**HALAKHA**

An Israelite woman... pregnant, etc. – 108

This tithe may also be eaten by Israelites, even in a state of pregnancy. Similarly, if she is not married but merely betrothed to a priest, or if she is a widow awaiting her yavam who is a priest, she is prohibited from partaking of teruma. (Rambam Sefer Zera'im, Hilkhot Terumot 8:2, 5).

**MISHNA**

If there is an Israelite woman betrothed to a priest or pregnant from a priest, and he died; and a widow awaiting her yavam, who is a priest; and similarly, the daughter of a priest who is betrothed, pregnant from, or is a widow waiting for her yavam, who is an Israelite, she may not partake of teruma. If there is an Israelite woman betrothed to a Levite or pregnant from a Levite; and a widow waiting her yavam, who is a Levite; and similarly the daughter of a Levite who is betrothed, pregnant from, or a widow waiting for her yavam, who is an Israelite, she may not partake of tithes.

**GEMARA**

The mishna states that an Israelite woman betrothed to a Levite may not partake of tithes. The Gemara is puzzled by this ruling: And let her even be a complete foreigner who is not a Levite; may a foreigner not partake of tithes? In contradistinction to teruma, no special sanctity pertains to tithes; they are merely the possession of the Levite. What difference does it make, then, whether she is a Levite or not? Rav Nahman said that Shmuel said: In accordance with whose opinion is this mishna? It is in accordance with the opinion of Rabbi Meir, who said that the first tithe is forbidden to foreigners, i.e., non-Levites, as it is taught in a baraita:

*Teruma is for a priest; and the first tithe is for a Levite;* this is the statement of Rabbi Meir. Rabbi Elazar ben Azarya permits it, i.e., the first tithe, to a priest, as he too is from the tribe of Levi. The Gemara is puzzled by this last statement: It says: Permits it. Does this prove by inference that there is one tanna that prohibits a priest from partaking of tithes? But a priest is also a Levite and cannot be considered a foreigner. Rather, say that Rabbi Elazar ben Azarya meant that one may give it even to a priest. The tithe does not have to be handed to a Levite; one may choose to give it to a priest instead.

**NOTES**

The first tithe is for a Levite, this is the statement of Rabbi Meir – this ruling of Rabbi Meir does not state explicitly that, in his opinion, foreigners are prohibited from partaking of the first tithe. Rashi attempts to prove this from Rabbi Elazar ben Azarya’s response. However, Tosafot question this interpretation, as does the Rivan. The Ramban agrees with Tosafot and maintains that our knowledge of Rabbi Meir’s opinion is not from the baraita, but rather from the tradition quoted by Rav Aha, son of Rabbi, which is assumed to be in accordance with Rabbi Meir’s opinion. It is based on this tradition that in several places the Talmud states as a generally accepted fact that Rabbi Meir is of the opinion that foreigners are prohibited from partaking of first tithe (Rashba; Ritva).
The Gemara inquires: What is the reason for Rabbi Meir’s opinion? Rav Aha, son of Rabba, said in the name of tradition that the verse states: “For the tithes of the children of Israel that they set apart as a teruma to the Lord, I have given to the Levites for an inheritance” (Numbers 18:24). From the fact that this verse calls the tithe “teruma,” we learn: Just as teruma is forbidden to foreigners, so too is the first tithe forbidden to foreigners, i.e., non-Levites. The Gemara asks: If so, is it true that just as with teruma, a foreigner who eats it is liable to receive the punishment of death at the hand of Heaven and to pay the additional fifth for it, so too, with regard to tithes, a foreigner who eats it should be liable for it to receive the punishment of death at the hand of Heaven and to pay the additional fifth?  

The Gemara answers that the verse states: “They will die through it if they profane it” (Leviticus 22:9), and a different verse states: “Then he shall add the fifth part thereof unto it” (Leviticus 22:14). A close reading of these verses shows that the Torah is emphasizing that the death penalty comes through it, teruma, and not through tithes, and that a fifth must be added to it, but not to tithes. The Gemara asks: And the Rabbis, who disagree with Rabbi Meir, how do they account for the comparison in the above verse? The Gemara answers: They would say it teaches that just as the requirement to separate teruma produces the status of forbidden untithed produce, so too the requirement to separate the first tithe also produces the status of forbidden untithed produce.

And this is as it is taught in a baraita: Rabbi Yosei says: One might have thought a person should be liable only for untithed produce from which no teruma or tithes have been separated at all, but if the great teruma has been separated from it and the first tithe has not been separated from it; or if the first tithe has been separated from it and the second tithe has not; or even if the poor man’s tithe, which is merely given to the poor and has no sanctity, has not been separated, from where is it derived that such produce also has the status of untithed produce?

The verse states: “You may not eat within your gates” (Deuteronomy 12:17), and below, with regard to the poor man’s tithe, it states: “That they may eat within your gates and be satisfied” (Deuteronomy 26:12). Just as “your gates” stated below is referring to the poor man’s tithe, so too “your gates” stated here is referring to the poor man’s tithe, and the Merciful One states in the Torah “you may not eat,” implying that it may be eaten only after separation.

And if we had learned it only from there, I would say that it merely teaches a prohibition against partaking of untithed produce of this type, but the death penalty is not warranted. The comparison to teruma consequently teaches us that eating this type of untithed produce is also punishable by death at the hand of Heaven.

A different version of this discussion presents it in the form of a question: Isn’t it the case that the halakha that failure to separate the first tithe creates the status of untithed produce is derived from the halakha that Rabbi Yosei taught? If so, there is no need for the exposition of the verse referring to tithes as teruma. The Gemara answers: If the proof was from that source alone, I would say that it is only prohibited by a prohibition but the death penalty is not warranted. He therefore teaches us that all the stringencies of untithed produce are in force.

**HALAKHA**

The requirement to separate teruma produces the status of forbidden untithed produce – תְּרוּמָה. It is prohibited to partake of produce before the great teruma and teruma of the tithe have been separated from it. One who eats an olive-bulk of untithed produce is liable to be punished with death at the hand of Heaven (Rambam Sefer Kedusha, Hilkhot Ma’akhalot Assurot 10:19).

The requirement to separate the first tithe also produces the status of untithed produce – חַיָּיב בְּרֵיהֶן. One who eats an olive-bulk from which the great teruma and teruma of the tithe have been separated but from which the first tithe has not been separated or the poor man’s tithe has yet to be set aside is liable to receive lashes for eating untithed produce. However, he is not liable to be punished with death at the hand of Heaven. Some maintain that one is liable even for eating produce from which the tithe has not been separated (Jerusalem Talmud; Midrash Rabba; Rambam Sefer Kedusha, Hilkhot Ma’akhalot Assurot 12:20).

In the name of tradition – מַשֵּׁשֶׁךְ: This expression, which appears in several places, means that the statement was not ascribed to a particular Sage. Rather, it was a tradition that each student received from his teacher, ultimately tracing back to Rabbi Meir himself (Ramban).

You may not eat within your gates – לֶאֱכוֹל: The verse states: “You may not eat within your gates the tithe of your grain, or of your wine, or of your oil” (Deuteronomy 12:17). It is understood as referring not to the first tithe itself, but to remaining tithes that have yet to be separated. In other words, one may not eat within his gates so long as the tithe of his grain has yet to be separated (see Ritva).

Failure to separate the first tithe creates the status of untithed produce – נַפְּפִּית אֵלֶּה בְּרֵיהֶן: The question arises how it is that the halakha of the first tithe is derived from the halakha of the poor man’s tithe? Admittedly, there is an a fortiori inference, but the principle is that we do not derive a prohibition by means of an a fortiori inference. According to Tosafot Yeshanim, this halakha relating to the first tithe is based on the teruma of the tithe contained within it. According to all opinions, the presence of this teruma creates the status of untithed produce, and therefore, as long as the first tithe has not been separated, it is considered untithed produce due to the teruma of the tithe.
The Gemara asks: In what manner did you establish the mishna? In accordance with the opinion of Rabbi Meir. But if so, the latter clause: The daughter of a Levite betrothed to a priest and the daughter of a priest betrothed to a Levite may eat neither teruma nor tithe. Here, what foreignness is there that prohibits her from partaking of the tithe? Even according to the opinion that prohibits the first tithe to foreigners, this woman is a Levite on both sides. Rav Sheshet said: What is the meaning of: She may not eat, that the mishna teaches? It means that she may not give permission to others to separate the teruma from the tithe. As long as she is merely betrothed to a Levite, she may not appoint a messenger to set aside the teruma from the tithe on behalf of the Levite, as she is not yet her wife.

The Gemara asks: Is it to be concluded by inference that a married woman may give permission to separate teruma from the tithe? The Gemara answers: Yes, and isn’t it taught: “And you may eat it in any place, you and your households” (Numbers 18:32)? This teaches that an Israelite woman married to a Levite may give permission to another to separate teruma from the Levite’s tithe.

Mar, son of Rabbana, said: The mishna is not teaching that the daughter of a Levite who was betrothed to a priest may not partake of tithe, but rather it is coming to say that we do not distribute tithe to her in the granary. The Gemara asks: This works out well according to the one who says that the reason for the decree against distributing teruma to a woman in the granary is due to the prohibition (Yevamot 20a) against a woman being alone with a strange man in the granary, which is a secluded place, as this concern applies equally to the case here. But according to the one who says that the Sages prohibited this practice due to concern that the woman might be a divorcée, who is no longer entitled to teruma, this concern should not apply to the daughter of a Levite. Does she not partake of tithe on her own account, even after she is divorced?

The Gemara refutes this argument: And according to your reasoning that rejects the explanation of Mar, son of Rabbana, with regard to the daughter of a Levite, does a divorcée who is the daughter of a priest not partake of teruma? Why should the daughter of a priest married to a priest not receive teruma in a granary? Rather, this is a rabbinic decree that was enacted primarily due to a priest’s divorcée who is the daughter of a non-priest, as she may no longer partake of teruma after her divorce. They also applied this decree to the daughter of a priest divorced from a priest. For this reason, they also decreed against a Levite woman receiving a portion in the granary.

The Gemara raises a difficulty: If so, why specifically one who was betrothed; the same would hold true even for a married woman as well. The Gemara answers: There is no difference between them in this regard, but since the tanna taught in the first clause of the mishna: Betrothed, he also taught in the latter clause: Betrothed, although the halakha in the latter clause does not apply exclusively to a betrothed woman.

The Sages taught: Teruma is given to a priest, and the first tithe is given only to a Levite; this is the statement of Rabbi Akiva. Rabbi Elazar ben Azarya says:
The first tithe is given to a priest. The Gemara is puzzled: To a priest and not to a Levite? But the Torah expressly states that the first tithe is for Levites. The Gemara answers: Say he means it can be given also to a priest. The Gemara clarifies: What is the reason for Rabbi Akiva’s opinion? As it is written: “You shall speak to the Levites, and you shall say to them” (Numbers 18:26). Clearly, the verse speaks of Levites, not priests. And the other tanna, Rabbi Eliezer, maintains in accordance with the opinion of Rabbi Yehoshua ben Levi, as Rabbi Yehoshua ben Levi said: In twenty-four places in the Bible the priests are called Levites. And this is one of those verses: “And the priests the Levites, the sons of Zadok” (Ezekiel 44:15).

And Rabbi Akiva replies: Here you cannot say the verse is referring to priests, as it is written: “And you may eat it in any place” (Numbers 18:31), from which we learn that the tithe is given to one who can eat it in any place. This excludes a priest, who cannot eat it in a cemetery, as he is prohibited from entering such a place. Consequently, the verse cannot be referring to priests. And the other Sage, Rabbi Eliezer, how does he respond to this claim? He explains the verse as follows: He may eat it anywhere that he wishes, that is, in any city, as it does not require the wall of Jerusalem, like the second tithe. And we further learn from here that if he eats it in a state of bodily impurity he is not flogged. Consequently, we can say that tithe may be eaten by priests in any place.

The Gemara relates: There was a certain garden from which Rabbi Elazar ben Azarya,1 a priest, would take the first tithe, in accordance with his opinion that priests are also entitled to this tithe. Rabbi Akiva went, closed up the garden, and changed its entrance so that it would be facing toward the cemetery,2 to prevent Rabbi Elazar ben Azarya from entering the garden. Rabbi Elazar said in the form of a lighthearted exaggeration: Akiva, a former shepherd, comes with his satchel,3 but I have to live; from where will I receive my livelihood if I cannot claim the first tithe? Rabbi Elazar was actually a very wealthy man and did not need the produce from this garden. However, his point was that Rabbi Akiva acted in order to stop him from receiving something that he felt was rightfully his.

§ It was stated that amoraim disagreed about the following question: For what reason did the Sages penalize the Levites4 with regard to their tithe, by declaring that it may be given to priests as well? Rabbi Yoanan and the Elders who were with him disagree with regard to this matter. One said it was because they did not ascend, i.e., immigrate to the land of Israel, in the days of Ezra. And one said it was that it was not a penalty at all, but they gave the first tithe to the priests so that they could rely on it during their days of impurity. Because it is prohibited for priests to consume teruma while in a state of impurity, they would have had nothing to eat if they were dependent exclusively on teruma. It is permitted, however, to eat the tithe while impure.

1. Rabbi Elazar ben Adar.
2. Caleb and waiting the retribution (Exodus 17:16).
3. Satchel (tarmil) – a bag made out of leather.
4. According to Rav Hai Gaon, it had a volume of five kav, equivalent to about 3.7 m. The tarmil was used by people who would travel significant distances or who needed to take a significant amount of food with them, e.g., shepherds. The tarmil was sometimes associated with shepherds and also with convert, who may have immigrated from distant lands, and as such serves as a double hint to the origins of Rabbi Akiva, who was both a son of converts and a shepherd. Indeed, the Sage Asi ben Yehuda described him as a man who would gather everything he could find and afterward sort and arrange his collection. It is possible that this statement of Rabbi Elazar ben Azarya also hints at Rabbi Akiva’s method of study, which involved collecting the opinions of various Sages and categorizing them. This is different from the method used by Rabbi Elazar himself, who apparently received his tradition principally from his forefathers.

5. One of the most significant tanna'im in the generation following the destruction of the Temple, Rabbi Elazar ben Azarya descended from a family blessed with great wisdom, distinguished lineage, and wealth. His father, Azarya, was also a Torah scholar and an extremely wealthy man. Azarya supported his brother Shimon, one of the Sages, who is therefore referred to as Shimon, brother of Azarya. Rabbi Elazar ben Azarya was from a family of priests descended from Ezra the Scribe, and there are traditions that draw parallels between them.

6. The Meiri explains the comment as follows: Even if Rabbi Akiva returns to his shepherd’s satchel, I can survive without the tithe, as Rabbi Elazar ben Azarya was a wealthy man. According to the Maharshal, the satchel refers to Rabbi Akiva’s position as charity collector. Rabbi Akiva wanted to give the tithe to the poor, as he thought the penalty was for the tithe to be transferred to paupers, to which Rabbi Elazar replied: But I have to live by this tradition, as Rabbi Elazar ben Azarya was a tenth-generation descendant of Ezra, and Ezra’s decree was that the tithe may be given to priests.

7. For what reason did they penalize the Levites – לְוִיִּם מְשֵׁר דִּבְרֵי; 86a. According to Rashi, there is no connection between this discussion and the dispute between Rabbi Akiva and Rabbi Elazar ben Azarya, as they disagreed over Torah law, whereas the Gemara deals with the situation after Ezra’s enactment. However, the Riva maintains that the two issues are related. Since Rabbi Akiva is of the opinion that according to Torah law the tithe is given only to Levites, it is impossible for Ezra to deprive them of their rights entirely. Conversely, Rabbi Elazar ben Azarya rules that even by Torah law the first tithe may be given to priests, and therefore Ezra’s decree can be understood to mean that only priests are entitled to receive this tithe. Tosafot offer a similar interpretation.

8. The Ritva adds that the question remains: According to Rabbi Akiva, who maintains that the first tithe belongs exclusively to Levites according to Torah law, how could Ezra transfer this right to the priests? He explains that since the first tithe has no sanctity and Levites have only a monetary right to this tithe, and since there is a general principle in halakha that a court has the authority to declare property ownerless, the Sages had the power to deprive them of their statutory rights. Consequently, the priests receive the tithe as representatives of the tribe of Levi. The Me’iri further suggests that the dispute between Rabbi Akiva and Rabbi Elazar is whether the Sages have the right to not only declare property ownerless but also to transfer that ownership to another.
An Israelite woman married to a priest – שֶׁנִּיסֵּת בְּמַﬠֲשֵׂר וְשׁוֹטְרִים

If her child from him, she may continue to partake of teruma on account of the child. If she then married an Israelite, she may partake of either teruma or tithe.

The Gemara asks: Granted, according to the one who says it was because they did not ascend, we can understand that due to that reason they penalized the Levites by forcing them to share their tithe with the priests. But according to the one who says it was done so that the priests could rely on it during their days of impurity, should we penalize the Levites for the benefit of the priests? Rather, everyone agrees that it was a penalty for the fact that they did not ascend in the days of Ezra, and here they disagree about this. One Sage holds that the penalty is that the tithe must be given to the poor, and one Sage holds that priests are classified as poor in the days of their impurity.

The Gemara asks: According to the one who says that the penalty imposed on the Levites is that the tithe must be given to the poor, due to that reason Rabbi Akiva changed the garden entrance so that it would be facing toward the cemetery, as Rabbi Elazar ben Azarya was a wealthy man. But according to the one who says the tithe was given to the priests, why did he change the entrance so that it would be toward the cemetery? The Gemara answers: This is what he said to him, i.e., this is what he meant: If you come to receive the tithe by virtue of the penalty imposed on the Levites, you may have it, but if you come by the standard halakha of distribution, demanding your share with the Levites, you may not have the tithe. If the owner of the garden chooses to give it to you, you may accept it, but you may not take it yourself.

The Gemara asks with regard to the penalty imposed on Levites: And from where do we derive that the Levites did not ascend in the days of Ezra? As it is written: “And I gathered them together to the river that runs to Ahava; and we encamped there for three days; and I viewed the people, and the priests, and found there none of the sons of Levi” (Ezra 8:15). With regard to this, Rav Hisda said: Initially they would establish officers over the people only from among the Levites, as it states: “And the officers, the Levites, before you” (11 Chronicles 19:11), but now they establish officers only from among the Israelites, as it is stated: And the officers of the many at your heads. This indicates that officers were appointed from: The many, meaning the largest group, ordinary Israelites.

MISHNA An Israelite woman married to a priest may partake of teruma. If the priest died and she has a child from him, she may continue to partake of teruma. If she subsequently married a Levite, she may no longer partake of teruma but she may partake of the first tithe on his account. If he, too, died and she had a child from him, she may continue to partake of tithe on account of the child. If she then married an Israelite, she may partake of neither teruma nor tithe. If her Israelite husband died and she had a child from him, she still may partake of neither teruma nor tithe. If her child from the Israelite also died, while her son from the Levite remained alive, she may partake of tithe on account of the Levite’s child. If her child from the Levite died, leaving her with a son from the priest, she may once again partake of teruma. If her child from the priest died as well, she may no longer partake of either teruma or tithe.