



TORAH VEHA'ARETZ

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# Swords of Iron #3: Involuntary *Hefker* and Owner's Despair

What is the status of produce that it is clear that the owners despaired of their crops? Such as, when tanks overrun a carrot field, significantly damaging the crop, or when farmers are not authorized to enter and harvest their apple trees up North.

Can we infer that the owners have abandoned the produce? If so, harvesting them would not be considered theft nor is the produce obligated in *terumot* and *ma'aserot*.

The Gemara discusses at what stage we can assume owners have abandoned their produce.

The *Mishnah* in *Ma'aserot* (3:4) states: "if a fig tree overhangs the road, and he found figs beneath it, they are allowed [with regard to the laws] of robbery, and they are exempt from tithing." Rash explains that it is clear that the owners have despaired of them, and thus they are *hefker*.

The *Mishnah* (*Bava Metzia* 2:1) permits taking scattered fruits. The Gemara (*Bava Metzia* 21) explains that this applies to produce scattered within a specific radius, when the majority of the produce was home and only a small amount was left behind. If the quantity and radius of the scattering require significant effort to collect, people will not bother

gathering them and will abandon them.

The Gemara in *Nedarim* (62) discusses the fig drying process. Throughout fig harvest season, figs are harvested and dried in the field. Once most of the fruits is harvested, the figs are taken home, but some figs are still on the trees. The Gemara states that it is not theft to harvest these figs and they are exempt from tithing. The Rishonim explain that the owners have abandoned (*Tosafot*) or despaired (*Ran*) of the remaining fruits.

The Mishnah in *Peah* (8:1) states that it is permissible for anyone to gather stalks of grain (and elsewhere, grapes) that are *lekhet* gleanings from the time that the poor have passed there twice and gleaned. Yerushalmi explains that when the poor do not arrive because there are paltry pickings we presume that they have despaired, it is not considered theft from the poor and anyone can glean.

## CONCLUSION

In areas where it is clearly not feasible for farmers to harvest their produce it is considered ownerless. Examples: fruits that have fallen to the ground or on a tree that has been uprooted by a tank. In these cases, taking it is not considered theft, and the produce is exempt from tithes. ■