

MISHNAH-TOSEFTA PEAH CHAPTER FIVE

The tractate's discussion of gleanings continues in the opening unit (M. 5:1–2) by addressing a fundamental problem. What happens if food in the status of gleanings becomes mixed with ordinary produce, so that we cannot tell which stalks of grain should be given to the poor? One possible answer, presented at M. 5:1A–C and 5:2 G, is that the farmer must give to the poor all produce in a doubtful status. By giving the poor all such grain, householders take care not to misappropriate for themselves food that has been set aside exclusively for the poor. According to this theory, gleanings are analogous to sanctified offerings. That is to say, grain in the status of gleanings is materially reserved for the poor, just as the substance of heave-offering is consecrated for the priests alone.¹ An alternative is offered at M. 5:1D–E and 5:2H–L. Here the poor have no claim upon those particular stalks of grain that fell to the ground as gleanings. Instead, the farmer may give them any food of equal value, that is, a similar quantity of grain that is exempt from the separation of tithes. The governing analogy for gleanings, according to this theory, is presented by second tithe, which the farmer may exchange for other produce of equal value.²

The discussion of gleanings is closed by a short section (M. 5:3–6) that reiterates the point of M. 4:1–5. All poor people must have equal access to the produce set aside for them by God. Poor field-owners therefore may not collect the offerings that are set aside from their own fields while they harvest. This would deprive others of their right to a fair portion of the food. In context, this section also functions as a transition. By shifting the discussion to a topic applicable to all poor-offerings, it prepares for the chapter's final unit (M. 5:7–8).

The law of the forgotten sheaf (M. 5:7–7:2) is based on Deut. 24:19, "When you reap your harvest in your field, and have forgotten a sheaf

¹ For rules governing the consecrated status of heave-offering, see M. Ter. 4:7–10:12.

² Haas, *Second Tithe*, pp. 1–3, explains that second tithe may be exchanged for other produce because it has a lesser degree of sanctity than other priestly rations. This lower amount of holiness means that the produce is attached less strongly to a single individual who designates the produce from his crops.

in the field, you shall not go back to get it. It shall be for the sojourner, the fatherless, and the widow.” Mishnah’s framers here focus their attention on two issues, the definition of forgetting and of a sheaf. M. 5:7 makes the point that if anyone involved in harvesting and binding the grain remembers that a sheaf remains in the field, by definition it cannot enter the category of the forgotten sheaf. The poor are entitled only to what all forget. Moreover, the law does not apply to sheaves that the householder leaves behind because the poor have hidden them. Since the farmer and his workers are constrained to forget such sheaves, they cannot be deemed subject to the law. The underlying notion, familiar from the laws of gleanings (cf. M. 4:10), is that the poor have a claim only upon what is left behind entirely by chance. If some identifiable force causes the householder to forget a sheaf, we need not give the grain to the poor. This is because the sheaf was set aside not by God, but by some other cause (in this case, by the poor themselves). M. 5:8 completes the picture, clarifying the definition of a sheaf. Farmers bind loose stalks of grain into sheaves for easy transportation to the threshing floor.³ Once at the threshing floor, however, they break apart these sheaves for storage or threshing. Only during the span of time between the conclusion of the binding process and the beginning of threshing does the produce fall into the category of sheaves. Only at this time, therefore, can the produce become subject to the law of the forgotten sheaf. An exception to this rule (M. 5:8A–D) concerns a householder who binds produce into sheaves, but does not yet wish to take the bundles to the threshing floor. Rather, he intends to use them in the field. Since he purposely leaves these sheaves behind and does not forget them, of course the law does not apply.

Let us now place this unit of law within the unfolding structure of the tractate as a whole. In the previous discussions, we have learned that *peah* and gleanings consist of produce that the farmer owns, but never takes into his possession. This principle also underlies the law of the forgotten sheaf. In this case, the farmer has claimed a quantity of grain for himself by binding it into sheaves. Nevertheless, some of these sheaves remain outside his possession, for he forgets to bring them to his threshing floor. This produce is set aside through no conscious act of the farmer, but at random. Only that which he forgets entirely by

³ For the use of sheaves in transporting produce to the threshing floor, see White, *Roman Farming*, p. 184. He first states that baskets were used for this purpose, but immediately thereafter refers to the sheaves that contain the produce.

accident must be given to the poor. Like *peah* and gleanings, therefore, forgotten sheaves share an anomalous status, owned but not possessed. This food must be given to the poor, those under God's special care.

5:1

- A. [As regards] a heap [of grain piled in the field, such that gleanings] have not been collected underneath it (*šl lqt tktu*), [that is, before the grain was piled, some gleanings remained uncollected in the field, so that now there is a doubt whether the produce at the bottom of the heap is gleanings left from before the grain was piled, or common produce from the grain-heap]—
- B. whatever [grain] touches the ground,
- C. lo, this belongs to the poor.
- D. [As regards] wind that [breaks apart and] scatters [over an area from which gleanings have not yet been collected] sheaves [from which gleanings have already been removed, once again creating a doubt concerning the status of all of the produce in the field]—
- E. they estimate the amount [of gleanings the field] is likely to produce, and give [this amount of food] to the poor.
- F. Rabban Simeon b. Gamaliel says, "One gives to the poor [the amount of grain] needed to sow [the entire field] (*kdy npylh*)."⁴

M. 5:1 (Y. Sheq. 1:2 [46a]; B. B.M. 105b)

An ambiguity arises if gleanings that remain uncollected in the field become mixed together with ordinary produce. In the two cases before us, this happens when the householder piles common grain on top of the gleanings (A–C), or when the wind scatters some ordinary produce throughout an area containing gleanings (D–E). All of the grain lying on the ground now has a doubtful status, because the poor might have a claim on each individual stalk. Hence, it is unclear what part of the mixture the poor should receive as gleanings. The two parallel cases present distinct answers to this problem. At A–C the poor are entitled to receive both the gleanings themselves and any other produce in a doubtful status. At D–E, by contrast, they receive ordinary grain that

⁴ For this meaning of *kdy npylh*, see M. B.M. 9:5, Y. B.M. 9:5 [12a], Jastrow, II, p. 924, s.v. *npylh*, and Maimonides, *Commentary*. Bert and TYT hold that this phrase means "the amount [of produce] that normally falls [as gleanings]." This interpretation is problematic, because it contradicts Mishnah's use of the phrase in other contexts. Furthermore, it harmonizes Simeon's opinion with the anonymous rule at E. According to this latter view, Simeon merely holds that the farmer gives to the poor the amount of gleanings that the field probably would produce, precisely the amount specified at E. On formal grounds, however, we expect Simeon to dispute E (see Porton, "Dispute," pp. 22ff.). I therefore have chosen the present translation on both formal and substantive grounds.

has the same value as the gleanings, but they do not receive the very stalks lost in the mixture. How do we account for these two inconsistent solutions to a single dilemma? One possibility presented by Y. 5:1[18d], is that the cases in fact refer to two different situations. The householder at A–C acted improperly, by piling his grain on top of the poor's gleanings. Since he thereby prevents the poor from easily gathering their food, he is penalized and must hand over to the poor all grain in an ambiguous status. At D–E, however, the wind, not the householder, causes the mixture of produce. We need not penalize the farmer because at all times he acted properly. Accordingly, he gives to the poor only the amount of food that they lost in the mixture.

If we closely examine the language of these rules, however, a further possibility presents itself. The cases formally are dissimilar and so probably express two different principles. We note that neither the protases (A, D) nor apodoses (B–C, E) share common syntactic traits or repeat phrases. It thus seems likely that the two cases present different conceptions of the character of produce in the status of gleanings. On the one hand, this grain might be materially consecrated for the poor alone (A–C). If so, the poor must receive precisely those stalks that fell to the earth as gleanings. To assure that they get this particular food, the householder must give them both the gleanings themselves and any produce in an ambiguous status. Since any of the grain underneath the heap at A–C might be gleanings, all of it must be given to the poor. According to this theory, gleanings are entirely analogous to sanctified offerings, which physically are reserved for the priests alone. In the case at D–E, on the other hand, only the value of the stalks that were lost is reserved for the poor. The gleanings themselves need not be given to them.

Simeon's lemma (F) explains how much food the householder must give to the poor, as specified at D–E. He claims that the poor must receive as gleanings the amount of grain needed to sow the field, 1/45 of the yield.⁵ Presumably, this represents the amount of grain that the average sower drops while seeding a field.

5:2

- A. [As regards] a single stalk [of unharvested grain that stands] in [an area of land that already has been] harvested,

⁵ So Danby, p. 363, n. 1.

- B. the top of which [single stalk] is as tall as the standing [crop next to it, so that the stalk perhaps appears to be part of the standing crop],
- C. if [that stalk] is harvested at the same time as the standing [crop],
- D. lo, it belongs to the householder, [that is, it is not deemed a gleaning].
- E. But if [the stalk is] not [harvested at all, but remains standing after the harvest of the entire field is completed],
- F. lo, it belongs to the poor, [that is, it is deemed a gleaning].
- G. [As regards] a single stalk [of grain that is in the status of] gleanings [such that it belongs to the poor and is exempt from the separation of tithes], that was mixed with a heap [of grain that is not in the status of gleanings, and so is subject to the separation of tithes]—
- H. [with the goal of returning to the poor person that one lost stalk, the householder must follow this procedure: He takes two other stalks of grain from the pile, and sets aside one for the poor. From the second, he] designates the tithes [required for the first] stalk, and then gives [that first stalk, now exempt from the separation of tithes], to a poor person. [This assures that the poor receive in exchange for the original stalk in the status of gleanings the proper amount of grain, one full stalk from which tithes need not be separated].⁶
- I. Said R. Eliezer, “But how can this poor person [receive] anything in exchange for [something that] had not yet come into his possession, [namely, the original stalk in the status of gleanings]?”
- J. “Rather, one transfers to the poor person [partial ownership of] the entire heap [of grain, so that now the poor person owns the stalk that was mixed in]. [Since he has acquired ownership of the gleaning, he now may trade it for a stalk of common produce.
- K. [To this end, the householder must follow the procedure outlined at G.] He designates the tithes [required for] one stalk [of grain], and then gives [another stalk to a poor person].

M. 5:2 (M. Ed. 2:4; Sifre Deut. #283
[Horowitz, p. 300])

The two distinct units redacted together treat a common topic, cases of ambiguity regarding a single stalk of grain. Since they raise different

⁶ The procedure interpolated at H is required to solve a problem arising from Mishnah's phrasing. Without this addition, H reads:

H. [in order to return to the poor person that one lost stalk, the householder takes another stalk of grain, that he will give to the poor. But first he] designates the tithes [required for that] one stalk and [then] gives it to [a poor person].

The problem now is clear. A full stalk of grain in the status of gleanings fell into the heap, yet in exchange the poor person will receive less than a full stalk. In order to prevent the poor person from being cheated, Y. 5:2 [18d], followed by all commentators, suggests the procedure I have indicated. Tithes are separated from one stalk on behalf of another that the poor person will receive.

issues, however, let us consider each separately. At A–E, we deal with a single stalk that the harvester has passed by and left uncut. This stalk now stands near the remaining, unharvested portion of the crop. This poses a problem, for the stalk shares some, but not all, of the features of gleanings. On the one hand, the farmer accidentally has left it behind just like produce in the status of gleanings (cf. M. 4:10C–E). On the other hand, the stalk never was cut and claimed, and so cannot be subject to the law (cf. M. 4:10F–L). The contrasting rules at C–D and E–F make the point that the harvester’s actions resolve the doubtful status of this grain.⁷ If he cuts the stalk along with the other produce standing nearby, it is deemed part of that crop and the poor have no claim upon it.⁸ But if, when reaping the remainder of the field, the householder still does not take the stalk for himself, the poor may take it as a gleaning.⁹

The second unit (G–K) focuses upon a single stalk in the status of gleanings that becomes mixed into a pile of common produce, a situation familiar from M. 5:1. This stalk imposes a doubtful status upon the entire heap, because we no longer can tell which stalk is the gleaning that belongs to the poor. How do we assure that the poor receive what is due them? The dispute at G–H vs. I–K presents two opposing theories. The first (G–H) claims that the poor need not receive the original stalk in the status of gleanings. Rather, the farmer may give them another stalk of equal value (cf. M. 5:1D–E). The poor therefore must receive a full stalk of grain that is exempt from the separation of tithes like the stalk which they lost in the pile. Accordingly, as outlined at H, the householder must separate tithes from one stalk on behalf of

⁷ Maimonides, *Commentary*, says that the determining factor is the stalk’s appearance. If it looks like the remaining standing crop (i.e., if it is approximately the same height as the standing crop, B), it is exempt from the law of gleanings. This interpretation, however, ignores C–F, which explicitly state that the decisive factor is the farmer’s act of harvesting.

⁸ At M. 3:1–4, the Shammaites hold that a field consists of whatever area of land the farmer harvests as a single unit. His action, not the physical characteristics of the land, is decisive. This basic principle also is operative here. What the farmer does during the harvest determines how the law is to be applied.

⁹ Bert, TYT, and Albeck, p. 52, hold that M. 5:2A–F actually refer to the law of the forgotten sheaf. The produce belongs to the householder, they say, because of the standing crop nearby (cf. M. 6:8, which states that sheaves forgotten near a standing crop are not subject to the restrictions of the law). The ruling is included here, says Albeck, because it deals with cases of doubt, the subject of M. 4:11–5:2. This interpretation seems to me unlikely. The rule is placed between two other laws that clearly do treat the law of gleanings (M. 5:1, 5:2G–K), and should be read in that context.

a second, and give the second, full stalk to the poor. Eliezer (I–K) objects to this solution. He claims that the original stalk in the status of gleanings is reserved exclusively for the poor (cf. M. 5:1A–C). As a result, the householder has no right to claim it for himself and to substitute other grain for it. Because the farmer does not know which particular stalk belongs to the poor person, he must transfer to him partial ownership of the entire grain-heap. Once the poor person has acquired partial ownership of the entire pile, including the gleaning that was lost, he may trade the stalk for ordinary produce on behalf of which tithes already have been separated. Once again, this assures that the poor person receives fair value for the stalk in the status of gleanings that fell into the grain pile.

T. 2:19

- A. "From what point in time do they burn the stubble that lies in the field?
- B. "In a shadeless field (*šdh lbn*) [they burn the straw] until Passover.
- C. "But in orchard, [they burn the straw] until the New Year.
- D. "In a field dependent on irrigation (Jastrow, II, p. 1580, s.v. *slh* iii) they may burn the straw immediately." the opinion of R. Judah.
- E. But sages say, "In a shadeless field [they burn the straw] until Pentecost.
- F. "In an orchard, [they burn the straw] at New Year,
- G. "because of the robbery of men and cattle.
- H. "In a field dependent on irrigation, [they burn the straw] immediately."

Tosefta here represents a case in which the householder should act generously, by letting the poor take any straw that remains in his field after the harvest. At issue is how long the farmer must wait for the poor to take this produce before he burns the entire field in preparation for planting the next year's crop. Judah (B–E) and sages (F–I) dispute the appropriate time for different types of fields. Judah claims that the farmer must wait until he is ready to plough the field; only then may he prepare the land by burning the stubble. This gives the poor ample opportunity to gather the straw. Sages claim that the farmer must allow the poor access to the straw for a longer period of time, until Pentecost. This prevents the householder from "stealing" the sustenance provided by the straw from the poor and from the animals who graze in the fields.

T. 2:21

- A. Single stalks [that remain unharvested] among stubble [in an area that already has been harvested] or in fields [that already have been harvested] (cf. M. 5:2A)—

- B. lo, these belong to the householder.
 C. Said R. Aqiba, "With regard to this [sort of produce] householders usually are generous, [with the result that they usually leave the stalks for the poor]."

Tosefta claims that single stalks that remain unharvested by definition belong to the householder (cf. M. 5:2A–C). The grain cannot enter the status of gleanings, because the worker neither harvested nor dropped it. Aqiba (C) agrees in principle, but not in practice. Although the stalks do not fall into the category of gleanings, he claims that householders should give them to the poor as a generous gift.

5:3

- A. "They may not turn a water wheel¹⁰ [in order to irrigate a field, until after the poor have collected their produce]," the opinion of R. Meir [This is because irrigation will make the field so muddy that the poor will have difficulty collecting their produce.]¹¹
 B. But sages permit [irrigation before the poor have collected their produce], because it [still] is possible, [though difficult, for the poor to gather what is theirs].¹²

M. 5:3 (M. Par. 6:1)

This dispute focuses on whether or not a farmer may tend his field in a manner that makes it difficult for the poor to collect their offerings. Meir (A) holds that the poor possess an inviolable right to gather the food without difficulty. The farmer thus is forbidden to irrigate until they have finished collecting the poor-offerings. Sages (B), by contrast, rule that the farmer may perform any agricultural activity so long as he does not make it impossible for the poor to take their grain. He therefore is allowed to irrigate, for this poses no insurmountable obstacle to the poor.

¹⁰ See M. Mid. 5:4, Jastrow, I, p. 525, s.v. *ṭwph*. Maimonides *Commentary*, presents another possibility. He claims that *ṭwph* means "inferior barley," and so interprets at A:

A. "They may not [irrigate by] turning [a water wheel] in [a field planted with] inferior barley," the opinion of R. Meir. [This is because irrigation will cause excessive damage to the barley, so that the poor will not receive useful produce.]

According to this reading, however, sages' view no longer responds to A. For a possible explanation, see below, n. 12.

¹¹ So Albeck, p. 53.

¹² Lieberman, TK, p. 155, reads at B:

B. But sages permit [the irrigation], for it is impossible [for householders properly to tend their fields without it].

That is, following K and P, he reads *ṣṣṣ* [= *ṣṣ* *ṣṣ*]. I have translated the text before me, without correction. The substance of the law is unaffected by the variant reading.

T. 2:20

- A. One who irrigates his field before¹³ the poor have entered it [to collect the produce designated for them] (cf. M. 5:3)—
- B. if the damage [that the water will cause] to [the householder's produce] is greater than [the damage to the produce that] belongs to the poor, [the irrigation] is permitted.
- C. But if the damage [that the water will cause to the produce that] belongs to the poor is greater than [the damage to the householder's] own [produce, the irrigation] is forbidden.
- D. R. Judah says, "Either way (*byn kk wbyn kk*),
- E. [the householder] must collect the produce that belongs to the poor, and set it on the fence,
- F. "and the poor person comes and takes that which belongs to him."

Irrigation poses a problem not dealt with in Mishnah, in that the water damages and rots produce remaining in the field. Tosefta's point is that this damage must not fall disproportionately to the poor. Thus, irrigation is permitted only if the householder is willing to suffer a greater loss to his own produce than that which he causes to the poor's produce (A–C). Judah (D–E) solves this problem in another way. In line with M. 4:1–2, he allows the householder to interfere in the distribution of poor-offerings to prevent damage to his own property. The householder simply moves the poor's produce to a dry place and then irrigates, preventing damage both to their produce and to his field.

5:4

- A. "[As regards] a householder who was travelling from one place to another,
- B. "and [because he had no money with him] he needed to collect gleanings, forgotten sheaves, *peah*, and poorman's tithe,
- C. "let him collect [what he needs].
- D. "But when he returns to his home, he must repay [the amount of produce he took as a poor person]," the opinion of R. Eliezer.
- E. But sages say, "[He need repay nothing, because] he was a poor person when [he collected produce designated for the poor]."

M. 5:4 (B. Hul. 130b)

At issue is how we determine who is entitled to collect poor-offerings. Do we consider a person's total wealth, or only the assets he has available at the moment he collects the produce? Eliezer (A–C+D) holds

¹³ So E, *ed. princ.* See Lieberman, TZ, p. 49.

that the householder's net worth is decisive. By this criterion, the farmer is not poor and is not entitled to take the food for free. He must repay whatever he legitimately collects because of temporary need, as if it were a loan. Sages (E) dispute this claim. In their view we consider only the householder's immediately available assets. He was a poor person when he collected the poor-offerings, and so need never pay for this food. The pericope belongs in Chapter Eight, which contains the tractate's definition of a poor person. I cannot account for its inclusion at this point in the tractate.

5:5

- A. One who trades [untithed produce for food in the status of poor-offerings owned by] poor people (*hmhlyp 'm h'nyym*)—
- B. that which [the rich man acquires from the poor remains in the status of poor-offerings and] exempt [from the separation of tithes].¹⁴
- C. And that which the poor [acquire from the rich man remains private property and] subject [to the separation of tithes].
- D. [As regards] two [poor men] who [independently] contracted to share-crop [separate halves of a single] field, [and so become partial owners of those parts of the field respectively]—
- E. one of them may give to the other the poorman's tithe [from his part of the field], and this other person may give to the former the poorman's tithe [from his part of the field].
- F. One who contracts to harvest a field
- G. is forbidden [to take for himself] gleanings, forgotten sheaves, *peah*, or poorman's tithe, [designated from that field].
- H. Said R. Judah, "Under what circumstances does [the rule at F–G] apply?
- I. "[It applies] if [the laborer] contracted with [the householder to harvest the field and be paid] one-half, one-third, or one-fourth [of the entire yield]. [In these cases, the harvester becomes a partial owner of the entire crop, and so may not gather its produce as poor-offerings.]
- J. "But if [the householder] said to him, 'A third of [the produce] that you harvest [and bring to the threshing floor] shall belong to you [as your payment],'
- K. "[the laborer] is permitted [to take for himself] gleanings, forgotten sheaves, and *peah*, [designated from that field]. [Since these offerings never are brought to the threshing floor, the worker has no claim of ownership upon them.]

¹⁴ M. Hal. 1:3 states that all poor-offerings are exempt from the separation of tithes. See also M. 1:6.

- L. "But he is forbidden [to take for himself] poorman's tithe [designated from that field, since this is designated at the threshing floor]." [This produce, of course, is partly owned by the worker.]

M. 5:5 (Y. Peah 2:5 [17b])

Two units (A–C, D–L) deal with various ways in which ownership might determine how the laws of poor-offerings apply. Since they present entirely different principles, however, we take them up separately. In the first case (A–C) grain in the status of poor-offerings has been given by the poor to a rich person. We wish to know whether the food now becomes subject to the separation of tithes like other produce owned by ordinary householders. The matched pair at B and C claim that the food retains its status as gleanings, *peah*, or forgotten sheaves, even though the poor no longer own it. It therefore remains exempt from the separation of tithes. That is, once the poor have claimed the offerings they may do anything with them that they wish, even sell them to the rich. Since the produce remains exempt from the separation of tithes, the poor gain a monetary advantage. The food they sell is worth more in the marketplace.

The principle underlying the second unit (D–L) is that a poor person may not collect poor-offerings designated from a field that he owns in whole or in part.¹⁵ This assures that poor people neither can hoard these offerings nor can prevent others from having fair access to them (cf. M. 4:1–4). Two distinct cases (D–E, F–G+H–L) present this principle. The first concerns a sharecropper who receives a fixed portion of the entire crop he contracts to harvest.¹⁶ Since he now claims partial

¹⁵ Two secondary interpretations of this principle are possible. First, we have the notion that a landowner by definition is not a poor person, and so may not gather poor-offerings. This interpretation is made less likely by the rule at D–E. Here sharecroppers own a portion of the field, yet explicitly are deemed poor. Second, our concern may be to assure that these agricultural offerings are differentiated from that which the field's owner retains, as required for all offerings (cf. M. Ter. 4:5), M. Bik. 2:4). That is to say, a person may not keep offerings required of produce he owns, even if he otherwise is entitled to them. For example, a priest or Levite must give to another the tithes separated from a field that he owns, even though he otherwise has a right to gather this produce for himself (cf. M. 1:6I–J). Similarly, a poor person must allow other poor people to collect poor-offerings designated from a field he owns. While this explanation is plausible, it seems secondary to the concern that all poor people have free access to poor-offerings. M. 5:6, which follows our pericope, takes up precisely this issue of free access. The continuity in underlying principles makes it clear that the pericope's primary point is that the poor must be allowed to gather the food without external interference.

¹⁶ See Albeck (p. 53), and Jastrow (I, p. 120, s.v., 'ḡs, ii).

ownership of the entire field, he may not collect poor-offerings designated from it. If, however, two sharecroppers harvest separate halves of a field (D–E), they may exchange poorman's tithe. Each will receive produce that grew in a field he does not own. This is permitted. A second case (F–G), independent of the first, claims that any poor worker is forbidden to gather poor-offerings from a field that he harvests, whether or not he has a partial claim on the field. Such a harvester would have an unfair advantage over others because he could gather the offerings for himself while he harvested on the householder's behalf. In its present context, however, this rule sets up Judah's gloss at H–L, which returns us to the issue of ownership. The contractor at I is paid a fixed portion of the crop and so becomes partial owner of the entire yield. He thus cannot gather poor-offerings from that field. What happens if he has arranged to receive a portion only of that which he actually reaps and brings to the threshing floor (J–K)? In this case, he has no claim of ownership on offerings that remain in the field, such as *peah*, gleanings, and forgotten sheaves. Therefore he may gather them for himself. Only poorman's tithe would be forbidden to him (L). This offering is designated at the threshing floor from grain that the contractor partially owns because he has returned it to the householder.

T. 2:4

- A. A householder may not take [for himself] gleanings from the poor,
- B. [even if he makes] the provision [that, in place of the gleanings, he will let them] collect [the produce that falls to the ground] during the binding process.

The householder at A wishes to exchange gleanings for common produce (cf. M. 5:5A–C). He wants to collect the grain that falls as gleanings for himself, and in its place he would give the poor that which falls during the binding process. This trade would allow the householder to harvest his field without the obstacle of the poor people collecting gleanings (Lieberman, TZ, p. 64). He cannot do this, however, for he thereby would misappropriate what God has set aside for the poor alone. Furthermore, the poor would receive produce subject to the separation of tithes. Such food has less value than the gleanings themselves, which are exempt from the separation of tithes.

T. 3:1b

- A. [If in the field] there are some poor people who have no right to collect [gleanings, e.g., because they are part owners in the crop (cf. M. 5:5D–L)]—

- B. if the householder is able to protest [their presence] immediately (*bydn*),
- C. he may protest, [and recover that which the ineligible poor people take].
- D. But if [the householder] cannot [protest immediately],
- E. he should let them be,
- F. in the interests of peace.

Tosefta supplements M. 4:10–5:6's discussion of gleanings. Its point is made obvious through contrasting a case in which a farmer can protest with a case in which he cannot, B vs. D.

5:6

- A. One who sells his field—
- B. [after the property has been transferred], the seller, [if he is a poor person], is permitted [to collect from that field produce designated for the poor].
- C. But the buyer, [who now owns the field], is forbidden [to collect the poor-offerings] (cf. M. 5:5).
- D. A person may not hire a worker [who agrees to work only] on condition that his son collect [gleanings] behind him.
- E. (1) One who does not allow the poor [freely] to collect [gleanings], (2) or who allows one [poor person] but not another, (3) or who assists [only] one of them,
- F. lo, that person robs the poor.
- G. With regard to that person it is stated, "Do not remove the landmark of the poor," (*gbwl 'wlym*).¹⁷ [This is a play on words for Prov. 22:28, which states, "Do not remove the ancient landmark" (*gbwl 'wlm*).]
M. 5:6 (B. B.M. 12a; Sifre Deut. #284 [Horowitz, p. 301])

Three distinct rules illustrate the principle that the poor must have free access to their food. A poor field-owner (A–B) may not hoard the offerings for himself (cf. M. 5:5D–L). Former owners, like all other poor people, should have freedom to collect this produce (C). In the separate case at D a worker wishes to keep all of the poor-offerings for his own family. Since this would deprive others of the food, it is not allowed. Finally, the list at E–F and the prooftext at G reiterate the main point. Impinging on the right of the poor to gather their offerings is tantamount to robbery.

¹⁷ So Albeck, p. 54, and Danby, p. 16, n. I, who interpret *'wlym* as "poor people." This, they say, is an antithetical use of "those who ascend" for "those who have descended" in fortune. Maimonides, *Commentary*, interprets the phrase to refer to the returnees from the Egyptian exile, who received gifts from God upon their return to the Land of Israel. In the context of this pericope, however, only the former interpretation is appropriate.

T. 3:1a

- A. *He who receives a field to harvest—his son may not collect gleanings behind him* (M. 5:6D).
- B. R. Yosé says, "His son may collect gleanings behind him,"
- C. But [with regard to] (1) sharecroppers,¹⁸ (2) [those who] rent fields,¹⁹ (3) or one who sells his standing [crop] to his neighbor to harvest—
- D. his son may collect gleanings behind him.²⁰

The two rules at B and C–D each refer to M. 5:6D, but are independent of one another. First, Yosé (B) contradicts A. He reasons that a son does not receive his father's wages. If the son is a poor person in his own right, therefore, he may collect gleanings even from a field that his father owns. The list at C–D treats cases in which a worker does not own the portion of the crop designated as gleanings. He is allowed to collect gleanings (cf. M. 5:5J–K, M. 5:6A–B), and obviously his son also is allowed.

T. 3:3c

- A. They do not hire gentile workers [to harvest],
- B. for [gentile workers] do not scruple with regard to [the laws of] gleanings.
- C. They do not designate poorman's tithe for poor gentiles,
- D. but as a favor [householders] give [poor gentiles] common [produce] that has been properly prepared [by having tithes separated on its behalf].

Tosefta's two independent rules (A–B, C–D) take up a single topic, proper relations with gentiles. A–B are straightforward. A householder must hire workers who act in accord with the restrictions of the law. In the second case, the householder may not give poorman's tithe to a gentile, because by definition this produce is set aside for poor Israelites (Deut. 14:25–29). If the householder wishes to give aid to poor gentiles, he may give them common produce as a gift. He first must separate tithes, however, because he must assume that the gentiles will not.

¹⁸ Read *'rysyn* for *rysyn* (E. *ed. princ.*, Lieberman, TZ, p. 50). Note that M. 5:5D–E states that a sharecropper may not collect poor man's tithe from a field he sharecrops. Gleanings, however, are allowed to him because they are not part of the produce which the sharecropper owns. Cf. M. 5:5, below.

¹⁹ Delete *wh'kerwt*, a variant spelling of the word that follows, *whhkerwt* (see Lieberman, TK, p. 157).

²⁰ In order to allow Tosefta to correspond fully to Mishnah, I have separated T. 3:1 into four parts. Tosefta itself makes no such distinction.

5:7

- A. [As regards] a sheaf that (1) workers forgot, but the householder did not forget, (2) that the householder forgot, but the workers did not forget,
- B. or (3) in front of which poor people stood, or (4) if they covered it with straw, [thereby hiding the sheaf from sight so that the householder and his workers would leave it behind]—
- C. lo, the [sheaf] is not [subject to the restrictions of the] forgotten sheaf (cf. Deut. 24:19).

M. 5:7 (B. Soṭ. 45a; Sifre Deut. #282 [Horowitz, p. 299])

We now begin Mishnah's discussion of the law of the forgotten sheaf (M. 5:7–7:2). The discourse begins at the logical foundation of the matter, by explaining what constitutes forgetting. In this regard, the list at A–B+C makes two quite separate points. First, a sheaf is deemed forgotten only if all those involved in the harvest forget that it remains in the field (A). A sheaf that is remembered by some workers is not subject to the law, even if others no longer keep it in mind. A point of secondary interest here is that Mishnah treats the workers as agents of the householder. They too are capable of remembering a sheaf on his behalf, and so must be considered in determining which sheaves are subject to the law. The list's second major point is that if the poor hide a sheaf from sight it cannot enter the category of forgotten sheaves (B). The farmer and his workers in this case are forced by external constraint to leave the grain in the field. Since there is no forgetting involved, the law cannot apply. This rule also assures that God alone, through processes of random chance, determines what falls into the category of forgotten sheaves. As with other poor-offerings (cf. M. 4:10), only that which is set aside for no apparent reason is deemed subject to God's claim on behalf of the poor.

T. 3:1d

- A. A householder who was standing in town said, "I know that the workers [will] forget a sheaf in such-and-such a place"—
- B. [if] the workers do forget [the sheaf],
- C. [the sheaf] is not²¹ [subject to the restrictions of the] forgotten sheaf (cf. M. 5:7A).

²¹ So V. E, *ed. princ.*, and Y. 5:7 read "is subject." However, that reading contradicts the general theory developed in M. 5:7, and in the pericope itself (cf. F–H; the use of the particle *š* at F implies that the preceding is a negative construction). Y. explains its reading on the basis of Deut. 24:19, which states, "and you have

- D. (Delete this entire stich, which repeats the substance of E–G; see Lieberman, TK, p. 160.) R. Simeon b. Judah says in the name of R. Simeon, “Even if [the only ones who do not forget a sheaf are] others passing by in the road [who] see the sheaf that [the workers] forgot, [the sheaf] is not [subject to the restrictions of the] forgotten sheaf.”
- E. R. Simeon b. Judah says in the name of R. Simeon, “Even if [the only ones who do not forget a sheaf are] others passing by in the road [who] see the sheaf that the worker forgot,
- F. “it is not deemed a forgotten sheaf,
- G. “unless everybody has forgotten it.”

A–C illustrate M. 5:7A1. Since the householder has not forgotten the sheaf, it is not subject to the restrictions of the law. The fact that the householder is in the city, not in the field, is of no importance. Simeon b. Judah’s point (E–G) is that so long as any householder, worker, or even a passer-by remembers that a sheaf remains in the field, the sheaf cannot enter the category of a forgotten sheaf.

5:8

- I. A. One who binds [produce] into (1) stack-covers,²² (2) stack-bases,²³ (3) temporary stacks,²⁴ or (4) [small] sheaves, [all of which will be used in the field itself]²⁵—
- B. [any of this bound produce that he leaves in the field] is not [subject to the restrictions of the] forgotten sheaf, [because the farmer never intended to remove it from the field].
- C. [If at some later time this bound produce is brought] from [the field] to the threshing floor,
- D. [any sheaves that he leaves behind] are [subject to the restrictions of the] forgotten sheaf, [for by bringing the produce to the threshing floor, the farmer indicates that he no longer wants it in the field]. [Hence we may assume that sheaves left behind were forgotten.]

forgotten a sheaf *in the field* . . .” According to the Talmud, the law of the forgotten sheaf does not apply to sheaves once they are transported to the city, and so the farmer’s actions while in the city have no effect on sheaves in the field. Thus even if the householder in the city remembers the sheaf which his workers have forgotten, the sheaf is deemed subject to the law. I have translated the text before me, since it is consistent with M.’s theory and since it shows no hint of the distinction between city and field. See Lieberman, TK, p. 158ff.

²² So Jastrow, I, p. 616, s.v. *kwtb’h*.

²³ So Jastrow, I, p. 620, s.v. *kwmsh*.

²⁴ So Jastrow, I, p. 506, s.v. *hrrh*.

²⁵ The interpolation is supplied by Maimonides, *Commentary*, TYT, and Bert. Since the householder intends to keep these bundles of produce in the field, we know that they are not forgotten.

- II. E. He who binds [sheaves that will be placed in a] grain-heap [near the threshing floor, for storage until they will be broken apart and threshed]²⁶—
 - F. [any bound sheaves that he leaves behind in the field] are subject to the restrictions of the] forgotten sheaf, [for the farmer did not intend to keep them in the field, but rather to store them near the threshing floor]. [Hence we may assume that sheaves left behind were forgotten.]
 - G. [If at some later time the sheaves are brought] from [the grain-heap] to the threshing floor,
 - H. [any sheaves that he leaves behind in the grain-heap] are not [subject to the restrictions of the] forgotten sheaf, [for this produce remains in storage, and was not forgotten].
 - I. This is the general principle:
 - I. J. All who bind sheaves [for storage] at a place where processing will be completed²⁷ [e.g., at a grain-heap near a threshing floor]—
 - K. [any bound sheaves that he leaves behind in the field] are [subject to the restrictions of the] forgotten sheaf, [because it is clear that the farmer wishes to remove the sheaves from the field and process them].
 - L. [If at some later time the sheaves are brought] from [the storage place, where processing is to be completed] to the threshing floor,
 - M. [any sheaves that he leaves behind] are not [subject to the restrictions of the] forgotten sheaf, [for they remain in storage].
- II. N. [But if the sheaves are bound for use in the field, that is] at a place where processing will not be completed,
 - O. [any sheaves that the farmer leaves in the field] are not [subject to the restrictions of the] forgotten sheaf, [for he clearly wants to keep them in the field].
 - P. [If at some later time the produce is brought] from [the field] to the threshing floor,
 - Q. [any sheaves that he leaves behind in the field] are [subject to the restrictions of the] forgotten sheaf, [for now the farmer wants all of the produce at the threshing floor]. [What he leaves behind, therefore, must have been forgotten.]

M. 5:8

²⁶ White, *Roman Farming*, p. 426, states that a roofed structure was used to prevent damage caused by rain to produce stored until threshing. Following Albeck, p. 55, I assume that a grain-heap was used for similar storage. If the farmer leaves some sheaves in this heap, the law does not apply. The sheaves are not forgotten, but merely remain in storage.

²⁷ I follow Maimonides, *Commentary*, who says that the end of processing (*gmr mPkh*) refers to storage immediately before threshing the produce. Compare Jastrow, I, p. 255, s.v. *gmr*.

At several stages in processing grain, a farmer may leave behind a sheaf. For example, when he transports produce from the field to the grain-heap, or from the grain-heap to the threshing floor, some of the sheaves may remain behind. Similarly, when he binds produce for temporary use in the field, he leaves the bound produce there. At issue is how we distinguish sheaves that he purposely leaves behind from those that he actually has forgotten, for only the latter are subject to the law. As we shall see, the contrasting cases at A–D and E–H, matched by the two-part general rule at I+J–M and N–Q, present a single theory. The farmer's actions indicate whether or not the sheaves fall into the category of what has been forgotten. Accordingly, we determine the status of the sheaves that remain behind by observing what he does with those that he has removed. If he takes some sheaves away from the field, to the threshing floor, for example, we assume that what he leaves behind has been forgotten. But if he does not intend to remove the sheaves from the field, none of the produce that remains in the field is subject to the law. The category of forgotten sheaves, therefore, is defined solely in terms of the Israelite's actions and intentions. With the main principle of the unit in hand, let us turn to the specifics of the rules before us.

The simplest test (E–F, J–K) involves a farmer who binds produce into sheaves for immediate transportation to the grain-heap near the threshing floor. When he begins to remove these sheaves from the field, we may assume that any he leaves behind have been forgotten. The law therefore applies to them. Sheaves that are stored in the grain-heap are another matter. The householder brings these a few at a time to the threshing floor for processing (G–H, L–M). Those that he leaves in the grain-heap do not fall into the category of forgotten sheaves, because they simply remain in storage.

A more complex situation arises if the farmer uses some of the bound produce as part of a stack in the field (A–B, N–O). By using the sheaves in this manner, he indicates that, at this time, he has no intention of taking them to the threshing floor. Since he leaves this produce behind purposely but does not forget it, the law does not apply. Eventually, however, the farmer will begin to carry these bundles to the threshing floor for processing (C–D, P–Q). This action indicates that he no longer wishes to use the sheaves in the field. From this point on, whatever he leaves behind is forgotten and subject to the restrictions of the law.

T.3:1e

- A. R. Judah says, "He who binds [all of the produce in] his field into sheaves, [placing them in a temporary heap, but with no intention later to rebind them] (cf. M. 5:8A),
- B. "his binding of them is like binding [sheaves which will be placed] in a grain-heap (cf. M. 5:8E), [and so the sheaves are subject to the law].
- C. "[That is,] the temporary stack (*ḥrrh*) is like a grain-heap."²⁸

Tosefta claims that sheaves in a temporary heap share the same rule as sheaves in a grain-heap (cf. M. 5:8A3). The farmer intends to bring them directly to the threshing floor, and so the restrictions of the law of forgotten sheaves apply to any produce he leaves behind.

²⁸ For problems of text and meaning, see Lieberman, TZ, p. 50; TK, pp. 161f, whom I follow.