

בת ישראל... מעוברת – מעוברת – An Israelite woman... pregnant, etc. – An Israelite or Levite woman who is not married to a priest, but is pregnant from a priest, may not partake of *teruma*, despite the fact that she is carrying a priest's offspring. 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, Hilkhhot Terumot* 8:2, 5).

מתני' בת ישראל מאורסת לכהן, מעוברת מכהן, שומרת יבם לכהן, וכן בת כהן לישראל – לא תאכל בתרומה. בת ישראל מאורסת ללוי, מעוברת מלוי, שומרת יבם ללוי, וכן בת לוי לישראל – לא תאכל במעשר.

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*.^h If there is an Israelite woman betrothed to a Levite or pregnant from a Levite; and a widow awaiting 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.

בת לוי מאורסת לכהן, מעוברת מכהן, שומרת יבם לכהן, וכן בת כהן ללוי – לא תאכל לא בתרומה ולא במעשר.

If there is a daughter of a Levite betrothed to a priest or pregnant from a priest; and a widow awaiting her *yavam*, who is a priest; and similarly a daughter of a priest who is betrothed to or pregnant from a Levite, or is a widow waiting for her *yavam*, who is a Levite, she may partake of neither *teruma* nor tithes. This follows the *halakha* that betrothal, pregnancy, and waiting for a *yavam* disqualify the daughter of a priest from eating *teruma*, but they do not enable an Israelite woman to partake of *teruma*.

גמ' ותהא זרה, זרה מי לא אכלה במעשר? אמר רב נחמן אמר שמואל: הא מני – רבי מאיר היא. דאמר: מעשר ראשון אסור לזרים. דתנא:

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:**

Perek IX

Daf 86 Amud a

Teruma is for a priest – תרומה לכהן: *Teruma* and *teruma* of the tithe may be eaten by adult and minor priests, both male and female, by their Canaanite slaves, and by their animals (Rambam *Sefer Zera'im, Hilkhhot Terumot* 6:1).

The first tithe is for a Levite – מעשר ראשון ללוי: The first tithe is given to Levites, both males and females. However, this tithe may also be eaten by Israelites, even in a state of impurity, as it has no sanctity (Rambam *Sefer Zera'im, Hilkhhot Ma'asrot* 1:1–2).

תרומה לכהן ומעשר ראשון ללוי, דברי רבי מאיר. רבי אלעזר בן עזריה מתירו לכהן. מתירו – מכלל דאיכא מאן דאסר? אלא אימא: נותנו אף לכהן.

Teruma is for a priest^h and the first tithe is for a Levite;^h this is the statement of Rabbi Meir.ⁿ 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 – מעשר ראשון ללוי, דברי רבי מאיר – 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 Rabba, 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).

In the name of tradition – **מִשְׁמֵיחַ דְּגַמְרָא**: 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).

לֹא תֹכֵל – מַעֲשֵׂר רְאִשׁוֹן דְּטָבִיל: 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 – מַעֲשֵׂר רְאִשׁוֹן דְּטָבִיל: 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.

מאי טעמא דרבי מאיר? אמר רב אחא בריה דרבה משמיה דגמרא: “כי את מעשר בני ישראל אשר ירימו לה תרומה, מה תרומה אסורה לזרים – אף מעשר ראשון אסור לזרים. אי מה תרומה חייבין עליו מיתה וחומש – אף מעשר חייבין עליו מיתה וחומש?”

The Gemara inquires: **What is the reason for Rabbi Meir’s opinion? Rav Aḥa, son of Rabba, said in the name of traditionⁿ that the verse states: “For the tithe 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?**

אמר קרא וימתו בו כי יחללוהו ויסקף חמשתיו עליו, “בו” – ולא במעשר, עליו” – ולא על מעשר. ורבנן: מה תרומה טובלת – אף מעשר ראשון נמי טובל.

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,^h so too the requirement to separate the first tithe also produces the status of forbidden untithed produce.^h**

וכדתנא, רבי יוסי אומר: יכול לא יהא חייב אלא על טבל שלא הורם ממנו כל עיקר, הורם ממנו תרומה גדולה ולא הורם ממנו מעשר ראשון, מעשר ראשון ולא מעשר שני, ואפילו מעשר עני – מנין?

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 *terumot* 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?

תלמוד לומר “לא תוכל לאכול בשעריך” ולהלן הוא אומר “ואכלו בשעריך ושבעו”, מה “שעריך” האמור להלן מעשר עני, אף “שעריך” האמור כאן מעשר עני, ואמר רחמנא “לא תוכל”.

The verse states: “You may not eat within your gatesⁿ the tithe of your grain” (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.

ואי מהתם הוה אמנא ללאו, אבל מיתה לא. קא משמע לן.

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.

לישנא אחרנא: מעשר ראשון דטביל מדרבי יוסי נפקא! אי מההיא – הוה אמנא: ללאו, אבל מיתה לא. קא משמע לן.

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 produceⁿ 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 – **תרומה טובלת**: 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 (Ramban *Sefer Kedusha, Hilkhoh Ma’akhalot Assurot* 10:19).

The requirement to separate the first tithe also produces the status of untithed produce – **מעשר ראשון נמי טובל**: 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*; Ramban *Sefer Kedusha, Hilkhoh Ma’akhalot Assurot* 10:20).

What foreignness is there – מאי זרות איכא: This difficulty is also addressed in the Jerusalem Talmud, where a different answer is offered: The mishna follows the opinion that the first tithe is given only to Levites, not to priests. Consequently, the daughter of a Levite betrothed to a priest is no longer permitted to partake of tithes as a member of her father's household, but she has yet to be granted permission to partake of *teruma* from her husband's household.

The Ramban, without explicitly mentioning the Jerusalem Talmud, rejects this opinion, as he maintains that after Ezra's enactment everyone agrees that the first tithe may also be distributed to priests (see 86b). He explains that the mishna cannot be discussing the fundamental concept on the level of Torah law, as according to Torah law a betrothed woman is considered married, and consequently she would be able to partake of *teruma* as a married woman.

What is: She may not eat, that it teaches – מאי אינה – אוכלת דקתני: According to Rashi, Rav Sheshet's explanation refers to the entire mishna, not merely its last clause. *Tosafot* question this interpretation, because if it were correct the Gemara should have introduced his opinion with the expression: Rather, Rav Sheshet said, as it normally does in such a case. Consequently, they maintain that Rav Sheshet accepts the previous explanation of the first part of the mishna and differs only with regard to that specific clause. In his Commentary to the Mishna, the Rambam appears to adopt the same opinion. The Ritva, however, claims that the difficulty raised by *Tosafot* is not decisive, as it is occasionally found that the Gemara neglects to preface a new line of interpretation with the word: Rather. He contends that throughout the mishna the phrase: May not partake, means that since she does not have the authority to allow others to separate *teruma* from the tithe, she herself may not eat. The Meiri offers a similar interpretation.

במאי אוקימתא – פרבי מאיר, אימא סיפא: "בת לוי מאורסת לכהן, ובת כהן ללוי – לא תאכל לא בתרומה ולא במעשר". הקא מאי זרות איכא? אמר רב ששית: מאי "אינה אוכלת" דקתני – אינה נותנת רשות לתרום.

מכלל דנשואה נותנת רשות? אין, והתניא: "ואכלתם אותו בכל מקום אתם וביתכם" – לימד על נשואה בת ישראל שנותנת רשות לתרום.

אתה אומר רשות לתרום, או אינו אלא לאכול? אמרת תרומה חמורה אוכלת, מעשר הקל – לא כל שכן? אלא, לימד על נשואה בת ישראל שנותנת רשות לתרום.

מר ברביה דרבנא אמר: לומר שאין חולקין לה מעשר בבית הגרנות. הניחא למאן דאמר משום ייחוד, אלא למאן דאמר משום גרושה – גרושה בת לוי מי לא אכלה במעשר?

וליתעמיך, גרושה בת כהן מי לא אכלה בתרומה? אלא, גזירה משום גרושה בת ישראל.

אי הכי, מאי איריא מאורסת? אפילו נשואה נמי! אידי דתנא רישא מאורסת תנא נמי סיפא מאורסת.

תנו רבנן: תרומה לכהן ומעשר ראשון ללוי, דברי רבי עקיבא. רבי אלעזר בן עזריה אומר:

§ The Gemara asks: In what manner did you establish the mishna? In accordance with the opinion of Rabbi Meir. But if so, say 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^N 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?^N 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 his 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 18:31)? This teaches that an Israelite woman married to a Levite may give permission to another to separate *teruma* from the Levite's tithe.

The *baraita* continues to discuss this *halakha*: Do you say she may give permission to separate *teruma* from the tithe, or perhaps it is only referring to eating? Say in response: If an Israelite woman married to a priest may partake of *teruma*, which is stringent, is it not all the more so true for tithe, which is lenient? Consequently, there is no need to teach us this *halakha*. Rather, the verse teaches that an Israelite woman married to a Levite may give permission to another to separate *teruma* from the 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* 100a) 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:

לכהן ולא ללווי! אימא: אף לכהן. מאי טעמא דרבי עקיבא – דכתב 'ואל הלוים תדבר ואמרת אליהם', בלוים קא משתעי קרא. ואידך – בדרבי יהושע בן לוי, דאמר רבי יהושע בן לוי: בעשרים וארבעה מקומות נקראו בהנים 'לוים', וזה אחד מהם: 'והבהנים הלוים בני צדוק'.

ורבי עקיבא: הכא לא מצית אמרת, דכתב 'ואכלתם אותו בכל מקום' – מי שכול לאוכלו בכל מקום, יצא בהן שאין יכול לאוכלו בבית הקברות. ואידך: כל היכא דבעי, דלא בעי חומה, ואי אכיל ליה בטומאת הגוף – לא לקי.

ההיא גינתא דהוה שקיל רבי אלעזר בן עזריה מעשר ראשון מינה, אול רבי עקיבא אהדריה לפתחא לבי קברי. אמר: עקיבא בתרמילו ואנא חיי!

איתמר, מפני מה קנסו לויים במעשר? פליגי בה רבי יונתן וסביאי. חד אמר: שלא עלו בימי עזרא. וחד אמר: כדי שיוסמכו בהנים עליו בימי טומאתו.

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,^p a priest, would take the first tithe. Rabbi Akiva went, closed up the garden, and **changed its entrance** so that it would be facing toward the cemetery,ⁿ 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,^{nb} 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 *amora'im* disagreed about the following question: **For what reason did the Sages penalize the Levitesⁿ with regard to their tithe, by declaring that it may be given to priests as well? Rabbi Yonatan 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 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.

BACKGROUND

Satchel [*tarmil*] – תרמיל: A *tarmil* is a bag made out of leather. According to Rav Hai Gaon, it had a volume of five *kav*, equivalent to about 7 *l*. 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 converts, 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 was different from the method used by Rabbi Elazar himself, who apparently received his tradition principally from his forefathers.

PERSONALITIES

Rabbi Elazar ben Azarya – רבי אלעזר בן עזריה: 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.

NOTES

Changed its entrance so that it would be facing toward the cemetery – אהדריה לפתחא לבי קברי: The later authorities note that it was still possible to extract the *teruma* of the tithe while in a state of purity. For example, the *Iyyun Ya'akov* suggests that Rabbi Elazar could in fact have sent an agent to retrieve the tithe for him, but Rabbi Akiva was hinting that the very fact that a priest cannot eat in a cemetery is why the verse can be explained as referring only to Levites, not priests.

Akiva with his satchel – עקיבא בתרמילו: 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 Maharsha, 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.

For what reason did they penalize the Levites – מפני מה קנסו לויים: 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 Ritva maintains that the two issues are related: Since Rabbi Akiva is of the opinion that according to Torah law 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.

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 *Mei Neftoah* 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.

But if you come by the standard *halakha* of distribution – ואי קא אַתִּית בתורת חלוקה – The Ritva explains that if Rabbi Elazar were to come demanding his share, he would be effectively misleading the owner of the produce, who would assume that he is fulfilling a Torah mitzva by giving it to a priest instead of a Levite.

The *Yam shel Shlomo* explains that Rabbi Elazar is permitted to take it in the form of a penalty, but he cannot claim it as his fair share, as he was wealthy enough not to require the tithe even during his days of impurity.

Now they establish...only – עבשׂו אין מעמידין – Some commentaries understand that as part of the penalty imposed upon the Levites by Ezra, they would no longer receive any preference when officers were appointed (*Iyyun Ya'akov; Be'er Sheva*).

And the officers of the many at your heads – וְשׁוֹטְרִים וְהַרְבֵּים בְּרֵאשִׁיכֶם – The early and later authorities note that this verse does not appear anywhere in the Bible. The early authorities add that the Talmud occasionally quotes an apparent verse that cannot be found in the Bible. The verse is sometimes from the book of Ben Sira. At other times it is paraphrased for its content. With regard to this particular verse, *Tosafot Yeshanim* suggest that it might be referring to the verse describing the appointment of officers and Elders over Israel: “Get you, from each one of your tribes, wise men, and understanding, and full of knowledge, and I will make them heads over you” (Deuteronomy 1:13).

If her child from the priest died, etc. – מֵת בְּנֵה מִכֶּהֶן – *Yam shel Shlomo* states that we can infer Rambam's ruling by reference to his ruling in the opposite situation: If an Israelite woman married an Israelite, had a child with him, was widowed, married a priest, had a child with him, and was widowed again, then she may partake of *teruma* on account of her child from the priest, despite the fact that she also has children from the Israelite. This opinion resolves the apparent contradiction between the first and latter clauses of the mishna. The Meiri concurs with this explanation.

בשׁלמא לְמֵאן דְּאָמַר שְׁלֵא עָלוּ – משום הכי קְנִסְיָנְהוּ. אֵלָּא לְמֵאן דְּאָמַר כְּדִי שְׁיִסְמְכוּ עָלָיו כְּהֻנִּים בְּיָמֵי טוּמְאַתָּן – משום כְּהֻנִּים קְנִסְיָנְהוּ לְלוּיִם? אֵלָּא: כּוּלֵּי עֲלִמָּא קְנִסָּא שְׁלֵא עָלוּ בְּיָמֵי עוֹרָא. וְהִכָּא בְּהָא קְמִיפְלָגִי. מִרְ סִבְר: קְנִסָּא לְעֻנְיִים, וּמִרְ סִבְר: כְּהֻנִּים בְּיָמֵי טוּמְאַתָּן עֻנְיִים נִינְהוּ.

בשׁלמא לְמֵאן דְּאָמַר קְנִסָּא לְעֻנְיִים – משום הכי אֶהְדְּרִיָּה רַבִּי עֲקִיבָא לְפָתַח לְבֵי קְבָרֵי. אֵלָּא לְמֵאן דְּאָמַר לְכֹהֲנִים – אֲמַאי אֶהְדְּרִיָּה לְפָתַח לְבֵי קְבָרֵי? הֲכִי קִאָּמַר לֵיהּ: אֵי דְקָא אַתִּית בתורת קְנִסָּא – אֵית לָךְ, וְאֵי קָא אַתִּית בתורת חֲלוּקָה – לֵית לָךְ.

וּמִנָּא לֵן דְּלָא סְלִיקוּ בְּיָמֵי עוֹרָא – דְּכֵתִיב וְיִקְבְּצֶם אֶל הַנְּהַר הַבַּיַּת עַל אֲהוּא וּנְחַתָּה שָׁם יָמִים שְׁלֹשָׁה וְאַבְיָנָה בָּעָם וּבְכֹהֲנִים וּמִבְנֵי לְוִי לֹא מִצְאָתִי שָׁם. אָמַר רַב חֲסִדָּא: בְּתַחֲלָה לֹא הָיוּ מַעֲמִידִים שׁוֹטְרִים אֲלָא מִן הַלוּיִם, שְׁנֵאָמַר וְשׁוֹטְרִים הַלוּיִם לְפָנֵינוּ, עֲבָשׂוּ אֵין מַעֲמִידִין שׁוֹטְרִים אֲלָא מִיִּשְׂרָאֵל, שְׁנֵאָמַר וְשׁוֹטְרִים הָרַבִּים בְּרֵאשִׁיכֶם.

מתני' בת ישראל שניסת לכהן – תאכל בתרומה. מת ולה הימנו בן – תאכל בתרומה. ניסת ללוי במעשר. מת ולה הימנו בן תאכל במעשר. ניסת לישראל – לא תאכל לא בתרומה ולא במעשר. מת ולה הימנו בן – לא תאכל לא בתרומה ולא במעשר.

מת בנה מישראל תאכל במעשר. מת בנה מלוי תאכל בתרומה. מת בנה מכהן לא תאכל לא בתרומה ולא במעשר.

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 priests? **Rather, everyone agrees that it was a penalty for the fact that they did not ascend in the days of Ezra,^h 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: **Granted, 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,ⁿ 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 H̄isda said: **Initially they would establish officers over the people only from among the Levites, as it states: “And the officers, the Levites, before you” (II Chronicles 19:11), but now they establish officers onlyⁿ 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^h may partake of *teruma*. If the priest died and she has a child from him,^h 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,^h 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 diedⁿ as well, she may no longer partake of either *teruma* or tithe.

HALAKHA

שׁלֵא עָלוּ בְּיָמֵי עוֹרָא – They did not ascend in the days of Ezra – On account of the Levites' failure to immigrate to the land of Israel with Ezra, he penalized the Levites of his time by declaring that the first tithe should be given to priests. The *Kesef Mishne* claims that after that period, each person had the right to give it to a Levite or to a priest, as he saw fit (Rambam *Sefer Zera'im, Hilkhot Ma'aser* 1:4).

בת ישראל שניסת – נִיִּסְתָּ לְיִשְׂרָאֵל שְׁנִיִּסְתָּ – The daughter of an Israelite or Levite who is married to a priest may partake of *teruma*, even if she is younger than

three years and one day old, and therefore has certainly not yet consummated her marriage (Rambam *Sefer Zera'im, Hilkhot Terumat* 6:3).

מת ולה הימנו בן – **מת בנה מישראל** – An Israelite woman who has a child from a priest is permitted to partake of *teruma* on account of her child, whether her child is a son, a daughter, a person whose sexual organs are concealed, or an androgynous person. She may also partake of it on account of her child's child and so on, for all generations (Rambam *Sefer Zera'im, Hilkhot Terumat* 6:9).

ניסת לישראל – **ניסת לישראל** – If an Israelite woman married a priest, had a child with him, was widowed, and then subsequently married an Israelite, she may not partake of *teruma*. In the event that her Israelite husband dies, if she has a child from him she may not partake of *teruma*, even if she has a child from the priest as well. However, if she has no children from the Israelite, or if her child from the Israelite died while her child from the priest remains alive, she may partake of *teruma* because of the priest's child (Rambam *Sefer Zera'im, Hilkhot Terumat* 6:13).