

HALOCHOSCOPE

This week's question:

An topical medication has ingredients that might originate from Israel. Some might have been made from plant material that was *tevel*, untithed. The ingredients have been modified, probably to the point that they are totally inedible. May one use this ointment?

The issues:

- A) *Tevel*, its mixtures, and *safek*, doubtful, *tevel*
 - B) *Sicha kishesiyah*, “anointing, rubbing and smearing is like drinking”
 - C) *Hana'ah shel kiluy*, benefit by using something up
 - D) *Nifsal maiachilas adam*, something rendered inedible
 - E) *Bakol misrap'in*, medicinal use of forbidden items
- A) *Tevel*, *taaruves tevel*, *safek tevel*

Before tithing, Israeli produce has a *halachic* status of *tevel*. Some consider this a mixture; it is part *chulin*, fully tithed permissible produce, and part tithes. Most consider it in a status of its own, that changes as the tithes are removed. The relevance of this status is seen when discussion turns to the penalty for eating it, or mixtures are made.

When produce is ready to be picked and eaten, be picked and eaten as a snack without tithing. It may not be eaten as a proper meal. When the harvest production is complete, snacking is forbidden before tithing.

Terumah gedolah the first separation, about one fiftieth, is given to the *kohain*. This measure is Rabbinical, for the average donor. Scripturally, there is no fixed amount. If defiled, it is burned. If its purity is undetermined, it is not burned, but may not be eaten or disposed of in the normal manner. It is left to respectfully decompose.

Maaser rishon, a tenth of the remainder, is given to a *levi*. It has no sanctity in its own right, but belongs to the Levite tribe. However, a part of it is sacred, *terumas maaser*, a tenth of this tenth, that is separated and given by the *levi* to a *kohain*. The *maaser rishon* is, therefore, *tevel* for this tithe until it is separated.

The last tithe, a tenth of the remainder, varies by year of the agricultural cycle. In the first, second, fourth and fifth years it is *maaser shaini*, a tithe that has sanctity and belongs to the owner to be eaten in *Yerushalayim*. Alternatively, he may redeem it by transferring its sanctity to money, taken and spent on food in *Yerushalayim*. In the third and sixth years, *maaser ani*, a tithe is separated and is given to the poor. The seventh year is *shvi'is*, or *shmita*, during which one may not cultivate crops, and no tithes are separated.

Nowadays, all are presumed *tamei*, defiled by direct or indirect contact with spiritual contaminants. It is impossible to properly separate *maasros* to be given to a *kohain*, who is also presumed *tamei*. Furthermore, we no longer have reliable incontrovertible evidence of the lineage of *kohanim* and *leviyim*. *Terumah* is left to decompose. *Maaser ris-*

hon has its *terumas maaser* separated, which is left to decompose. The remainder of the *maaser* is kept by the owner of the produce, unless a *levi* can prove his entitlement to it! *Maaser shaini* is redeemed for a nominal amount.

The poskim debate whether tithes apply Scripturally to all produce. The majority apply it Scripturally to wine, olive oil (and their fruits) and *dagan*. The Talmud debates whether *dagan* includes the five bread grains or also other grains grown and harvested in the same way. Some add the rest of the seven special species of *Eretz Yisroel*. A minority apply Scriptural tithes to all fruits and vegetables. There are two conditions: it must be eaten by normal people, and must be *nishmar*, owned. Some say this means it was owned for its entire time of growth. Others apply this to common practice – if the prevailing practice is to cultivate and harvest it, it must be tithed. If not, wild produce is not tithed.

Produce that could be eaten by humans is liable for tithing. Produce that is really only fit for animals, but is eaten by humans for medicinal purposes, is not considered edible. It is not susceptible to the laws of *tumas ochlin*, ritual defilement of foodstuffs. Therefore, it does not have the status of food regarding tithing either. However, produce that is edible, but is also used medicinally, should require tithing.

In the majority view, nowadays, tithes apply Rabbinically. Once it becomes formal *tevel*, it does not lose this status until the tithes are separated.

In the days of the second *Bais Hamikdash*, it was determined that Jews could be divided in two groups. *Chavairim* are meticulous in their observance of *maasros*. *Amei ha'aretz*, the ignorant, are lax and sometimes negligent. One could rely on them most of the time, enough for Scriptural rulings. Since they are suspect part of the time, their produce is considered Rabbinically doubtful. A decree was instituted on all of their produce called *demye*, literally “what is this?” Unless one can verify the status of the vendor and the origin of the crop, it is *demye*. No-one is negligent about *terumah gedolah*. Sincere fear of the consequences of eating it or of eating *tevel* before it is separated prompts everyone to separate it. Ignorance leads a minority to neglect *maaser rishon*, including *terumas maaser*, and *maaser shaini*, part of the time. Therefore, produce purchased must be tithed. Due to the doubts surrounding it, the tithed removed have many leniencies.

Nowadays, due to a higher level of ignorance, combined with a lower level of general observance, much of the produce is worse than *demye*. It is considered *safeik tevel*. Exporters are often rabbinically supervised. Insufficient supervision, low standards, lenient rulings, commercial pressures and machinations of dealers, can cast a supervision into doubt. Thus, though riddled with non-Scriptural obligations and doubts about applicability, Israeli produce is considered obligated and untithed, unless it comes with a reliable supervision. Tithing must be done by the consumer or a religious retailer, under most circumstances, with no *brocha*. The procedure can be found in many *sidurim*.

Taaruves tevel can come in two forms. Generally, mixtures of like foods are neutralized more easily than those of different foods. *Min bemino*, a mixture of like foods, needs a majority of kosher content to be permissible, Scripturally. Rabbinically, some such mixtures are treated very stringently. *Min besheaino mino*, mixtures of unlike foods, are neutralized when the forbidden food cannot be detected in the mix, usually when one part

of forbidden ingredient is overwhelmed by sixty permissible parts. If *tevel* is mixed with non-*tevel* of the same food type, the *tevel* cannot be considered neutralized at all. (i) *Tev-el* is a *davar sheyesh lo matirin*, has a way to permit it without resorting to *bitul*. It can be tithed. (ii) Just as the strict minimum to permit the *tevel* is by removing a minute piece, in the same way it is appropriate that the mixture should be forbidden in the same proportion. The second reason can apply when it is no longer viable to tithe it. In our case, we may safely assume that there are many other ingredients in the ointment, rendering it *min besheaino mino*. Depending on the proportion of the *tevel* component, there might be *bitul*. The *tevel* component might be such that it keeps the ointment stable. This might prevent *bitul* for another reason. If the ingredient is *maamid*, maintains the mixture, it cannot become *batel*. If the forbidden ingredient is not *tevel*, but *demye*, there is less restriction.

Terumah may not be destroyed, but must be consumed in accordance with its intended usage. *Terumah temeiah* was also property of the *kohain*. He was allowed to benefit from the burning of the *terumah*. The Talmud says that either benefit of *terumah*, whether from eating uncontaminated, or from burning contaminated, is only permissible after tithing. Thus, it is forbidden to burn *tevel tamei*, which includes all *tevel* nowadays. [See Mishnayos Zeraim, esp. Demye Challah 3:10 Shabbos 26a Nedarim 59a Avoda Zara 73b etc., Poskim. Tur, Sh Ar YD 331, commentaries.]

B) Sicha kishesiya

Items can be *isurei achilah*, forbidden to eat, or *isurei hana'ah*, forbidden to benefit from. *Isurei hana'ah* may not be benefited from in their normal usage. For something made into a lotion, this would include spreading on the skin. *Isurei achilah* are really only forbidden when consumed. For *tevel* and *terumah* rubbing on the skin is considered a form of drinking. Three types of usage apply to *terumah*: eating, drinking and *seecha*, anointing. Items that are produced specifically for *seecha* may be used this way. Otherwise, it is considered misuse and indirectly destruction of *terumah*. In the case of *tevel*, which may not be eaten until tithed, rubbing is also forbidden. [See Shvi'is 8:1-2 Maaser Sheini 2:1-2 Yuma 76b-77a Chulin 115b, Poskim. Tur, BY, Sh Ar OC 614:1 629:11 YD 87 117 123:2 134: 155:3 331, commentaries.]

C) Hana'ah shel kiluy

We mentioned that *tevel* may not be destroyed before tithing, even if it is *tamei* anyhow. This is based on extending the Scriptural *mitzvah* to “guard” *terumah*. This positive *mitzvah* forbids destroying it. This is automatically extended to forbid benefiting from the destruction, such as using the heat generated when burning it. The majority consider this extension Scriptural, at least according to one Talmudic opinion. A minority maintain that his extension is Rabbinical, linked to Scripture by *asmachta*. When it is permitted, such as from tithed *terumah*, such benefit may only be made by a *kohain*. A non-*kohain* may not gain any such benefit, just as he may not consume regular *terumah*.

Hana'ah shel kiluy, benefit while destroying, comes in many forms. Usage inconsistent with the intended use is forbidden, even if it is destroyed at the time. Examples include using olive oil to season utensils, or using flour in the process of tanning hides. The Talmud debates squeezing fresh figs onto pressed fig cakes as a glaze. *Demye* is treated

more leniently. One may purchase *demye* with the intent to use it in medicinal preparations. These could include use as a dressing or salve, basically our case. If they were purchased to eat, they must be untithed. [See Peah 1:4 Demye 1:3 (Tosefta) Maasros 1:8 5:1 Shabbos 25a 26a (cross-refs), Poskim. YD 331:116. Chazon Ish Demye 4:4.]

D) Nifsal maiachilas adam

Food that reached the point in its production that requires tithing must be tithed. If it then becomes unfit to be eaten as is, the poskim debate whether its status as *tevel* is suspended. The example is dried pepper. It is unfit unless added to other food. Some say that it can lose its *tevel* status, while others maintain that once obligated, it does not lose it. The former opinion would make the same allowance for food that is rendered unfit for human consumption. Some say that the latter view would agree in this case, since it is totally unfit for consumption, as opposed to pepper, that can be eaten as part of a mixture. This would mean that one may benefit from this *tevel*.

In most cases, once a status is reached it remains. For example, *basar bechalav* mixtures may not be benefited from even after they are burned. However, the *issur hana'ah shel kiluy* of *tevel* is not due to a direct prohibition. It comes indirectly, as a result of the obligation to tithe. If this obligation can be shown to have been suspended, the benefit restrictions are also lifted. Accordingly, *tevel* ingredients that have become inedible, may be used as a topical medication. [See Chazon Ish demye 15:1.]

E) Bakol misrap'in

The concept of using *isurei hana'ah* for medicinal purposes is quite complex. We are to live by the Torah, but not to die by it. There are levels of illness that warrant immediate attention, including violating any *mitzvah* except the three cardinal sins. Some dangerously ill people might not be in imminent danger, but are still in life-threatening situations. If the sickness does not reach this level, one must be more careful about using forbidden mixtures. In many cases, the medicine itself may be made from such ingredients, but the method used to convey it into one's body, such as syrup, should be kosher, if possible. Some ingredients fall between these two categories. For example, a topical ointment needs to be spread in a gel. It also has the medicine ingredient. A third ingredient ensures that the medicine ingredient is spread evenly. The first ingredient may be of non-kosher origin, but one would try to use a kosher second ingredient, if at all possible. It seems to be used, primarily, for benefit. It would appear that the third ingredient is not being used for 'benefit', and may be considered medicinal. On deeper examination, the second ingredient seems to be used, in such instances, purely for medicinal purposes as well. Unlike a syrup, a prescribed topical ointment is not used as a skin lotion. [See psachim 25a-b, Poskim. Tur Sh Ar YD 155:3, commentaries.]

In conclusion, the ointment may be used without the need to arrange for tithing.

Sponsored by Noah Bass and Debbie Rotenstein in memory of Debbie's father, Chaim ben

Dovid z"l, whose *yahrzeit* was on the 26th of Sivan. ☞

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