



# Iron Swords #2: Terumot and Ma'aserot from Jewish Produce in Closed Military Zones

In certain scenarios, *terumot* and *ma'aserot* (below: T&M) are obligatory and others when considered ownerless (*hefker*) and therefore exempt. Today we will discuss the status of closed military zones in the Gaza Envelope.

### DEFINITION OF A CLOSED MILITARY ZONE

The military does not have ownership of the land, but it can restrict entry to certain areas; ownership of the trees and fruits remains the farmers'. Furthermore, the compensation regulations paid by the state states that farmers are compensated for direct damages (wages) and indirect damages (unharvested yield), but the fruit remains the farmer's.

### BASIS OF OWNERLESS STATUS

*Mishnah (Challah 1:3)* states: "These are obligated in *challah* and exempt from tithes... and [produce that is] ownerless." The *Yerushalmi (Challah 1:3)* explains the verse: "Then the Levite, who has no hereditary portion with you" (*Devarim 14:29*): "What you have but he does not - you are obligated to give him, but if it is ownerless, your hand and his hand is equivalent regarding it." That is, giving T&M is obligated only

from produce owned by you and not by the poor or Levite; ownerless produce belongs equally to all. Likewise, the *Shulchan Aruch (YD 331:16)* states: "Ownerless [produce] is exempt from T&M."

### PARTIAL OWNERLESSNESS

The *Mishnah (Peah 6:1)* discusses whether ownerless status can be attached to produce earmarked for the poor only: *Beit Shammai* hold it can, while *Beit Hillel* argue "it is not ownerless until it is available equally to the rich and to the poor." The *Yerushalmi* explains that *Beit Shammai* learn from the law of gifts to the poor (*matanot aniyim*) that produce earmarked for the poor is still considered *hefker*, while *Beit Hillel* learn from *shemitah* that it needs to be available even to the rich to be considered ownerless. The *Shulchan Aruch (CM 273:5)* follows *Beit Hillel's* approach and later authorities follow suit.

In light of the above, if a farmer permits only soldiers to harvest, but if someone would come with a truck to harvest the whole field, he would refuse, halachically it is not considered ownerless. Consequently, soldiers must separate T&M before eating. Similarly, if it

is a closed military zone, even if the army permits harvesting, the farmer still retains ownership of the produce and therefore T&M must be separated.

All of the above is true when we know that the farmer permits soldiers to eat his produce. If not, taking produce is considered theft.

To be continued. ■

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