

בענין שיעור פירות למעשרות ולשביעית

- I. All grain, vegetables and fruits that grow in ארץ ישראל are טָבֵל and may not be eaten until their תרומות ומעשרות are separated (דָּגָן תִּירוֹשׁ וְיִצְהָר / grain, olives and grapes are מדאורייתא; everything else is מדרבנן). [טָבֵל - grain, vegetables and fruits before the separation of תרומות ומעשרות]. The punishment for one who eats טָבֵל is מיתה מן השמים. מיתה מן השמים learn out from פסוקים that תרומות ומעשרות may only be taken from produce of the same year. One may not take תרומות ומעשרות from one year's crop to permit the produce of a different year. The question is how do we determine to which year a crop belongs. The first ראש השנה in משנה teaches us different *new-years* for different crops. Concerning trees there is a מחלוקת בי"ש בי"ש. בי"ש holds בית הלל and ראש חדש שבט ט"ו בשבט בית הלל holds בית הלל.

There is another issue that must be clarified. How do we determine which fruit belong to which year? When ט"ו בשבט arrives, how much of the fruit must have already grown in order for us to say that it is the precious year's fruit? [If that stage has not been reached, then the fruit belongs to the following year.]

- II. The אילן בְּתֵר חֲנֻטָה - say רבנן quotes גמ' ראש השנה יג: / trees follows the time that they blossom. Fruit that has not yet blossomed is the *next year's* fruit and may not be mixed with the earlier fruits in the separation of תרומות ומעשרות. [See רש"י פרשת קרח פ"ז פ"ב ד"ה צ"ח: / when the flower falls off and the developing fruit begins to emerge.] תבואה וְיִצְהָר וְזֵיתִים בְּתֵר שְׁלִישׁ / produce, grapes (תבואה) and olives are determined from when they grow to a third of their full size. These two trees, grapes and olives, follow the time they reach a third (as opposed to other trees, as we just mentioned). They differ from other trees since their חיוב is מדאורייתא - see ראש השנה יב: / רש"י יב:; שאר ראשונים וטורי אבן [Similarly, if grain reaches a third before ראש השנה (מעשרות) it is considered grain of the previous year.] יָרֵק בְּתֵר לְקִיטָה / the year (ראש השנה is also ראש השנה) of a vegetable is determined from the time it is picked. [There is a מחלוקת ראשונים how to learn our גמ'. The גמ' learns that the deciding factor is the actual time that the vegetable is picked. תוס' ד"ה אחר argues that the defining

בענין שיעור פירות למעשרות ולשביעית

time is when it is fit to be picked - totally ripe. See אמונה (which includes all plants from which the seed is eaten, excluding the five grains), such as אורז, דוחן, פרגין שומשמין (rice, millet, poppy, sesame) have their own time which is from when they take root – as the גמ' explains.

Concerning trees the ת"ר אילן שחנטו פירותיו: הלכה גמ' טו: קודם ט"ו בשבט מתעשר לשנה שעברה, אחר ט"ו בשבט מתעשר לשנה הבאה

- III. The רמב"ם however combines trees and all grains and says that their *year* is determined by their *עונת המעשרות* (the time upon which their *מעשרות* begins) – which is a third of their growth. If the produce reached a third by its ראש השנה it is produce of the previous year and if not then it is deemed the produce of the following year.

his words are a wonder. The גמ' we just learned clearly defines the different times for trees, grapes, olives, vegetables. Why does the רמב"ם lump them all together with one שיעור? The *עונת* of שיעור, one third was given specifically to grapes and olives (with which to determine their year) - not all trees.

The same question can be asked on the רמב"ם פ"ד שמיטה ויובל ה"ט. There the רמב"ם paskens that if fruits of trees have reached the *עונת* of שיעור, one third, before ראש השנה they are deemed fruits of the sixth year. Why? The deciding factor should be חנטה, which is a much earlier stage. The גמ' seems to say clearly that חנטה determines the year when it comes to fruit trees. Why does the רמב"ם not pasken in accordance with this phase and instead choose a later stage of *עונת המעשרות*?

This question is asked by רעק"א in his פירוש on משניות and he remains with a צ"ע.

- IV. The question becomes stronger when we learn the רמב"ם פ"א מעשר שני ה"ג. There the רמב"ם writes concerning חרובין/carob (buksar) whose דין ט"ו בשבט (חנטה) before ראש השנה, that even though they blossomed (חנטה) before ראש השנה they are still considered fruits of the following year. This implies that if their דין מעשר would be מדאורייתא we would go ב"ת חנטה; only because it is מדרבן do we consider them fruits of the following year.

The רמב"ם appears to contradict himself. In the previous הלכה, as we noted above, the רמב"ם writes that we follow *עונת המעשרות* (1/3).

בענין שיעור פירות למעשרות ולשביעית

we don't follow תְּנַטָּה - which is indeed the true stage by which the year of fruit trees is decided. We also understand why by אתרוג the רמב"ם says we follow תְּנַטָּה. אתרוג is unique in that it becomes במעשרות before it blossoms, before תְּנַטָּה. Therefore, if an אתרוג is treated like other trees its actual determining stage will be תְּנַטָּה.

- VIII. ר' לייב continues that this חדוש that we cannot consider the fruits to belong to a certain year if it is lacking in its פְּרִי only applies to the דין מעשר (which depends on its פְּרִי) and שביעית. [Concerning שביעית the משנה says that one must not sell פירות שביעיות to one who is חָשׂוּד (not trustworthy to keep the הלכות associated with שביעית) once it reaches עֹנֶת הַמַּעֲשָׂרוֹת. We see that before this stage it is not yet considered a *fruit* and therefore the דינים of לא לסחורה ולא לאכלה do not apply. Other דינים do apply, see משניות שביעית פ"ד; however, full קדושת שביעית they do not have.] Since the חיוב מעשר ושביעית only begins when the fruits reach the שיעור of עֹנֶת הַמַּעֲשָׂרוֹת, this is also the שיעור which will determine the year to which the fruit belongs.
- IX. However, when it comes to בכורים the רמב"ם (פ"ב ה"יט) paskens that the owner calls them בכורים when they are still attached to the ground even though they are not fully grown. When they fully ripen he detaches them and does not need to rename them. We see that the ביכורים of קדושה can go into effect before the fruit attains a פְּרִי. Accordingly, when we want to determine the year to which the fruit belongs for the purpose of בכורים we do not need to focus on its פְּרִי. Therefore, the one and only deciding factor is תְּנַטָּה. This is why the רמב"ם only requires תְּנַטָּה as we mentioned above.