine liable. While this account resolves the contradiction between the two rulings, it must be regarded with the greatest suspicion since it imports into the exegesis of T. a principle attested only in b. Secondly, the explanation presumes the ignorance of the Temple treasurer regarding the owner's actions, a fact which can hardly be seen as central--if it is even present at all--in T.'s articulation of the case.

¹⁰⁹See *TZ*, p. 229, variant readings l. 26, and *TK*, II, p. 274, l. 26.

¹¹⁰In Lieberman's text the word *whwlk*, translated as "continual," appears in brackets. The insertion is based upon the readings of *ed. princ.*, E and Sirillo.

¹¹¹*Anigaron* is a kind of broth (Lieberman, *TZ*: 229.33).

¹¹²See Peck, *M. Terumat*.

¹¹³*Ibid.*

¹¹⁴This point is made at M. 4:1G-I.

¹¹⁵Alternatively, as at M. 4:1D-F, the issue is whether the action of crushing is interpreted as making a random snack or a regular meal. If one crushes in the hand, this is a snack, and the juice is exempt. If one crushes into a cup, this is a meal, and the juice is rendered liable. Cf. Maimonides, *Tithes* 5:17, RDBZ, *loc. cit.*, and Lieberman, *TK*, II:675.36.

¹¹⁶Cf. Lieberman, *TK*, II:676.39 and y. Ma. 1:8, end.

¹¹⁷Krauss, *TA*, II:189 affirms that the threshing was commonly done in the fields.

¹¹⁸Quoted by Finkelstein, p. 165, l. 2.

¹¹⁹On the stalls of Beth Ḥanan see Freedman's translation of b. B.M. 88a (p. 508, n. 8): "These were stores set up on the Mount of Olives for the supply of pigeons and other commodities required for sacrifices, and owned by powerful priestly families, to whom they proved a source of wealth."

NOTES

CHAPTER TWO

¹Cf. y. Ma. 2:1(49c), s.v., *šmw'ł 'mr*.

²For other interpretations of the meaning of F's rather obscure point, see Maim., *Tithes* 5:6, MR and Albeck. Cf. y. Ma. 2:1(49c), s.v., *bmqwm šrw b*.

³The procedure for tithing *dema'i*-produce, and its rationale, are described by Sarason, *M. Demai*, p. 10:

This procedure ("tithes of *dema'i*") is far less rigorous [than normal tithe-removal]. To begin with, we do not now separate heave-offering at all, since we assume that it already has been separated at the threshing-floor, viz., the point at which produce becomes liable to this obligation. The *am ha'ares* is deemed to take seriously the taboo against eating and selling *tebel*, and will not violate it We also do not have to separate first tithe from *dema'i*, but merely designate, i.e., localize, it in the produce. It is up to the Levite to prove that the produce certainly was not tithed if he wishes to claim his portion. We must, however, separate heave-offering of the tithe, i.e., one-hundredth part of the whole, from *dema'i*-produce and give it to the priest, for heave-offering of the tithe carries the same stringent taboo as does heave-offering (i.e., it may not be eaten by a non-priest), and is treated in every way like the latter. Second-tithe, too, must be accounted for in the case of *dema'i*, but this tithe simply may be designated in the produce, since in any case it can be redeemed with coins, the value of which will be eaten in Jerusalem by the owner of the produce. In the third and sixth years of the sabbatical cycle, poorman's tithe need only be designated in the produce. It is up to the poor man who would claim the tithe to prove that the produce has not previously been tithed. In the case of bread, dough-offering also must be separated from *dema'i*, since this is a priestly gift which cannot be eaten by a non-priest. Taken as a whole, only those tithes which a non-priest is forbidden to eat (heave-offering of the tithe and dough-offering) must be separated from *dema'i* produce and given to their rightful recipient. The preeminent concern expressed in this tithing procedure, then, is not to violate the taboo against eating a priestly offering. The tithing and purity preoccupations of the *haber* are thus seen to be complementary in focus. On the one hand, only priests may eat unconsecrated food. On the other, non-priests are to eat their unconsecrated food in conditions of cleanness, i.e., as if they were priests eating priestly gifts.

⁴y. Ma. 2:2(49d), s.v., *hd' 'mrh šbytw tūbl lw 'bl l' l'ħrym*.

⁵Printed editions read: *wkn byhwdh*, "and [this is] also [the case] in Judea." Thirteen MSS. and y. Ma. 2:3(49d), however, record the reading which I translate (cf. Sacks-Hutner, p. 214, l. 8, n. 8, and remarks by Albeck and MS to M. 2:3).

⁶Neusner, *Purities* III:336-42, V:213-16 and VIII:200-02, observes that contrasting positions on "form vs. function" underlie numerous pericopae in which Meir and Judah appear in dispute with each other. Neither authority, however, appears consistently "formalist" or "functionalist" from tractate to tractate, although within the limits of a *single* tractate each will consistently represent one view over against the other. See in particular Neusner's discussion in *Purities* III, *loc. cit.*

⁷MR, who assumes that the man is bringing the produce to Judea in order to sell it, stipulates that since the man has no intention of selling the produce until he reaches his destination, the produce is not rendered liable to the removal of tithes until the owner brings it to the market of his destination. At D the man has changed his destination in mid-journey, given up the thought of selling the produce in Judea, and returned to Galilee. Since he has given up his commercial interest, his produce remains permitted to him as a random snack until he arrives home or actually markets the produce elsewhere. Similar approaches may be found in MS, TYY and Bert. The solutions are all ingenious, but seem to me to over-interpret what is before us. Maimonides' version of the ruling (*Tithes* 4:11), which preserves D without explanation, is still the clearest presentation of the ruling: "While a person is conveying his produce from one place to another, it does not become designated for tithing, even if along his way he brings it into and out of houses and courtyards. He may therefore eat occasionally of it until he reaches his final destination. And the same applies to his return journey" (tr. I. Klein, p. 200).

⁸In Mishnah the term *rwkl* generally describes a seller of perfumes and spices (e.g., M. Kel. 2:4, cf. Jastrow, p. 1459, s.v., *RWKL*). As Maimonides (*Comm.*) points out, the subject of the present case is *not* produce which the peddler is offering for sale, but rather the untithed produce he has brought with him for his own personal use.

⁹Judah apparently contradicts M. 2:2J-L, which permits people found within a man's place of business, i.e., the surrogate for his own home, to make a snack of untithed produce. In fact, the two issues are unrelated. Judah's ruling at M. 2:2 N-O reveals that, for him, the problem is whether a place of business, i.e., a place not used as a dwelling, can be deemed a surrogate for the owner's own home. Judah concludes that it is deemed a surrogate only if the formal requirement of privacy is met; and even then, the privacy only establishes the "at homeness" of the owner, not that of the customers in his shop. In the present pericope, however, the problem is whether the *home* of one man can be a surrogate for the home of another. Judah now claims, on formalist grounds, that since the dwelling is *already* a home, anyone given permission to enter it is deemed to have entered the equivalent of his own dwelling. Cf. MR's probing discussion of M. 2:3.

¹⁰E reads: 'pylw lšty š'wt, interpreted by Lieberman as "at two hours," i.e., at 8 a.m. (TK, II:677.6).

¹¹Lieberman (*ibid.*, ls. 5-6) considers E's reading a scribal error, for it makes nonsense of Meir's opinion. There is also another textual difficulty at L-N. Note that L, which employs the plural imperfect (*hgy^{aw}*), is out of phase with N, which employs the singular present participle (*hyyb*). Since M. 2:3E, upon which L-N is based, employs the singular (*mgy^a*), L must be considered a scribal error which has imported H's correct use of the plural imperfect *hgy^{aw}*.

¹²For further remarks on the use of Meir's traditions in M.-T., see R. Goldenberg, *The Sabbath Law of Rabbi Meir* (Missoula, 1978), pp. 12-14.

¹³Heave-offering, the first agricultural offering to be removed from produce, is normally separated at the completion of processing (cf. T. Ter. 2:11-13), for this is the point at which the owner incurs the obligation to tithe. The notion that the completion of processing, apart from all other considerations, renders produce liable is, of course, the unadorned thesis of M. 1:5-8. M. 2:4 is entirely uninterested in further complexities, introduced by M. 1:5-8's redactor, regarding the storage of produce or otherwise effecting appropriation. In M. 2:4's view, produce must be tithed as soon as it is desirable as food. The question of appropriation, read into the pericope by T. and all later commentators, is foreign to the problems before us.

¹⁴MR argues that A-C and E-G in fact address separate issues. Of concern at A-C is whether removal of heave-offering indicates the owner's decision to complete processing with the produce in its present condition. At E-G the problem is whether figs in a basket are processed or unprocessed. From this point of view Sages are consistent, as I shall explain in my commentary. Cf. Albeck, p. 395. MR's solution, as we shall see below, is little more than an elaboration of T. 2:2, which offers an essentially identical solution to the Sages' self-contradiction.

¹⁵Neusner, *Eliezer*, I:355.56, lists this pericope among those "not demonstrably part of the traditions about Eliezer ben Hyrcanus." The reason is that, in its redacted context, Eliezer is placed in dispute with Simeon, an Ushan. Since Eliezer b. Hyrcanus is a Yavnean, it is therefore likely that the Eliezer at B is an Ushan Eliezer.

¹⁶See Sarason, "Mishnah and Scripture":

The farmer, by his act of separation, determines how much of the produce actually has been consecrated as *terumah* [heave-offering]. That the holiness of produce is not immanent, but the result of man's act of consecration, further is illustrated by the ruling that *terumah* and tithes for a particular batch of produce need not be separated from that batch itself. They may be taken from any tithable batch of produce, so long as natural taxonomic categories are not violated ... *For Mishnah, then, it is man who consecrates produce by his word and deed* [italics supplied].

Sarason's point, as he later states, is that Mishnah's theory of holiness--at least as it applies to agricultural produce--is "transactional rather than immanentist," i.e., that sanctification occurs in the world by virtue of man's consecrating activity, rather than by virtue of some created holy substance which inheres within things irrespective of human agency. From this perspective, at issue between Eliezer and Simeon is whether man's acts of consecration, which require his complete attention and concentration (M. Ter. 1:1-3), may be broken by periods of inattention, such that a snack may be made of the produce in the midst of its tithing.

¹⁷So Lieberman, *TK*, II:679.18, citing y. M.S. 3:6, b. B.M. 88b.

¹⁸GRA (*Shanot Elishu*, M. 2:4; cited by Lieberman, *ibid.*, p. 678, l. 11) explains Sages' agreement in the following way. As M. 1:5K states, a basket of produce is completely processed as

soon as the owner picks all he needs. The fact that the separation of heave-offering prevents the owner from adding completely untithed produce to the basket (i.e., mixing untithed with partially-tithed produce), indicates that he has now picked the desired quantity. Therefore the work is complete and the produce forbidden until the tithes are removed. This explanation is ingenious, but ignores the fact that the produce at A is no less susceptible to the addition of untithed produce after the heave-offering has been separated, yet there the Sages do not consider the produce forbidden.

¹⁹In y. Ma. 2:4(49d) our pericope is cited according to the version which reads, "and he removes tithes [as he would for] certainly-untithed produce." The ensuing discussion begins with the observation, "We have [another version] written in the notes (*pyngš*) of Hilfai [which reads], 'He makes a chance meal of them and removes tithes [as he would for] doubtfully-tithed produce.'" b. Bes. 35b and MS Erfurht concur with Hilfai's version. I follow the version of y., which offers a superior mnemonic for the apodosis of the dispute: *l' y'wkl- dmyy/'wkl- wdyy*. Cf. Lieberman, *TK*, II:678.15-16.

²⁰An *issar* is worth 1/24th of a *dinar* (T. B.B. 5:11). Cf. Krauss, *TA*, II:406-08. The most recent study of currency in Roman Palestine is D. Sperber, *Roman Palestine 200-400: Money and Prices*. Sperber's work is far more sophisticated than Krauss's in the use of rabbinic and other sources, and is more exhaustive in scope as well. See especially his Table of Values (p. 29) as well as his chapters on the *dinar* (pp. 31-34) and comparative prices (pp. 1-25).

²¹Eleven MSS. read *csrym*, "twenty." On the strength of K-M, which doubles the quantities cited at G-I, the translated reading, that of the printed edition, is most likely.

²²Judah's opinion, that the operative act is the buyer's gathering of the produce, is congruent with the anonymous ruling which introduces M. B.M. 4:2. Meir stands with Simeon, whose gloss of M. B.M. 4:2 indicates that whoever holds the coin determines whether the purchase is binding. If the buyer holds the coin, the purchase is not deemed binding even if he has gathered the produce. If, on the other hand, the seller holds the coin, whatever the buyer gathers is deemed to be purchased. This is precisely Meir's position at A-B. Cf. Neusner, *Damages* II.

²³y. Ma. 2:5(49d), s.v., '*mr rby mn*' has an entirely different view of matters, and an appropriate solution. According to Manna, the buyer at A-B, unlike that of E-I, has not picked his figs, but has rather received them from the seller in a handful. The figs, which are *already* gathered before the buyer in the hands of the seller, are therefore liable to tithes (cf. T. 2:11). Judah, at C, maintains that even under these circumstances the buyer may eat one fig at a time from the seller's hand. Manna reads the problematic *ma'aseh* at D as further support for Judah's position. Judah now reports that the owner of the rose garden would not permit people to enter it in order to purchase figs. Rather, he would bring them to the buyers himself. Since these figs were not tithed, Judah holds that any purchase need not be tithed if the buyer gathers fewer than five (cf. PM, *loc. cit.*). Manna's solution is ingenious but unsupported by the text.

²⁴See Lieberman's explanation for reconstructing the text (*TK*, II:234.43). Cf. also GRA's notes on the text of T., in which he suggests the reading, *l' y'kl ed šy'csr*, "he shall not eat

unless he tithes." Lieberman's emendation is to be preferred as more plausible.

²⁵The roots *QŠY* and *QŠ^c* can refer either to harvesting fresh figs, drying harvested figs, or packing pressed figs. I follow the translations of Cohen (p. 264) and Danby (p. 69). For philological notes on these roots see Jastrow (p. 1405, s.v., *QŠY*, *QŠH*, *QŠ^cH*), *Aruch Completum* II:169, s.v. *QŠ*, III:176, s.v. *QŠ^c* and Krauss (*TA*, II:197).

²⁶Neusner, *Damages* II, translates M. B.M. 7:2 as follows:

- A. And these [have the right to] eat [the produce on which they work] by [right accorded them in] the Torah:
- B. he who works on what is as yet unplucked [may eat from the produce] at the end of the time of processing;
- C. [and he who works] on plucked produce [may eat from the produce] before processing is done;
- D. [in both instances solely] in regard to what grows from the ground.
- E. But these do not [have the right to] eat [the produce on which they labor] by [right accorded them in] the Torah:
- F. he who works on what is as yet unplucked, before the end of the time of processing;
- G. [and he who works] on plucked produce after the processing is done,
- H. [in both instances solely] in regard to what does not grow from the ground.

The Talmuds (b. B.M. 87a, y. Ma. 2:6[50a]) link the ruling exegetically to Dt. 23:24-25, which permits a man to pick and eat produce while in another's field, but forbids him from putting it in a basket or cutting it with a scythe. Latter actions are deemed trespassing or thievery. The Talmuds point out that field-workers alone are exempt from this ruling. According to b. B.M. 87a, "When you are putting [the produce] in the householder's basket [i.e., working for him], you eat [by authority of Dt. 23:24-25]; but when you are not putting it in the householder's basket, you do not eat [by authority of Dt. 23:24-25]." Cf. also Sifre Dt. 266 (Finkelstein, p. 286) and y. Ma. 2:6(50a), s.v. *ktyb ky tb' bqmt r^ck*.

²⁷Neusner, *op. cit.*, translates:

"And in all instances they have said [that he may eat from the produce on which he is laboring] only in the time of work" (M. B.M. 7:4).

²⁸So y. Ma. 2:6(50a), s.v. *lmh ly ^cl mnt*.

²⁹See Sacks-Hutner, p. 219, l. 29, for the numerous variant readings. The identity of these figs is uncertain (Löw, p. 392). b. Ned. 50b, which cites A-B, reads *klwpsyn* for M.'s *lbšym*, and identifies these as "a kind of fig from which pap is made." I follow b. in translating *lbšym* as "cooking-figs." Cf. Jastrow, p. 640, s.v. *KLWPSYN*.

³⁰As above, the exact species is unclear. I translate following y. B.B. 2:14 (cf. Maim., *Comm.*, M. 2:8), which discusses "a tree of white *brt swb^cyn*." *brt swb^cyn* is simply the Aramaic equivalent of *bnwt šb^c*. Cf. Jastrow (p. 198, s.v. *BRT*, p. 200, s.v. *BT*) and Bunte (p. 95).

31 Neusner, *Damages II*, translates:

- A. [If the laborer] was working on figs, he [has] not [got the right to] eat grapes,
- B. [if he was working] on grapes, he [has] not [got the right to] eat figs.
- C. But [he does have the right to] refrain [from eating] until he gets to the best produce and then [to exercise] his right to eat.

Except for minor differences concerning the produce involved, M. B.M. 7:4A-C is identical to M. 2:8A-C.

32 *Ed. princ.* reads *ly*, "for me," where both M and P read *lk*, "for yourself."

33 The attribution to Eleazar b. R. Simeon is also supported by y. Ma. 3:8(50d). M. knows two authorities named Eliezer b. R. Sadoq, one of Yavneh and the other of Usha. Eleazar b. R. Simeon, on the other hand, lived in Rabbi's generation.

34 A *še'aḥ* equals six *qabs*.

35 My interpretation of A-C + D-F differs substantially from that of Rashi (b. Erub. 32a), MB, HY, HD, and Lieberman (*TK*, II:679.20-21ff.). These commentators read the issue raised by the gloss at G-L back into our rulings, and understand the matter as follows. The problem of the rules is to determine whether the owner of the figs is likely to have already tithed the figs by removing tithes from another batch of produce on their behalf (J-L). At A-C the recipient tithes the figs as certainly-untithed, because the owner has not specified a particular amount of figs as a gift. Consequently, he cannot have known the proper proportion of tithes to remove on behalf of these figs from a separate batch of produce. At D-F the recipient tithes the figs as if they are doubtfully-tithed, because the basket is a fixed quantity, making it possible for the owner to remove the proper proportion from a separate batch as tithes for the basket. Full discussions of these rulings are found in b. Erub. 32a-b and y. Ma. 2:1(49c), s.v., *s' wlaqt lk*. Cf. also Maimonides' revision of the pericope in *Tithes*, 10:10, with the comments of KM.

36 This point is assumed in M. 5:3A-C, below.

37 While I mistrust my own interpretation of the case, I am even less satisfied with those offered by HD, MB, PM, and Lieberman (*TK*, II:681-82.30-31), all of which stem from the following discussion of our pericope in y. Ma. 2:1(49c):

"Rabbi Bun bar Hiyya inquired before Rabbi Ze^Cira [concerning the obligation of the recipient of the twenty figs]: 'But is it not true that a man eats one by one and is exempt [from tithing]?' He [Rabbi Ze^Cira] answered him, 'Yes.' 'Then why is he required [to tithe]?' He answered him, '[The case assumes that] he has gathered [them together].'
[Rabbi Bun replied], 'But if [the case assumes that] he has gathered [them together], then even the one who eats his fill should be required [to tithe]: And [furthermore], is he not forbidden [to eat without tithing] on the ground that exchange [is the same as a purchase]?' Said Rabbi Simi, 'He has not participated in an exchange, for this fellow only intended to encourage his [friend] to eat [by saying the equivalent of, 'Here, do not be ashamed of eating these twenty figs, for I shall take many of yours': PM].

The commentators cited above concern themselves with interpreting the enigmatic opinion of Simmi which, whatever it might in fact mean, does not solve the problem of why one man's produce is liable and the other's is exempt. MH (y. Ma. 2:1), after refuting all the options made available by y. concludes, "These matters have no solution, and there is no point in going on at length about them."

NOTES

CHAPTER THREE

¹On the root *QSY* refer to M. 2:7, p. 185, n. 25. Figs are routinely sun-dried in order to preserve them and to process them further into pressed cakes (cf. M. 1:8, M. 3:4).

²MSS. and *rishonim* know numerous versions of D-E. MS. Kaufman is identical to D-E as I have translated it, with the exception of D, where the word *ʿlyw* appears instead of the *'wklyn wptwryn* of the printed versions. In context, MS. Kaufman's reading means: "The responsibility for tithing rests upon the employer." Bunte (p. 97), who uses MS. Kaufman as his primary text, interprets the law in this fashion as well. The point is that since the workers eat with the employer's permission, it is his responsibility to tithe the gift. MS. Kaufman, therefore, does not understand the workers to be eating by right of the Torah, a position with which I concur. Another variant, however, cited by MS, reverses the order of D and E, such that in a case in which the workers are dependent upon the employer for their board, they eat and are exempt, and if not, they must tithe. As Sacks-Hutner (pp. 221-22, n. 7) suggests, this reading must be interpreted to indicate that the workers of D-E are eating by right of the Torah, i.e., from produce which is in the midst of processing, while those of F-G are eating produce which is already processed. For further discussion, see MS, Sens, Sirillo and MR.

³The term *muqseh* (*QSY*) applies to the drying figs as well as to the place in which they are dried. See Krauss (*TA*, II:197).

⁴Maimonides (*Comm.*, cf. *Tithes* 5:13) reads the issue in light of M. Dem. 5:8, which forbids one from selling *tebel*. Since the exchange of produce for labor is regarded as a sale, Maimonides says that the workers of F-G may not eat because "the owner may not defray his debt with *tebel*." This, of course, is correct, but there is little indication that M. is interested in bringing this principle into operation. Maimonides here makes the error, rare for him, of interpreting the ruling apart from the context created by M.'s redactor.

⁵The common translation of the *qal* construction of the root *ŠKH* is "to forget," a rendering which is confusing in the present context. The man has forgotten nothing, rather he has inadvertently brought his produce through a place which he should have avoided, had he his wits about him. To render this sense, I have chosen the word "careless."

⁶The readings for P are not unanimous. I have indicated the readings of *ed. princ.* and E in my translation. The paraphrase of our case in y. Ma. 3:1(50c) reads: "[If] he brought figs from the field [= M], and brought them through *his courtyard* in order to them on the roof--Rabbi declares [the figs] liable. R. Yose b. R. Judah declares [them] exempt" [italics supplied].

No reading is without its problems. In order to make sense of Lieberman's text or its MS. variants, we must assume that, contrary to M. 2:2, a man's produce can be rendered liable by passage through his fellow's home, even though the owner of the produce is not on a journey. Even if we so assume, the next problem is, as KM (*Tithes* 4:13) asks, Why should the fellow's home effect liability while the owner's own house (A-E, F-I) does not?

If we appeal to the version of *y.*, which specifies that the man has brought the produce through his *own* courtyard, we are still left with the problem of understanding the discrepancy between A-F and G-L, on the one hand, and M-Q on the other. Lieberman (*TK*, II:683.37-38) suggests the following emendations as a solution. In accordance with the version of *y.*, he deletes O ("if he was careless") as a copyist's error. This changes the case to one in which the man *intentionally* brought the produce into a private courtyard. Lieberman next suggests an eclectic reading for the problematic stich at P: "and he brought them *through the courtyard of the house.*" He explains that the man originally intended to bring his figs to the roof via the *back* of the house which does not face the courtyard. He then changed his mind and brought them through the courtyard. Since his change of mind is deliberate, the courtyard renders the figs liable. I would follow Lieberman in deleting O, for the ruling at Q requires a deliberate act in order to conform to the general rule worked out at A-F and G-L. However I do not see how Lieberman's emendation of P is necessary, or his explanation of it plausible.

⁷See also Maimonides, *Tithes* 5:13: "But if they are dependent upon him for their board, they shall not eat even though the processing is not complete, for one does not defray a debt with *ṭebel.*" Lieberman (*TK*, II:684.39) follows Maimonides' understanding of the matter. At n. 4 above, I discuss the difficulty of interpreting the present issue as a matter of defrayment of debts. Here, as in M. 3:1, we are simply presented with an issue of sale.

⁸The roots *NKŠ* and *cDR* can both bear the sense of "pruning" (so Jastrow, p. 904, s.v. *NYKWS*, and Lieberman, *TK*, II:686 n.53). If that is the case here, the point is that even though the workers are actually removing fruit, they do not eat it by right of the Torah, since the removal is not for the harvest, but rather for the benefit of the other fruit on the tree. In my commentary I have interpreted each root in the sense of "weeding."

⁹Here I follow Lieberman's emendation of K.

¹⁰b. B.M. 89a-b understands the point to be that use of salt or bread encourages the worker to eat more than is proper, in which case what he eats comes under the category of stolen property (cf. Rashi, b. B.M. 89b, s.v. *l' yšpwt* and *Nemuqei Yosef* to *Alfasi* B.M. 52b, s.v. *k'cnbym wdbr 'hr*). This interpretation of T. would be legitimate if the pericope did not appear in our tractate, but rather in T. B.M., which shows no interest in the tithing laws. Since the pericope is presently located in our tractate it is legitimate to read the issues of tithing into the law, as I have indicated in brackets of my translation.

¹¹M and Sa read: *qsy^{cwt}*, a reading attested as well in b. B.M. 21b. See Sacks-Hütner, p. 233, n. 22, for citations from Geonic and medieval halakhic sources. Cf. Cohen, p. 267, n. 6.

¹²T. Ket. 8:3 defines abandoned property (*hefqer*) as property "the location of the owner of which is not known." For a general discussion of the issue, see S. Albeck, "Ye'ush," *EJ* 16:774-75.

¹³Cf. b. B.M. 21b, Rashi, *loc. cit.*, s.v., *y'wš šl' md^ct.*

¹⁴So Raba, b. B.M. 21b, but cf. Maimonides, *Tithes* 3:24, who does not see the issue in terms of theft at all:

If one finds olives under an olive tree, or carobs under a carob tree, they are liable to tithing, because the

presumption is that they had dropped off from that same tree. If one finds figs under a fig tree, there is cause for doubt, seeing that figs are likely to change their appearance by getting soiled in the dust, as to whether they had dropped off from this fig tree or from some figs that have already been tithed (tr., Klein, p. 197).

Given the fact that E is integral to C-D+E-F, Raba must be preferred to Maimonides on this point.

¹⁵On the general characteristics of this form in Mishnah, see Neusner, *Purities* XXI:217ff.

¹⁶On the basis of T. 2:19I it is possible to argue that underlying the ruling is the notion that produce which may be used either as human food or as cattle fodder is subject to the law of tithes by virtue of its human value, even if actually used for cattle. Maimonides explicitly assumes that this is the case in *Tithes* 3:20. This assumption permits the following explanation of M. at *Tithes* 3:18:

In the case of carobs, as long as they have not yet been taken up to the roof-top, one may fetch some of them down for his cattle, and he is exempt, because he is likely to take the remainder back for drying, *so that he is thus providing only a casual feed for his beasts* (tr. Klein, p. 195, italics added).

The cattle are understood to have rights similar to those of the householder's dependents. That is, they may eat unprocessed produce as a snack, sharing in this regard the privileges of the householder himself. Cf. M. 3:1A-B.

¹⁷"Private domain" (*ršwt hyhyd*) and "public domain" (*ršwt hrbyd*) are common technical terms. In M. Shab. 11:1-2 and M. Erub. 10:4-9 the terms are used to distinguish separate realms of space for the purpose of defining Sabbath limits on carrying. In M. Toh. 4:7, 4:11 and chapters 5-6, the adjudication of the status of objects, about which there is doubt concerning their cleanness, is determined by whether the objects were found lying in the private or public domain (cf. Neusner, *Purities* XI:10-11, 112-18, 126-57). As T. Shab. 1:3-5 makes clear, the terms primarily define a kind of enclosed space.

¹⁸At b. B.M. 22b (s.v., *krykwt brhr hry 'lw šlw*) Rabbah and Raba understand the issue to be the likelihood that the owner of the lost object will despair of recovering it if it is lost in the public domain.

¹⁹Cf. HY, HD, MB and Lieberman (*TK*, II:680.57-58).

²⁰HD understands the rule to mean that the finder can declare the produce to be heave-offering and tithes for his *own* produce. Thus HD is able to read N in reference to both K-L and M. Since the strewn grain (M) was smoothed before it was abandoned, it remains subject to the law. Thus the finder may offer it as heave-offering, etc., for other produce in his possession and need not worry about being considered a thief. If stacked grain was found (K-L), HD says that the finder may not use the produce himself unless he estimates the value of the produce and sets the money aside for the former owner. The finder then removes the offerings and eats the rest of the produce. HD here reads the gloss at S-T back into this entirely separate case.

²¹See Peck, *M. Terumot*, for further discussion of M. Ter. 1:lff. The fact that the finder ought to have no right to dispose of another's produce in any case brings Lieberman (*TK*, II:688.60-61) to accept the reading of MS. Erfurt, which I have cited in my translation. Lieberman's explanation is substantially that of HD, cited above. S-T is read back into our rule. After having estimated the cash value, the finder then "removes heave-offering and tithes on their [i.e., the produce in the stack's] behalf from the householder's produce; i.e., from the produce itself [which has been found] (*mtwkm*) ... and gives heave-offering and tithes to the Priest and Levite without fear of robbing the householder." I do not see how N's directions to remove offerings from produce belonging to the householder can possibly be understood to refer to the stack itself. MB, HY and GRA are able to interpret N only by emending it to conform to the version of N found at y. Ma. 3:3: "In either case, [the produce] is liable [to the removal] of tithes, but exempt [from the separation of] Great Heave-Offering (*trwmh gdwlh*), for it is not possible that processed produce (*gwrn*) would be removed [from the threshing floor] unless heave-offering had been separated." The rule avoids the issue of robbery entirely and substitutes a plausible ruling applicable to both K-L and M.

²²My formal analysis of M. concurs almost entirely with earlier analyses offered by Primus, *Aqiba*, pp. 71-72 and Porton, *Ishmael I*: 46-47. See, however, n. 23, below.

²³Porton, *loc. cit.*, does not distinguish B and C as separate literary elements. There can be no doubt, however, that B-C as a unity exemplifies the larger principle of the pericope.

²⁴I have not been able to locate any archaeological evidence illuminating the ways, if any, in which Tyrian courtyards differ in structure from other types. According to W.L. MacDonald ("Tyrus," *Princeton Encyclopedia of Classical Sites*, p. 944), remains stemming from Imperial Rome and the early Byzantine period have been uncovered in Tyre, but are limited to colonaded avenues and public buildings. No domestic dwellings have been found which could confirm the assertion of y. Ma. 3:5(50d) and b. Nid. 47b that Tyrian courtyards have a guard posted at the entrance protecting the utensils.

²⁵Cf. M. Erub. 6:1-10 which assumes that a courtyard shared by two or more householders constitutes a public domain separate from the private domains of each household. The requirements of Sabbath observance necessitate an agreement on the part of each householder to place a commonly owned quantity of food (*crwb*) within the courtyard on Sabbath Eve, so that the residents of each house may consider the courtyard, in which their food is kept, to be their household for the Sabbath. They may then carry their utensils from house to house via the courtyard during the Sabbath without violating the prohibition of carrying, on the Sabbath, utensils from the private to the public domain. On the importance of food in the establishment of the household, see Nehemiah (F).

²⁶Cf. M. Erub. 9:2. Eliezer points out that a courtyard leading into the public domain (e.g., a street) is itself deemed part of the public domain, such that it is forbidden on the Sabbath to carry from such a courtyard into the private domain.

²⁷Cf. y. Ma. 3:5(50d), which is identical to A-C, but at D reads: "but not two tenants." The point, then, is that since

the courtyard is the domain of a single individual--the landlord--the tenants' control of access is ceded to them by him. This does not constitute a violation of his personal domain, for the presence of the tenants is solely the landlord's decision. Therefore the courtyard retains its ability to render produce liable.

²⁸The gate-house is a separate structure built into the wall surrounding the courtyard. Normally a watchman is posted within the gate-house to control access to the courtyard (Krauss, *TA*, I:52, 365, n. 674).

²⁹*kšdrh* (pointed as *'akhšadrah* by Yalon in Albeck, p. 231) is a loan word from the Greek *exedra*. Krauss (*TA*, I:366, n. 675) notes that in Greek usage the word denotes a covered colonnade leading to the entrance of the house, while in Latin (*exedra*) a kind of ante-room is indicated. In M. the structure is apparently similar to the Greek colonnade, leading from the entrance of the courtyard to the doorway of the house (cf. T. Ah. 8:5, where the normal exit from the *'kšdrh* is assumed to be the gate-house). In a *baraita* attributed to Eliezer (b. B.B. 25a-b) it is assumed that the *'kšdrh* is enclosed on three sides and open on the fourth. Cf. T. Erub. 5:23 (*TM*, p. 116, ls. 59-60) and Lieberman's remarks in *TK*, III:407.59-60.

³⁰Balconies are attached to the house itself (see n. 32 below). It should be noted that M. Erub. 8:4 considers these three structures to be domains distinct from the courtyard, such that if food is placed in one of these structures on Sabbath Eve, it is not permissible for the residents of the courtyard to carry utensils from their homes to the courtyard on the Sabbath (cf. p. 192, n. 25). Clearly, then, M.'s discussion of private and public domains--so crucial in the construction of Sabbath law--are immaterial in determining the status of produce regarding the law of tithes. For example, a courtyard may be deemed public domain regarding the Sabbath, yet private property regarding the law of tithes. As far as I can determine M. makes no attempt to harmonize or relate the two bodies of law (but cf. T. 2:17).

³¹The notion that the roofs of houses form a domain distinct from those occupied by the houses upon which they are constructed appears as well at M. Erub. 9:1. All roof-tops are deemed a single domain regarding the Sabbath, such that objects kept on roofs belonging to householders who have not co-operated in the placing of an *erub* may be moved from roof to roof without violating the Sabbath prohibition (see Neusner, *Appointed Times* I).

³²C's balcony is somewhat out of phase with the point of the ruling. If the balcony is built onto the house, why should its status depend upon that of the courtyard? Since the householder is free to step onto the balcony from his house, the balcony ought to be deemed part of the domain of the house. Maimonides (*Comm.*) suggests that balconies have a staircase leading to the courtyard as well as an entry into the house. The balcony, therefore, is considered part of the courtyard's contained space and shares its status regarding the law of tithes. A literary-critical solution is also possible. The series "gate-house, portico, balcony" appears to be a formulaic protasis serving cases in a number of different contexts (cf. M. Erub. 8:4, M. Sotah 8:3). Apparently it has provided a protasis for C-D as well, despite the fact that "balcony" is somewhat unsuited to the ruling's principle.

³³A make-shift structure used for storage (Bunte, p. 108, n. 1). The notion that the *šryp* is cone-shaped appears in all commentaries, and gains support from T. Suk. 1:10, which assumes that the roof of a *šryp* may be less than a handbreadth in width. Krauss (*TA*, I:275, n. 71) suggests that *šryp* is borrowed from the Greek *sarpos*, defined in Liddel-Scott (p. 1311) as a kind of wooden hut.

³⁴A loan-word, pronounced "borgan." The Greek *purgos* simply means "tower" (Liddel-Scott, p. 1284), while the Latin *burgus* refers more specifically to a watch-tower used for military purposes (Krauss, *TA*, II:327). See now D. Sperber, "Pyrgos," in *AJSR* 1 (1976).

³⁵Maimonides (*Comm.*, M. 3:6 and M. Oh. 18:10) implausibly derives the word from the Aramaic *qyyt*, "summer," yielding the meaning "summer hut." Krauss (*TA*, I:276, n. 81) suggests several Greek candidates, all of which bear the sense of shed or shack.

³⁶Gennasar refers to the region surrounding Lake Kinneret in the Northern Galilee. For appearances of the term in the literature of Greek and Jewish antiquity, see Bunte, p. 108, n. 5.

³⁷B and O² read *dyrt hmh 'w dyrt gšmym*, "either a summer dwelling or a winter dwelling." According to this reading, the dwelling need serve as a home only for an entire season, in order to be deemed permanent. On the substitution of *w-* by *'w* in MSS, see Epstein, pp. 1062-64.

³⁸So Rashi, b. Suk. 8b, s.v. *šty šwkwš šl hyšrym*. In b. the inner hut is deemed a permanent dwelling, and is therefore required to have a *mezuzah* attached to its doorpost, and may not serve as a Festival Hut during the Festival of Tabernacles. The outer hut, to the contrary, needs no *mezuzah* and may be used as a Festival Hut.

³⁹For further discussion, see Lieberman (*TK*, II:691.71).

⁴⁰*Coriandrum* (Löw, p. 209).

⁴¹On the translation of *nšmr* as cultivated, see M. 1:1B and p. 169, n. 4.

⁴²M. Ter. 8:3 assumes with the present pericope that produce picked for immediate use is rendered liable as soon as it enters the courtyard, even if it is unprocessed. As far as I am aware, my interpretation of M. as an exercise in defining a means of eating produce without harvesting it in the courtyard is not shared by any commentator to M. Maimonides, in both his *Commentary* and *Tithes* 4:15-18, simply cites M. without interpretation; and he is followed in this silence by Mishnah's later exegetes. RDBZ (*Tithes* 4:18), however, argues that the point of our pericope is to permit making a random snack of unprocessed produce in the courtyard (cf. M. 3:1A-B). The dispute between Tarfon and Aqiba, from this perspective, concerns only the quantity deemed permissible as a random snack. As I have argued throughout this essay, however, "eating one by one" is not identical to "making a random snack." The two notions are brought together for purposes of analysis in M. 4:3 and M. 4:5A-D.

⁴³Cf. Primus, *Aqiva*, p. 73 on the literary history of the dispute: "The grapecluster, the pomegranate and the melon are linked elsewhere without attribution to Aqiva, in ... M. Ma. 2:6; although such evidence is not decisive, it does suggest that [K-L] has been added on to Aqiva's saying in [J]. [H-I] are in

turn added on to Tarfon's opinion in order to balance the content, although obviously not the literary form, of [K-L]." According to Primus, then, the original dispute between Tarfon and Aqiba consisted of F+G vs. J.

⁴⁴ Compare my discussion of the identical materials at M. 2:6F-I. The different contexts within which the unit appears require different exegeses.

⁴⁵ An illustration of coriander, bearing out our exegesis of M.'s problem, may be found in Britton-Brown, II:646-47.

⁴⁶ See T. Ter. 2:12 (translated and discussed in Peck, *M. Terumot*) for the borders of the Land in Israel in regard to the law of tithes. The question of the sanctity of the land is made more complex by the fact that in certain locations outside the Land of Israel, such as Syria, an Israelite is required to offer tithes from produce growing on land which he has purchased. As elsewhere in Mishnah, the notion of "intrinsic sanctity" is modified, and sanctification is made relative to the needs and actions of human agents. Cf. M. 2:4, p. 183, n. 16 on this problem. The Talmud's discussion of sanctification and the borders of the Land of Israel is found at b. Git. 8a-b, and excellent discussions of this passage may be found in Maimonides, *Heave-Offering* 1:1-6 and MR (M. 3:10).

⁴⁷ MR adds that if the tree is rooted within the city, with a bough extending beyond it, the manslayer is protected if he takes shelter under the bough. It seems to me, however, that such a state of affairs more closely conforms to the principle of the entire tree sharing the status of the roots.

⁴⁸ Discussion of these laws may be found in Haas, *Maaser Sheni*.

⁴⁹ T. M.S. 2:12 adds that if the roots are within the city and the bough without, the entire tree is considered outside the city. Fruit picked within the walls, therefore, may be brought outside the city and exchanged for coins (so Lieberman, *TK* II:730.62-63). Both M. and T. M.S. 2:12 contradict M. M.S. 3:7, which states that produce growing within the wall is deemed to be within the city, while produce growing from the bough is deemed to share the status of produce brought from afar. b. Mak. 12a-b and later commentators have proposed numerous ways of resolving the contradiction. Representative, and valuable for its clarity, is the discussion of Maimonides, *Second Tithe and Fourth Year's Fruit* 2:15 (tr. I. Klein, p. 251): "In the case of a tree standing within the wall of Jerusalem with its foliage extending outside, one may not eat second tithe underneath its foliage [for regarding the eating of second tithe, one beneath the bough is deemed to remain outside the city: KM, *loc. cit.*]. *Second tithe that has come under its foliage may not be redeemed, inasmuch as it is accounted the same as if it had entered Jerusalem*" [italics supplied]. Maimonides, as interpreted by Joseph Caro (KM), claims that we rule according to the location of the bough in one set of circumstances and according to the location of the roots in another, in order to impose the greater stringency in either case.

⁵⁰ Lieberman (*TK*, II:692.75) seeks to harmonize A-D with M. 3:10 D-E. The problem, then, is why the man should be able to eat as he pleases from a bough extending into his home, when he may eat only one by one in the courtyard. Lieberman's answer appears to be *ad hoc*, with no textual evidence to support it:

"Perhaps ... the explanation is that he picks as much as he pleases--even two by two--as long as he has not completed picking." In other words, we do not consider the harvest (and processing) complete until the owner has picked all he desires. For another harmonistic interpretation, see HY's citation of RTBA, who says that since the figs have been brought into the house through the window, rather than the door, the unusual mode of entry exempts the produce from liability.

⁵¹It should be noted that M.-T. is not univocal on this point, for T. 2:19A-H clearly permits unprocessed produce to be brought to the table without the necessity of removing the tithes.

⁵²This is by far the simplest explanation of the dispute. For further discussion in the light of the laws applying to dough-offerings and trees bearing fruit for less than three years, see y. ^COrl. 1:1, b. Git. 22a, b. B.B. 27b and Lieberman, *TK*, II:692-93.77-78.

NOTES

CHAPTER FOUR

¹"In the field" (*bsdh*) appears in eighteen MSS, and is included in Albeck's text. The phrase is absent from the standard printed edition reproduced in Sacks-Hutner (p. 232, n. 4).

²*hmtbl*. Cohen, p. 272, n. 8, explains, "If he dipped it in salt, brine or vinegar."

³I interpolate "a ladle of wine" on the basis of T. 1:9A-C (p. 58), which points out that wine skimmed in a tub or other small vessel is not rendered liable to the removal of tithes. For further remarks, see n. 5 below.

⁴My interpretation of M.'s issue, which denies that E-H's concern for processing may be read into A-D, differs dramatically from that of most commentaries. These follow Maimonides' view of matters. Maimonides, in an effort to rationalize M.'s diverse criteria by which produce is rendered liable to the removal of tithes (*Tithes*, 3:3-4; cf. y. Ma. 4:1[51a], b. Bes. 35a), offers the following account of the law (tr. I. Klein, pp. 191-92):

Each one of the following six things designates produce for tithing: courtyard, purchase, fire, salt, heave-offering, and Sabbath. *And all of them are effective only upon produce whose preparation [i.e., processing] has been completed.* How so? ... [P]roduce sold, boiled over a fire, pickled with salt, subjected to heave-offering, or overtaken by the Sabbath--one may not eat thereof until he has tithed it, even if it has not yet reached the house [italics supplied].

Note Maimonides' insistence that *only* processed produce can be rendered liable to tithes. The data of M. do not support this interpretation, for the grapes of M. 3:8-9, for example, are rendered liable in the courtyard without any processing whatsoever. M.'s concern for processing, rather, is a function of its conviction that a man is only likely to appropriate produce in its most desirable form (cf. my discussion of M. 1:5-8, pp. 45-48). It is in no sense, however, a *sine qua non* for determining whether or not produce can be rendered liable. Should a man, as in M. 4:1, make appropriation of the produce despite its unprocessed condition, the produce is rendered liable immediately. At issue in M. 4:1A-D, therefore, is not whether the cooking or pickling completes the processing, but whether these acts indicate preparation for use in a meal. In other words, M. simply wants to know whether or not the man intends his actions to effect appropriation of the produce prior to the normal act of appropriation (e.g., bringing the produce home, etc.).

⁵Cohen (p. 272, n. 14), following Bert., argues that the wine has been skimmed *after* it has been poured into the stew: "Liability to tithing is not fixed here by this skimming, since the wine has already been mixed before the skimming." The point, I assume, is that since the wine was not food when it was added to the stew, the later skimming is inconsequential, for now there is indeed no possibility of skimming the wine in its pure condition. The circumstances, however, seem implausible to me, for which reason I have interpolated at G the factor of the ladle of wine.

⁶Mishnah understands Ex. 16:23's prohibition against preparing food on the Sabbath to include as well a prohibition against tithing on that day. Cf. M. Shab. 2:7, M. Bes. 5:2 and Maimonides' *Commentary* to M. Bes. 1:1 and M. Ter. 2:3. Tithing, it appears, is understood as part of the food's preparation.

⁷D-F appears at M. Ed. 4:10 as part of a catalogue of Houses disputes having the common element of a strict Hillelite ruling and a correspondingly lenient Shammaite ruling. For discussion see Neusner, *Pharisees* II:93-94, 331-40 and *Damages* IV.

⁸b. Bes. 34b. s.v. *my 'mrynn* (cf. Rashi, *loc. cit.*, s.v., *tynwqwt*) seems to suggest that at issue between the Houses is whether an untithed basket of Sabbath fruit may be eaten on the Sabbath without the removal of tithes. The Shammaites, in this view, would argue that since the produce is designated for the *meal*, it need be tithed only if it is used in the meal. The householder, therefore, may *snack* during the Sabbath without tithing. The Hillelites, however, differ, arguing that *all* produce consumed on the Sabbath is deemed a festive meal (cf. Sens, M. Ed. 4:10), and must therefore be tithed. Since this is impossible on the Sabbath, the produce remains forbidden. The problem with this interpretation is that the apodotes of the dispute do not support it. If matters are as b. suggests, we should expect the dispute to be *mtyrn* vs. *'wšryn* (permit vs. forbid), i.e., the Shammaites *permit* use of the produce on the Sabbath, while the Hillelites *forbid* its use. Instead we have *pwtrn* vs. *mhybyn* (declare exempt vs. declare liable). The question can only be whether the produce is exempt from the removal of tithes under all circumstances or liable under all circumstances. Such a question can only arise if at issue is the status of the produce on a day *other than* the Sabbath. As I suggest, the true exegetical problem of the dispute is to determine whether the Houses refer to the status of the produce before the Sabbath (as at G) or after the Sabbath (A-C).

⁹MR rejects Maimonides' claim that G refers specifically to a Sabbath basket, preferring instead to read G in light of M. Dem. 3:3. That rule forbids a man from sending untithed produce to a friend, lest the latter assume that tithes have been removed, and consequently eat forbidden produce. MR argues that as soon as one resolves to send such a gift it is rendered liable, so that even the sender, who knows it is untithed, must tithe before eating. MR's exegesis is, however, implausible. The point of M. Dem. 3:3 is to relieve the recipient of doubt regarding the status of the produce. The sender, who has no such doubts, should therefore be permitted to snack without tithing until he actually sends the gift. M. Dem., then, appears to have no bearing upon Judah's ruling. Similarly, it is hardly likely that Judah requires a person to tithe all produce he offers as a gift, for at M. 2:2 he assumes just the opposite. Clearly, then, Judah must have a Sabbath basket in mind, as Maimonides suggests, and as the context of M. requires. Cf. M. 5:1E-F and discussion.

¹⁰It is by no means unusual for a dispute attributed to the Houses in the period before 70 A.D. to depend upon conclusions attested, in their earliest formulation, to Usha (135-180 A.D.). For the classic discussion of this phenomenon, see Neusner, *Purities* XI:203-19 and XII:133-43 (M. Toh. 9:1-7): "Where we have an Ushan attestation, therefore [i.e., Simeon, T. Toh. 10:10], we must take seriously the possibility that Ushans have phrased the problem in terms of principles important to Ushans and have assigned opinions to the Houses congruent to larger general

rules ... subject to dispute by them" (*ibid.*, XII: 141). Strikingly, the issue at M. Toh. 9:4 is identical to that of M. 4:2, the problem of whether intentions or actions regulate how we determine the status of food regarding susceptibility to uncleanness (M. Toh.) or liability to the removal of tithes.

¹¹Lieberman's emendation of V; see TK II:694.3-4 for discussion. V, which Lieberman prints as his text, reads: "doubt [concerning the identity of the figs renders them] forbidden; doubt [concerning] the preparation [of the figs specifically for the Sabbath renders them] forbidden" (*špyqn 'šwr špq mwknn 'šwr*). Cf. the version in Zuckerman, p. 84, ls. 18-19, which follows MS. Erfurt: "lo, these are forbidden, for doubt [concerning their identity renders them] forbidden." This is followed by an independent stich which reads: "doubt [concerning] preparation [of the figs specifically for the Sabbath renders them] forbidden." Lieberman argues that MS. Vienna has added this independent stich to its own tradition, thus conflating two texts. He therefore harmonizes the two by inserting the conjunction *mpny š* between MS. Vienna's original tradition (D) and that of MS. Erfurt (E).

¹²Lieberman (TK, II:694.2-4), following all commentaries, interprets the pericope within the framework of the tithing laws. In his view the figs are liable to tithes if they have been designated for the Sabbath. The problem of the case is to determine tithing procedure in cases where there is doubt as to whether the produce has in fact been designated. Presumably, if the figs have not been designated, the advent of the Sabbath should have no effect upon them. The point of D (+E), then, is that doubt as to whether the figs have been designated for the Sabbath requires us to treat them as if they have been designated. Thus the figs are forbidden unless they are tithed. I have not taken this route because the apodotes at D and E employ the term "forbidden" (*'šwr*) instead of the term which is standard regarding produce which is liable to tithes, *hyb*. Since, in M. Bes. 1:4, "forbidden" signifies nothing more than that the produce may not be prepared, I have understood its use here in the same way.

¹³M. Bes. 1:4A-B: *zmn šħwrym wms' lbnym, lbnym wms' šħrym*.
T. 3:2b/A-C: [*tmnw*] *šħwrym wms' lbnym, lbnym wms' šħwrym*.

¹⁴But cf. Rashi, b. Bes. 35a, s.v., *hll ešmw*, and Lieberman (TK, II:694-95.5-8), who argue that the point of the gloss is to show that *only* Hillel held to the prohibition. Further proof is adduced by Lieberman from MS. variants of b.'s text which indicate that Hillel enacted the rulings for *himself* alone (*hll l'ešmw hyh 'wšr*). If this is the case, the point of Judah's glosses is to show that the rulings are a minority opinion. This is unlikely, however, for the anonymous ruling cited at J is attributed to none other than Judah at M. 4:2G. At K Judah glosses this ruling with the observation that Hillel himself used to forbid it. If the point of Judah's gloss is to say that only Hillel held the opinion at J, it is necessary to explain why T. cites Judah against his own words in M.

¹⁵See n. 10 above. For further discussion of the probable provenance of M. 4:2 and related materials see my remarks in Neusner, *Judaism*, "Appendix II" and Neusner's earlier discussion in *Pharisees*, I:230.

¹⁶y. and major commentaries to T. read M. 4:2A-C and T. 3:5a as pericopae deriving from the same hand and exhibiting the same principle, i.e., that the intentions of minors cannot be inferred

from their actions (see y. Ma. 4:2[51b], s.v. *r z^oyr bšm rb hmwⁿ'* and Lieberman, *TK* II:695-96.9). I do not see that the issue is of any importance to either M. or T.

¹⁷In light of F, the batch of salted olives is liable because, having been salted, it can no longer be returned to the bin. The olives in the bin, we recall, are being softened for eventual pressing. If the salted olives are returned to the bin, the resulting oil will be salty and devoid of commercial value. Clearly, then, the householder has removed the olives permanently and intends to use them in a meal.

¹⁸Alternatively, B-C and D-F are independent rulings, each of which is served by the protasis at A. The issues of both B-C and D-F, while certainly related, are quite independent of each other, for while F is essential to the exegesis of D-F, it offers only a secondary level of meaning to A-C (see above note). I would argue that redactional skill alone is responsible for the fact that D-F appears to be such a natural and appropriate gloss of A-C.

¹⁹The chain of contamination presupposed by the ruling may be found at M. Toh. 2:2-7, a pericope in which Eliezer, incidentally, plays an important role. On the presumed second-remove uncleanness of the hands, see M. Yad. 2:3-4. In the present case, the transfer of uncleanness from the hands to the olives occurs in the following manner. The hands, presumed to be in the second remove of uncleanness, render unclean in the first remove the liquid coating the olives. The olives, coated by the liquid, are then unclean in the second remove. When these olives are returned to the batch of clean olives, they render unclean in the first remove that liquid coating the remainder of the olives. Now *all* the olives of the bin are unclean in the second remove.

²⁰Lieberman deletes *thwr* ("clean") from the end of the stich, despite its presence in both E and V. The deletion is sound, for it makes no sense to return the unclean olives to a clean bin.

²¹For interpretations of the Houses dispute in light of M. Bes. 1:8, see Lieberman, *TK* II:703.31-32. While E-G may plausibly be understood to reflect the issues of M. Bes. 1:8, Simeon b. Eleazar's phrasing of matters is clearly dependent upon A-D's refinement of M. 4:3A-C. Therefore, the Houses opinions transmitted by him are most probably the result of Ushan efforts to depict the Hillelites in accord with M. 4:3A-C. See p. 198, n. 10 and p. 199, n. 15.

²²A is an imperfectly formulated protasis for this dispute, for the present apodosis at C and D do not smoothly follow from A. As it stands, A is simply a declarative sentence stating a rule, to which are appended "it is exempt" and "declares liable." Normally, such apodosis should refer to a protasis phrased as conditional clause, e.g., "If one drank wine at the press" (*sth^o l hgt*), or "One who drinks wine at the press" (*hšwth^o l hgt*). MSS. cited at C attempt to achieve a smoother reading by adding *w-*, "and," to the first apodosis. This yields a somewhat better reading: "They drink ... *and* it is exempt." One may speculate that A has been reformulated in order to create a better sentence in conjunction with B, for together they appear to be a single ruling: "They drink ... whether" Even this reading, however, leaves C and D poorly connected to their protasis.

²³Both b. Shab. 11b and b. Erub. 99b (followed by G⁴ and G⁵) cite A-E with the additional stich, "since he returns the surplus"

(= M. 4:3F). Either this shows exceptional sensitivity to the redactional program of M.'s redactor, or M. at one time circulated in the form cited at b. Epstein does not discuss the pericope.

²⁴Meir's position is represented as well by the glossator of M. 1:5-6 (C, E, G-H, J-K, P, R, T). For comment, see pp. 45-46. above.

²⁵Read outside the context of M. 4:3, Sages' distinction between hot and cold mixtures makes a different point entirely. Wine mixed with hot water is understood to have been cooked (M. 4:1), and must be tithed on that account alone. While this is in fact a far simpler interpretation of M., I follow b. in permitting the redactional context of the pericope to impose its own logic on the materials.

²⁶So Bunte, p. 126, n. 1.

²⁷Eleven MSS. and b. A.Z. 7b read, "Eliezer." See Epstein, p. 1177, for a discussion of the frequent confusion between Eleazar and Eliezer in MSS. As I shall argue, evidence internal to the pericope suggests that at G we should read "Eliezer," as the majority of textual witnesses attest.

²⁸See Sifre Dt. 105c/T, p. 39, and p. 174, ns. 59 and 60.

²⁹So fifteen MSS. and Albeck vs. the printed text's "Rabban Simeon ben Gamaliel." See Sacks-Hutner, p. 129, n. 5.

³⁰*Vicia Faba* (Löw, p. 312, Bunte, p. 129, n. 5).

³¹*Capperis Spinosa* (Löw, p. 264, Bunte, p. 130, n. 1).

³²See Sacks-Hutner, p. 236, ns. 58 and 70. Of all sources I have consulted, only Sirillio, in his commentary to y., divides the pericope into its natural units, A-D and E-L.

³³Compare M. 1:1D-F and discussion, pp. 29-30. Both E-J and M. 1:1E assume that produce deemed food is not subject to the law until it is actually edible (although the assumption is only implicit at E-J). M. 1:1E, however, is explicit that once a person intends his crop for use as food, objective criteria of edibility govern the point at which it is actually subject to the law. We may assume that Aqiba, at K-L, would agree on this point. E-J, on the other hand, is concerned with a separate, and logically prior matter, i.e., the role of the farmer's intention in determining first of all that a crop is to be the kind of produce which is considered to be food. Thus, once the subjective factor of intention determines that a crop shall be food (E-L), objective criteria of edibility determine when it actually becomes subject to the law of tithes (M. 1:1D-F).

³⁴So y. Ma. 4:5(51b), s.v. *kyny mtnyt'*.

³⁵The fact that Aqiba, a Yavnean, glosses J suggests that if G and J are attributed to a single authority, that authority is Eliezer b. Hyrcanus, a Yavnean. Cf. Neusner, *Eliezer* I:71. Neusner lists this pericope among the "fair" traditions (*Eliezer* II:175), i.e., "those attested at Bet Shearim, in the circle of masters around Judah the Patriarch" (*ibid.*, p. 90).

³⁶On the use of originally independent materials to create "artificial" disputes, see the important article of G. Porton, "The Artificial Dispute: Ishmael and Aqiba," in Neusner, *Cults* IV:18-29.

³⁷Cf. M. Ter. 10:5-6 where the stalks of fenugreek are deemed to be heave-offering (i.e., food) only if the householder has specifically designated them as such. Peck's remarks to the pericope, in the forthcoming *M. Terumot*, are most interesting from the perspective of E-J: "... The stalks [of fenugreek] are not deemed to be liable to the separation, or to have the status of tithes, for the householder normally does not eat them. If, however, he designates them as such, the designation is valid, for he *shows his intent to use the stalks as food*" [my italics].

³⁸Primus, *Aqiba*, pp. 73-74, stresses this point as well.

³⁹Lieberman explains T.'s distinction on the basis of the relative sizes of the two types of kernel. Since wheat kernels are smaller, one may gather more of them without being suspected of intending to make a formal meal (*TK*, II:697.11). For an attempt to read T. 3:6 in light of M. 4:3F ("for he returns the surplus"), see y. Ma. 4:5(51b), s.v., '*mr lyh šnyy' hy' hk'*'.

⁴⁰Cf. T. Dem. 1:14 (= T. Makh. 3:15) where a related formulary pattern is employed for the transmission of Joshua b. Qebusai's tradition (*mymy l' gš lyby vs. kl ymyy hyyty qwr'*).

⁴¹Jastrow (p. 355, s.v., *HMTLY'*) identifies *hementalia* ("liverwort") as a loan-word from the Greek, *hepatorion*, "Herbs used for cooling the blood." Cf. *Aruch Completum V:122*, s.v. *MPLY'* which describes the product as a type of white bean.

⁴²For discussion of M. Ter. 2:4's ruling concerning the proper separation of heave-offering, see Peck, *M. Terumot*.

⁴³y. Ma. 1:1 (s.v., *w^cwd mn hd' dtny*) revises the ruling to more clearly support Gamaliel's position: "Said R. Joshua [y. deletes patronymic]: 'Never in my life did I presume to tell a man, "Go and pick stalks of fenugreek, of mustard, and of white beans, and boil them in order to exempt them from tithes."' The italicized portion cites M. 4:6I.

⁴⁴b. A.Z. 38b (tr. Cohen, p. 188) gives the following recipe: "Take the seeds of parsley, flax and fenugreek, soak them together in lukewarm water and leave them until they begin to sprout. Then take new earthenware pots, fill them with water and soak therein red clay into which the seeds are planted. After that go to the bathhouse and by the time of coming out they will have blossomed, and on eating of them you will feel cooled from the hair of the head down to the toenails."

⁴⁵y. Ma. 4:6(51c) knows a discussion of M. 4:6J which appears to have been formulated in light of C: "The blossoms and the stalks [of the caper-bush] are a single kind. One tithes the blossoms on behalf of the stalks, and the stalks on behalf of the blossoms--but [one does] not [tithe either] of them on behalf of the berries, or the berries on their behalf."

NOTES

CHAPTER FIVE

¹So have matters been viewed by the copyists and printers responsible for the present chapter divisions. For a somewhat different analysis of the place of Chapter Five's materials in the structure of the tractate, see my outline of M. in the Introduction to this volume, pp. 11-12.

²Cf. Pa, O², P and R: *lqh*, "purchased." The reading is accepted as well by Maimonides (*Tithes* 5:2) and other commentators, including Epstein, pp. 229-30. If we accept this reading the point of E-F is that since the purchase is designated for another, the produce remains permitted to the one who actually purchased it. If this is the correct reading, however, then the point made by Eleazar at G-H seems hardly *a propos*.

³On the problem of translating *grn*, see p. 176, n. 79. In the present context the word "harvest" seems most appropriate.

⁴I follow the witness of twelve MSS. over against the printed text's and Albeck's *bslym mšhšryšw*. See Sacks-Hutner, p. 240.

⁵As at M. 4:5-6, the infelicitous division of the pericopae is the responsibility of copyists and printers. In the present case only Sirillio, as before (cf. p. 201, n. 32), recognizes the natural units, A-L and a pair of declarative sentences at M-O.

⁶Cf. Theophrastus, *Enquiry* VII, v. 3: "All herbs grow finer and larger if transplanted; for even the size of leeks and radishes depends upon transplantation. Transplanting is done especially in view of collecting seeds."

⁷The ruling entirely ignores the intentions of the farmer, a surprising fact in view of the crucial role played by intention in the cases of Chapter Four.

⁸Cf. Sarason, *M. Demai*, *passim*.

⁹For a completely different evaluation of Eleazar's contribution, see T. Zahavy, *Eleazar b. Azariah*, p. 28.

¹⁰Cf. y. Ma. 5:3(51d), s.v. *kyny mtnyt'*, and PM (M 5:3). The context requires the sale of the field with the produce growing in it. Otherwise, the seller would simply tithe the produce on behalf of the purchaser prior to the sale. If the field itself is included in the sale, however, the seller has absolutely no control over the produce from that point on.

¹¹So Freedman (b. Ned. 43b, p. 139) for *ykwł lħawr bw*.

¹²Lieberman observes that the unit serves the interests of T.'s redactor, rather than those of M. We recall that T. 3:8C(1) has already introduced the issue of ownerless produce, and we shall see that the matter is carried further at T. 3:12. Thus, the matter of ownerless produce, which is totally ignored by M., appears as a running sub-theme in T. Interestingly, the two most substantial units on this subject, T. 3:11 and T. 3:12, have no interest in the subject of tithing whatsoever.

¹³Both y. Pe'ah 6:1 and b. Ned. 43b-44a assume that the point of the householder's activity is to avoid the necessity of removing tithes from the produce of the field. If he reclaims the field as a passer-by, he is considered to have claimed an abandoned field, the produce of which is exempt from the law. If he simply retracts the declaration of ownerlessness, however, the field remains his as before, and he is responsible for tithing the produce (cf. Greenstone and Albeck, "Hefker"). Within this context, standard in all commentaries (cf. Freedman, b. Ned. 44a, pp. 139-140, ns. 2-5), Lieberman provides the most cogent interpretation of the ruling before us (*TK*, II:704): "Bavli [i.e., b. Ned. 44a] explains that the Sages passed such an ordinance to hinder dishonest landlords, so that they would not relinquish their fields and then reclaim them [as passers-by], thereby exempting themselves from the law of tithes. Thus they said that for three days the householder may retract his declaration. Now, by definition, any act of laying claim to the field could be considered a retraction [of the original declaration of ownerlessness]. Thus the field is not rendered exempt from the law of tithes [for it is considered to have been in the continuous possession of the householder]. The fact that the householder is prevented from claiming the field for three days permits the word of the field's release to spread, and, in turn, arouses the householder's fears that someone else will precede him in claiming it. The fact that he has refrained from making an outright retraction of his declaration for three days proves that he is not acting deceptively [when, after three days, he in fact lays claim to the field as a passer-by]." This is an ingenious interpretation of our rule, and shows its relevance to a tractate on Tithes, but receives no support from the text of T. Indeed, even if we accept the context outlined above, the rulings of C-I are extremely difficult to follow. As G-I, in particular, shows, the householder may simply claim the land as a passerby, and exempt the field's produce from the law. If the Sages are intent on preventing circumventions of the law, we must explain why they apparently permit it here. See Freedman's discussion, cited above, for a survey of later thinking on the matter.

¹⁴See Lieberman, *TK*, II:704.36-37.

¹⁵Lieberman, who argues that A-D furthers T.'s particular interest in ownerless produce, offers the following plausible interpretation. "If he winnowed carelessly, and was unconcerned with extracting the wheat from the straw, the wheat is simply ownerless produce and is exempt from tithes--even if the purchaser acquired the straw in order to remove the wheat" (*TK*, II:705.39).

¹⁶y. Dem. 6:7 (s.v., *š'yṅ*) explains the rulings as an expression of concern for one who is starving for lack of bread. The explanation is not entirely implausible. T. Sheb. 6:20 forbids the sale of large quantities of Seventh Year produce to an *cam ha'ares*, but permits the sale of a quantity sufficient for three meals. Presumably, the smaller quantity is not useful for trade, and will support the life of the purchaser.

¹⁷Cf. T. Dem. 4:31 and Sarason's comments, in *M. Demai*, p. 149. See also the slightly different view of matters offered by Lieberman (*TK*, II:706.43), who views the prohibition as one forbidding the *gift* of food to one who does not remove the necessary offerings, or prepare food in purity. Lieberman's view is based upon a variant reading found in MS. Erfurt and in G.

¹⁸For further discussion, see Lieberman (*TK*, II:706.44-45). Cf. also GRA's emendations and the subsequent comments of MB on the emended text. A large block of materials treating the problem

of the householder who must share his produce with his tenant-farmers appears in T. Dem. 7:1-15, of which T. Dem. 7:11-12 are particularly relevant to our problem. Sarason's comments may be found in *M. Demai*, pp. 221-25.

¹⁹Although governed in the past by Israelite kings, Syria is not deemed part of the original gift of God to Israel, a fact which raises a number of ambiguities regarding the application in Syria of certain laws specific to the Land of Israel. The problem is discussed at b. Git. 8a, and is summarized in regard to agricultural law by Maimonides at *Heave-Offering*, 1:2-5. For a recent contribution toward determining those portions of the Land of Israel which were subject to tithing laws, see Sussman, "Inscription," pp. 97-104.

The status regarding the law of tithes of produce grown in Syria is under dispute by Yavneans at M. Hal. 4:7. There Eliezer and Gamaliel dispute whether tenant-farmers to a non-Israelite in Syria need tithe their produce and let their fields lie fallow in the Seventh Year. The problem is pressing, for while tenant-farmers work the land, they do not own it. Gamaliel, who exempts their produce from laws applicable to Israelite produce, apparently carries forward the position which becomes normative in M.

²⁰T. attributes the position to Aqiba, an attribution supported by an independent, but parallel, *baraita* in y. Ma. 5:4(5ld):

tny: A field reaching a third of its growth under the ownership of a non-Israelite, and an Israelite purchased it from him--R. Aqiba says, "That which ripens afterward is exempt," but Sages say, "That which ripens afterward is liable." Cf. b. H. Hul. 136a and Lieberman, *TK*, II:707.47-48.

²¹MR's position is based upon b. Men. 67a, s.v. *gr šntgyyr*, which MR understands to release from the law of tithes produce which is processed at the hands of gentiles. He holds that the point of Judah's ruling is to require the Israelite purchaser to hire Israelite workers in the harvest of the crop, so that, in cases in which the produce is purchased before it ripens, the householder will not try to prevent the produce from being tithed by the ploy of hiring gentile harvesters. I do not see how this issue can be read into Judah's lemma.

²²For extensive form-analytical comment, see Primus, *Aqiva*, pp. 74-79.

²³Lieberman interprets Sages' to exempt the produce only if it was purchased *in a harvested condition*. Thus, their position is not like that of Simeon b. Gamaliel's, for they hold that the produce is liable if purchased while attached to the ground, whether or not the land was included in the purchase. Lieberman does not explain why he interprets the Sages' remark in this manner, and I cannot see what he gains by it, since we can in no way imagine Aqiba to hold such a position.

²⁴Such grape-pulp wine is called *temed*. See Bunte, p. 149, n. 1.

²⁵M. M.S. 1:3 prohibits the purchase, with coins designated as second-tithe, of unfermented *temed*. The liquid, in other words, is deemed water, and cannot be sanctified as second-tithe.

²⁶In Judah's view, unconsecrated produce which has absorbed the flavor of produce designated as heave-offering, acquires the

status of heave-offering *only* if the owner of the unconsecrated produce desires the absorbed flavor. See Peck, *M. Terumot*, M. Ter. 10:1ff. The logic is identical in the present pericope. Since the householder desires to use as wine the grape-flavored water, it is deemed wine, and no longer may be used as water.

²⁷Bunte points out that Baalbek was, under the name of Heliopolis, a prosperous Roman trade center in the province of Coele-Syria, northwest of Damascus (Bunte, p. 41, n. 2).

²⁸Bunte (*loc. cit.*, n. 3) places Rakhpa ten miles south of Baalbek.

²⁹*Ibid.*, n. 5.

³⁰*Ibid.*, n. 6.

³¹*qrqš* has often been interpreted as a reference to colocasia (*colocasia antiquorum*, Löw, p. 240ff.), but Lieberman argues that no certain identification is possible (*TK*, II:709.56). Bunte (p. 242, n. 7) suggests that *qrqš* is the root of the Cilician split-bean. If so, Meir is adding that the roots of the plant, as well as the bean, are exempt from tithes. The point is superfluous, however, for if the plant does not grow in the Land of Israel, all of it is by definition exempt.

³²As with *qrqš*, certain identification is impossible. Cohen (p. 278) translates, "wild lentils," in which case they are exempt as uncultivated produce, *not* because they are foreign to the Land of Israel. Bunte's suggestion (*ibid.*, n. 8) that the reference is to the pods of the split-bean suffers from the same weakness noted in n. 31 above.

³³*Arum maculatum*, Löw, pp. 238ff. For a thorough description of appearance and uses, see Bunte, p. 143, n. 10.

³⁴The *qilqaš* mentioned by Meir and the *qantym* of Yose are equivalent to the *qarqaš* and *qoṭnym* of M. 5:8B-C. The species are unidentified. See Lieberman, *TK*, II:709.56-57.

³⁵According to Lieberman, imported produce of a type which does not grow in the Land of Israel was marked "so that people would know the types of produce to which Mishnah referred; not in order to prevent errors regarding the tithing of produce, but rather for instructional purposes, in order to understand Mishnah." Further, imported produce of a type which grows inside the Land as well was not marked, "for the yield of the land was insufficient for its population. Thus produce was brought from outside the Land and remained unmarked, for everyone could recognize these" (*TK*, II:710.58). I know of no means of evaluating Lieberman's arguments, each of which appears rather arbitrary to me.

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