

# THE LAX FAMILY EDITION



TZURBA צורבא  
M'RABANAN מרבנן  
לגיוזי נשמת מאיר (מיש) אלימקד י"ל

# צורבא מרבנן

## TZURBA M'RABANAN

WITH ENGLISH TRANSLATION, COMMENTARY AND ESSAYS

A concise learning method from the Talmudic source  
through modern-day halachic application

**THE ELLIS FAMILY VOLUME**

**Volume 6 Excerpt:**  
**Selected Laws of Terumot and Ma'asrot**

SELWYN & ROS SMITH AND FAMILY



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## TERUMOT AND MA'ASROT IN CHUTZ LA'ARETZ <sup>21</sup>

We learned towards the beginning of the *shiur* that the mitzvot of *terumot* and *ma'asrot* do not apply to produce grown in *chutz la'aretz* (except for areas adjacent to Eretz Yisrael). Based on this, we would think that those who live in or visit *chutz la'aretz* (the Diaspora) need not worry about these halachot concerning produce purchased in local stores. But today with our global economy, Israel is actually a major exporter of fruits and vegetables to other countries, and it is quite common to find Israeli produce in local stores. Has such produce had *terumot* and *ma'asrot* separated in Israel before being exported? According to many Kashrut organizations, the answer is most probably not. This is how the OU explains the situation.



### 65. OU Kosher Staff, "Separating Terumah and Maaser" <sup>22</sup>

Many people mistakenly believe that the Chief Rabbinate of Israel separates *terumah* and *maaser* from all produce exported to America. Our office clarified this matter with the Rabbanut and, regrettably, this is presently not the case. Of course, if the produce is a packaged item which bears reliable supervision, one need not be concerned with *tevel*; however, in the absence of supervision, the consumer must separate *terumah* and *maaser* himself.

It is therefore important to note the source of origin of produce. Generally, supermarkets will post signs indicating fruit or vegetables which are a product of Israel. Readers should be aware that much of the canned grapefruit sections sold in America are products of Israel and require separation. Information on country of origin is provided on the packaging label.

The policy of most major Kashrut organizations, including the OU, London Beth Din, Star-K, Chicago Rabbinical Council (CRC) and COR (Canada),<sup>23</sup> is that one should indeed make sure to separate *terumot* and *ma'asrot* from Israeli produce. This is based on the opinion of the **Radvaz** who understands the **Rambam** to hold this way.



### Rambam, Hilchot Terumot 1:22

Produce of Eretz Yisrael that was taken to outside of Eretz Yisrael is exempt from *challa*, *teruma*, and *ma'aser*, as it is stated: "Where I will bring you there," [indicating] that there you are obligated, but outside of Eretz Yisrael, you are exempt. And if they went out to Syria, they are obligated by rabbinic law.

### 66. רמב"ם | הל' תרומות א:כב

פירות ארץ ישראל שיצאו חוצה לארץ פטורין מן החלה ומן התרומות ומן המעשרות שנאמר אשר אני מביא אתכם שמה, שמה אתם חייבין בחוץ לארץ פטורין, ואם יצאו לסוריא חייבין מדבריהם.

21. This section was written specifically for the English edition of *Tzurba M'Rabanan*.

22. The complete article can be viewed at [www.oukosher.org/blog/consumer-kosher/separating-terumah-and-maaser](http://www.oukosher.org/blog/consumer-kosher/separating-terumah-and-maaser).

23. See [www.star-k.org/articles/kashrus-kurrents/kashrus-kurrents-2006/1160](http://www.star-k.org/articles/kashrus-kurrents/kashrus-kurrents-2006/1160), [tinyurl.com/tz6crcterumot](http://tinyurl.com/tz6crcterumot), and [www.cor.ca/view/61/produce\\_of\\_israel\\_a\\_primer](http://www.cor.ca/view/61/produce_of_israel_a_primer).

**Radbaz, ibid.**

...But if the smoothing [of the pile, which is the completion of the processing] is done in Eretz Yisrael, and they were obligated in *terumot* and *ma'asrot*, they are not exempted because they were exported to the Diaspora...<sup>24</sup>

According to the Radbaz, when the Rambam states that fruits from Eretz Yisrael that were brought to *chutz la'aretz* are not subject to *terumot* and *ma'asrot*, that applies only when the *gemar melacha* (final stage of processing), when the obligation of *hafrasha* takes effect, was performed in *chutz la'aretz*. But when it is done in Eretz Yisrael (which is the case here), one is still obligated to separate *terumot* and *ma'asrot* in *chutz la'aretz*. This is the opinion of the **Ra'avad** as well, who says that even if the *gemar melacha* takes place in *chutz la'aretz*, the obligation still applies, though only *miderabanan*.

**Ra'avad, ibid.**

...Rabbi Akiva [whom the halacha follows] follows the location where *ma'aser* begins to take effect, which is the smoothing, but on a rabbinic level, even if they are exported to the Diaspora and smoothed out there, they are still obligated on a rabbinic level...<sup>25</sup>

However, there are some authorities that disagree and hold that the determining factor is where the food is eaten. Therefore, produce that is eaten in the Diaspora would not require *terumot* and *ma'asrot* to be separated, even if it was totally grown in Eretz Yisrael. This is the opinion of the **Tur**, who understands the exemption of the Rambam above to apply even if the *gemar melacha* takes place in Eretz Yisrael.

**Tur, Yoreh De'ah Siman 331**

Produce of Eretz Yisrael that was exported to the Diaspora is exempt from *challa* and from *ma'asrot*, and if it was exported to Syria, it is obligated on a rabbinic level...<sup>26</sup>

Some *Acharonim* suggest though that produce that is grown specifically the purpose of export should be exempt from *terumot* and *ma'asrot* according to all opinions. This is the approach of the **Maharsham (1:72)** as well as **Rav Kook** in his responsa *Mishpat Kohen*.

**67. רדב"ז | שם**

... אבל אם מירחן בארץ ישראל ונתחייבו בתרומות ומעשרות לא נפטרו מפני שיצאו חוץ לארץ...  
... אבל אם מירחן בארץ ישראל ונתחייבו בתרומות ומעשרות לא נפטרו מפני שיצאו חוץ לארץ...

**68. ראב"ד | שם**

... רבי עקיבא אזיל בתר [מקום] קביעות למעשר דהיינו מירוח, אבל מדרבנן מיהא אע"פ שיצאו ח"ל ונמרחו שם חייבין מדרבנן...  
... רבי עקיבא אזיל בתר [מקום] קביעות למעשר דהיינו מירוח, אבל מדרבנן מיהא אע"פ שיצאו ח"ל ונמרחו שם חייבין מדרבנן...

**69. טור | יו"ד סימן שלא**

פירות ארץ ישראל שיצאו לח"ל פטורין מן החלה ומן המעשרות ואם יצאו לסוריא חייבין מדבריהם...  
פירות ארץ ישראל שיצאו לח"ל פטורין מן החלה ומן המעשרות ואם יצאו לסוריא חייבין מדבריהם...

24. For the background of this issue in Chazal, see the Mishna (*Challa* 2:1), *Sifrei* (*Piska* 110), and the *Yerushalmi* (*Challa* 2:1), where a *machloket Tana'im* is brought concerning the status of fruits brought from Eretz Yisrael to *chutz la'aretz* and vice-versa.

25. Other *Acharonim* that hold this way include the *Mishneh Lmelech* and the *Mabit* (2:196).

26. This is also the opinion of the Mahari Kurkos and the *Bach* (y.d. 331), and appears to be the opinion of the *Shulchan Aruch* (331:12) and *Shach* (331:20, 22) as well.



### Responsa Mishpat Kohen, Siman 46

As is known, there is room to be lenient concerning the primary obligation of *terumot* and *ma'asrot* for what is exported to the Diaspora, as one can say that when the completion of the processing was done with intent for export to the Diaspora, even when it takes place in Eretz Yisrael, it is exempt.

### 70. שו"ת משפט כהן | סימן מז

כידוע, מה שיוצא לחוץ לארץ יש מקום להקל בעיקרי חיוב תרומות ומעשרות שלו, כי יש לומר דבדהוי גמר מלאכתו על דעת חוץ לארץ, גם בנגמר מלאכתו בארץ גם כן פטור.

On the other hand, the **Chazon Ish** argues that the produce is still obligated in *terumot* and *ma'asrot* even in this case.



### Chazon Ish, Demai 15:6

... But if they were exported from Eretz Yisrael after the final processing, then even [if they are in] the actual Diaspora, they are obligated, as the *Mishneh L'melech* writes (*Terumot*, chapter 1) ...<sup>27</sup> and even one who completes them in Eretz Yisrael to export them to the Diaspora, it is not called lacking the completion of processing.

### 71. חזון איש | דמאי טו:

... אבל אם יצאו מארץ לאחר גמר מלאכה אף בחו"ל ממש חייבין וכמו שכתוב המשנה למלך (פרק א' מהל' תרומות) ... ואף הגומר בארץ להעלותו לחוץ לארץ לא מקרי חסר גמר מלאכה.

For this reason, **Machon HaTorah V'ha'aretz** concludes that although one should separate *terumot* and *ma'asrot*, one should do so without a *beracha* since some opinions hold that one is not required to do so in this case.



### Machon HaTorah V'ha'aretz, "Export of Tevel to the Diaspora"

It seems that we are stringent to separate *terumot* and *ma'asrot* on a rabbinic level even for fruits that are exported to the Diaspora. But since it is a dispute among the *poskim*, it seems that one should separate them without a *beracha* for produce exported to the Diaspora.<sup>28</sup>

### 72. מכון התורה והארץ | יצוא טבלים לחוץ לארץ

נראה שהולכים לחומרא להפריש תרומות ומעשרות מדרבנן אף בפירות המיוצאים לחוץ לארץ, וכיון שהיא מחלוקת הפוסקים נראה שעל פרי המיוצא לחוץ לארץ יש להפריש ללא ברכה.

27. The *Chazon Ish* here also quotes (in the section skipped in the text) the Rash (Rav Shimshon of Shantz) who indicates that once the produce is obligated in *terumot* and *ma'asrot* in Eretz Yisrael, the obligation cannot be repealed simply by moving the produce elsewhere.

28. The Kashrut organizations mentioned above all agree that *terumot* and *ma'asrot* should be taken without a *beracha*, though the primary reason they give is the possibility (even remote) that perhaps *terumot* and *ma'asrot* were taken in Eretz Yisrael before they were exported (though see footnote 11 in the article from the COR cited above, where the issue discussed here is alluded to briefly). See also *Journal of Halacha and Contemporary Society*, Vol. 27, where Rav Michael Broyde argues that one should not be obligated to separate *teruma* and *ma'aser* at all in such a case based on a number of factors. The article is also available online at [www.aishdas.org/avodah/faxes/rmjBroydeTerumah.pdf](http://www.aishdas.org/avodah/faxes/rmjBroydeTerumah.pdf).

## WHICH FRUITS AND VEGETABLES ARE OBLIGATED IN TERUMOT AND MA'ASROT?

The next step of understanding the practical rules of separating *terumot* and *ma'asrot* involves understanding which produce is included in the obligation. The Torah only mentions three types as being subject to the obligation: *Dagan*, *tirosh* and *yitzhar*, which are usually translated as grain, wine, and oil.



### Devarim 14:22–23

22. You shall set aside every year a tenth of all the crop of your planting that is brought from the field.

23. And you shall consume **the tithes of your new grain and wine and oil**, and the firstlings of your herds and flocks, in the presence of the Lord your God, in the place where He will choose to establish His name, so that you may learn to revere the Lord your God forever.

### 9. דברים | יד:כב-כג

כב. עֶשׂוּר תַעֲשׂוּר אֶת כָּל תְּבוּאֹת זֶרַע הַיָּצֵא  
הַשָּׂדֶה שָׁנָה שָׁנָה:

כג. וְאָכַלְתָּ לִפְנֵי ה' אֱלֹקֶיךָ בְּמִקּוֹם אֲשֶׁר  
יִבְחַר לְשֹׁכֵן שְׁמוֹ שָׁם מֵעֵשׂוּר דָּגָן תִּירוֹשׁ  
וַיִּצְהָרְךָ וּבְכֹרֶת בְּקֶרֶךְ וּצְאֲנָךְ לְמַעַן תִּלְמַד  
לִירְאָה אֶת ה' אֱלֹקֶיךָ כָּל הַיָּמִים:



### Devarim 18:4

You shall also give him **the first fruits of your new grain and wine and oil**, and the first shearing of your sheep.

### 10. דברים | יח:ד

רִאשִׁית דָּגָן תִּירוֹשׁ וַיִּצְהָרְךָ וּרְאשִׁית גֹּז  
צֹאֲנֶךָ תִּתֵּן לוֹ:

*Rishonim* dispute whether only these three types of produce are obligated on a Torah level, or whether other fruits are also included, and these three are simply illustrations.

According to the **Rambam**, all fruits are also subject to a *de'oraita* obligation to tithe.



### Rambam, Hilchot Terumot 2:1

Just as grain, wine and oil are foods for human consumption, they grow from the ground, and they have an owner, as the verse states “your grain,” so too anything that is similar to this is obligated in *terumot* and *ma'asrot*.

### 11. רמב"ם | הל' תרומות ב:א

מה דגן תירוש ויצהר מאכל בני אדם  
וגידוליו מן הארץ ויש לו בעלים שנאמר  
דגןך אף כל כיוצא בהן חייב בתרומות וכן  
במעשרות.

The **Kesef Mishneh** explains that the Rambam understood the *pasuk* as giving three examples of produce subject to the mitzva, but the mitzva is not limited only to those three.

**Kesef Mishneh, ibid.**

Our teacher understood **that they are obligated on a Torah level**. Since even though the words “grain, wine and oil,” are mentioned in the verse, our teacher holds that this is not specific, and anything that is similar to it is also included.

**12. כסף משנה | שם**

משמע ליה לרבינו, שחייבים מן התורה. ואף על פי שכתוב “דגן”, “תירוש” ו”יצהר” – סובר רבינו דלאו דווקא, אלא הוא הדין לכל דדמי להו.

The **Ra'avad** disagrees and holds that the Torah limits the *de'oraita* obligation to the three types of produce mentioned, but no others.

**Ra'avad, Hilchot Terumot 3:1**

...The reason is that tithes of other fruits are rabbinic by nature other than grain and wine.

**13. השגת הראב"ד | הל' תרומות ג:א**

...והטעם מפני שתרומת שאר הפירות דרבנן חוץ מדגן תירוש.

Whether the obligation for other produce is *de'oraita* or *derabanan*, Chazal derived the principles for which types of produce are included in the obligation of *teruma* and *ma'aser* from the three mentioned in the Torah. The **Mishna** in **Ma'asrot** explains that the general guidelines are that any item that is known as food, is guarded by the owner as belonging to him, and grows from the ground is obligated in *terumot* and *ma'asrot*.

**Mishna, Ma'asrot 1:1**

This is the general rule that was said about *ma'asrot*: Anything that is food and is guarded and grows from the ground is obligated in *ma'asrot*...

**14. משנה | מעשרות א:א**

כלל אמרו במעשרות: כל שהוא אוכל, ונשמר, וגידוליו מן הארץ – חייב במעשרות...

**Bartenura, ibid.**

**And is guarded** – This excludes ownerless food, which has no owner to guard it.

**And grows from the ground** – This excludes truffles and mushrooms...

**15. ברטנורא | שם**

**ונשמר** – למעוטי הפקר, שאין לו בעלים שישמרוהו. **וגידוליו מן הארץ** – למעוטי כמהין ופטירות...

The rule that ownerless food is not subject to the obligation of *terumot* and *ma'asrot* is codified by the **Shulchan Aruch**.

**Shulchan Aruch, Yoreh De'ah 331:16**

That which is ownerless is exempt from *teruma* and *ma'aser*...

**16. שולחן ערוך | יו"ד שלא:טז**

ההפקר – פטור מתרומה ומעשרות...

What is the status of vegetables? Although vegetables are considered food, grow from the ground, and are guarded, it seems that the obligation for *terumot* and *ma'asrot* is only *derabanan*, as evident from the following passage from the **Yerushalmi**.

### נ Talmud Yerushalmi, Ma'asrot 1:1

It is written, "You shall set aside a tenth part of all of the yield of your sowing." From where is it derived that one must also tithe vegetables? Isi ben Yehuda says: **Ma'asrot for vegetables are only [obligated] by rabbinic law...**

### 17. תלמוד ירושלמי | מעשרות א:א

כתיב: "עשר תעשר את כל תבואת זרעך..." ירקות מניין? איסי בן יהודה אומר: המעשרות לירקות – מדבריהן...

The **Rambam** also rules in this manner that the obligation of *teruma* and *ma'aser* for vegetables is *derabanan*.

### ה Rambam, Hilchot Terumot 2:6

**Vegetables are only obligated in tithes by rabbinic law, even though they are eaten by humans**, since it is stated concerning tithes "the grain of your planting," [which includes] grain and the like, but vegetables are not included in grain. Similarly, it seems to me that this also applies with regard to *teruma*, since it is stated about it: "Your grain, your wine, and your oil," meaning everything that resembles these. But *teruma* separated from vegetables is a rabbinic decree, as is tithes.

### 18. רמב"ם | הל' תרומות ב:ו

הירקות, אף על פי שהן מאכל אדם – אינן חייבין במעשרות אלא מדבריהן, לפי שנאמר במעשר "תבואת זרעך" – תבואה וכיוצא בה, אבל הירקות אינן בכלל התבואה. וכן ייראה לי שהוא הדין בתרומה, שהרי נאמר בה "דגנך תירושך ויצהרך" – כל הדומה לאלו. אבל תרומת הירק מדבריהם, כמעשר.

We should note that a *beracha* is still recited on separating *teruma* and *ma'aser* from vegetables, despite only being obligated *miderabanan*, and the rules are generally the same as for produce obligated *mide'oraita*. The practical difference between the two is mainly in cases of uncertainty, where perhaps there is more room to be lenient for *derabanan* cases,<sup>4</sup> or when one is separating *teruma* or *ma'aser* from produce that is obligated *derabanan* for produce that is obligated *de'oraita*, where the halacha is more complex.<sup>5</sup>

## Produce Grown by a Gentile in Eretz Yisrael

Another important issue is whether produce grown by a gentile in Eretz Yisrael is also subject to *terumot* and *ma'asrot* if a Jew later acquires it. According to the **Gemara in Bechorot**, it seems that if the process of harvesting (which in the time of the Gemara was accomplished with grain by *miruach*, gathering it in piles and smoothing them out) is completed by the gentile, then it is exempt.

- There is a discussion whether spices are obligated in *terumot* and *ma'asrot* even on a rabbinic level. According to Tosafot (*Nidda* 50a), spices are obligated only if they could be eaten independently (e.g., garlic or onion), but not if they would not be eaten alone (e.g., black pepper). Rav Ovadia Yosef applies a similar principle to mint leaves that if one plans to eat them, they would be obligated, while if they will be used for tea to make it smell better, they would not be obligated.
- See Rambam (*Terumot* 5:14–17). For examples of this type of case and additional sources, see *Mishpetei Eretz, Terumot Uma'asrot* 8:12–13. [Addition of the English editors]



### ח Masechet Bechorot 11b

Rabbi Shmuel bar Natan says that Rabbi Chanina says: With regard to **one who purchases untithed produce** that is gathered in **smoothed** piles, **from a gentile, he tithes** the piles **but they are his**, as he is not required to give the *teruma* to a priest or the tithes to a Levite. The Gemara asks: **Who smoothed** the piles? **If we say that a gentile smoothed them**, doesn't **the Merciful One state: "Your grain"** (*Devarim* 12:17, 18:4), with regard to *teruma* and tithes, indicating that only grain whose processing is completed by a Jew is subject to the rules of *teruma* and tithes, **but not the grain of a gentile?...**

The *Shulchan Aruch* also rules this way but notes that if the Jew completed the harvesting process, then they are obligated.

### ס Shulchan Aruch, Yoreh De'ah 331:4

Concerning produce of a gentile that was grown on land that he acquired in Eretz Yisrael [the halacha is as follows]: If the process [of harvesting and gathering] was completed by the gentile, and then the gentile smoothed out the pile, **they are exempt from all of them**. But if the Jew purchased them after they were picked before the process was complete, and the Jew completed it, they are obligated. One then separates *teruma*, *ma'aser rishon*, and *terumat ma'aser*...<sup>6</sup>

### 19. מסכת בכורות יא:

אמר רבי שמואל בר נתן אמר רבי חנינא: הלוקח טבלים ממורחין מן העובד כוכבים – מעשרן והן שלו, דמרחינהו מאן? אילימא דמרחינהו עובד כוכבים – דגנך אמר רחמנא, ולא דגן עובד כוכבים...

### 20. שולחן ערוך | יו"ד שלא"ד:

פירות הגוי, שגדלו בקרקע שקנה בארץ ישראל: אם נגמרה מלאכתו ביד הגוי, ומרחן הגוי – פטורין מכולם. ואם לקחן ישראל אחר שנתלשו, קודם שתיגמר מלאכתן, וגמרו ישראל – חייבים. ומפריש תרומה, ומעשר ראשון, ותרומת מעשר...

6. Based on this, any produce that was certainly grown and harvested completely by gentiles would not be subject to *terumot* and *ma'asrot*. However, if gentiles working for a Jew did so (which does occur sometimes nowadays in Eretz Yisrael), many *poskim* hold that *terumot* and *ma'asrot* should be taken on a *derabanan* level (in addition to the fact that the obligation is already *derabanan* nowadays according to the Rambam); see *Peninei Halacha, Kashrut* Vol. 1 8:10. [Addition of the English editors]