

# Fruits from the Holy Land in America: Is There an Obligation to Separate *Teruma* and *Ma'aser*?

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## I. Introduction

The establishment of the Jewish state of Israel and the resettlement of Israel by vast numbers of Jewish farmers has revitalized the study of those portions of Jewish law that deal with agricultural laws. Indeed, nearly all of these rules are not completely applicable to produce grown outside Israel by Gentiles.<sup>1</sup> Israel as an agricultural center has generated numerous questions of agricultural halacha whose primary importance is to the Jews residing in Israel; these are generally

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1. It is worth noting that there were *rishonim* who thought that *teruma* and *ma'aser* should be separated by Jews living outside of Israel, just as *challah* is; see opinions cited in Tosafot, *Chulin* 7a. Indeed, it is clear that there were *tanaim* and *amoraim* who followed that practice; see *Berachot* 36a, *Beitza* 12b, *Bechorot* 27a. However, the halacha is clear that there is no obligation to separate *teruma* outside of Israel and its immediate vicinity; see *Shulchan Aruch* Y.D. 331:1.

Indeed, except for *teruma* and *ma'aser*, the Talmudic Sages decreed some form of observance outside of Israel of each of the other agricultural commandments; thus, *chadash*, *revai*, *kelaim*, and *leket* are all applicable in some form. See generally, *Encyclopedia Talmudit* "Chutz LaAretz" 13:330, 331-341.

addressed by rabbinic authorities living in Israel.<sup>2</sup>

This article deals with an agricultural problem confronting diaspora Jewry because of the presence of Israeli fruits outside of Israel: must one separate *teruma* from produce grown in Israel for export and now being sold in America? The presence of desirable Israeli fruits and vegetables as well as the preference among many Jews<sup>3</sup> for Israeli products has made this issue particularly relevant in the last few years.

## II. Introduction to the Laws of *Teruma* and *Ma'aser*

There is a general biblical obligation to separate *teruma*, *ma'aser*, and *terumat ma'aser* from the agricultural produce of Israel. In the time when the Temple was standing and ritually pure *cohanim* and *levi'im* functioned in society, the following four categories of agricultural tithes were made:

1. *Teruma* was separated for a *cohen* and was not to be eaten by anyone else. Although according to Torah law one could fulfill the obligation of separating *teruma* with an infinitesimally small amount, the Sages by decree established

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2. For a perusal of the many works written in these topics, see past issues of *Hatorah Vehamedina* or *Techumin*. It is worth noting that modern Israeli decisors devote a considerable amount of their intellectual energies to this field. For example, nearly 25% of the multi-volume work *Tzitz Eliezer* by Rabbi Waldenburg addresses issues related to agricultural laws, as does nearly 40% percent of *Minchat Shlomo*, by Rabbi Shlomo Zalman Auerbach.

3. This preference has some halachic basis. One who buys products and produce of Israel -- which helps those who are living in Israel fulfill the commandment of living in Israel -- himself might have a partial fulfillment of the biblical obligation of settling Israel; see Comments of Ramban on Rambam's *Sefer Hamitzvot*, commandment four; see also *She'arim Metzuyananim Behalacha* 173:4 in the *Kuntress Ha'acharon*.

that it is is not proper to give less than one-sixtieth or more than one-fortieth.<sup>4</sup>

2. *Ma'aser Rishon* was the 10% of the remaining produce which was given to a *levi*, but which could be eaten by anyone (after *terumat ma'aser* was removed) and was not ritually holy like *teruma*.<sup>5</sup>

3. *Terumat Ma'aser* was 10% of the *ma'aser rishon* that had to be separated and given to a *cohen*. Like *teruma*, this could only be eaten by a ritually pure *cohen*.

4. *Ma'aser Sheni* or *Ma'aser Ani* was an additional 10% separated out. *Ma'aser sheni* could be eaten by anyone, but only in Jerusalem (or redeemed and the money spent in Jerusalem) and *ma'aser ani* was given to a poor person to eat anywhere.<sup>6</sup>

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4. Rambam, *Teruma* 3:1-2. According to many authorities, there are two separate commandments, one to separate *teruma*, and the other to give it to a *cohen*; see comments of *Maharatz Chayas*, *Gittin* 20a. Rabbi David Cohen of Congregation Gevul Yavetz notes that from the language of Rambam as well as the presentation of this issue in the Gemara, it would appear that one has only three choices of level of giving: one-fortieth, one-fiftieth or one-sixtieth. According to this, giving one fifty-third or one forty-fifth is prohibited.

5. It is disputed whether ten percent really was given, or whether a slightly smaller amount was given because a portion was already given to the *cohen*. According to one approach, if one had 100 bags of wheat, and the *cohen* was given two as *teruma*, the *levi* received only 9.8 bags of wheat; according to the other approach, what the *cohen* received was not deducted from the *levi's* accounting of 10%; see *Tosafot Gittin* 25a (*asara*) for both possibilities.

6. Produce of the first, second, fourth, and fifth years of the *shemita* cycle required *ma'aser sheni* to be taken, while produce of the third and sixth years required *ma'aser ani*. For an excellent

Since at least the destruction of the Second Temple, the ideal method of distribution has not been possible. There are no *cohanim* who are ritually pure and can eat *teruma*; therefore the custom is to separate out *teruma*<sup>7</sup> in the minimal amounts possible and allow this produce to be destroyed. Thus, slightly more than 1% is separated out as *teruma* and the rest may be eaten by anybody. If *teruma* and *ma'aser* are not separated out, the produce is *tevel* and may not be eaten by anyone.

### III. Are *Teruma* and *Ma'aser* Biblical or Rabbinic Obligations Nowadays on Fruits of Israel?

Before discussing the issue of separating *teruma* in America, it is necessary to establish the nature of the obligation to separate *teruma* in Israel. There is a twofold dispute concerning the nature of the obligation to separate *teruma* and *ma'aser* for fruit. The first is the nature of the obligation generally in Israel: is it biblical or rabbinic? The second is, from what is one biblically obligated to separate – only grain, wine, and oil, or even fruit from trees? These two disputes are crucial, as the general rule is that cases of doubt are resolved in favor of the stricter alternative when a biblical prohibition is at issue, whereas when a rabbinic prohibition is involved, frequently one can be lenient in a case of doubt.<sup>8</sup>

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review of these issues, see Rabbi Yaakov Luban, "Separating Terumah and Ma'aser", *Jewish Action* 53:2, pages 50-52 (1993). For a more detailed discussion of the different categories, see R. Aharon Zakai, *HaBayit HaYehudi* 8:1 (1-33).

7. In this article, the word *teruma* will be used to refer to both *teruma* and *terumat ma'aser*, since their status is for all intents and purposes the same for the issues discussed.

8. See generally *Shulchan Aruch*, *Yoreh Deah* 242; see also note 65.

Based on different opinions found in the Talmud, *rishonim* disagree as to whether the obligation to separate *teruma* and *ma'aser* is biblical or rabbinic nowadays. Two basic opinions are present. Rambam states that the obligation to separate *teruma* is currently only rabbinic in nature.<sup>9</sup> Ravad (and others) disagree and rule that the obligation is biblical.<sup>10</sup> *Shulchan Aruch* rules that:

Currently, even in places sanctified by the return from Babylon in the time of Ezra, the obligation to separate *teruma* and *ma'aser* is not from the Torah, but is only rabbinic. . . . *Ramo*: There are those who disagree and rule that the obligation now is biblical, but this is not the custom.

Thus, the consensus – but by no means unanimous<sup>11</sup> – opinion of authorities is that the obligation to separate *teruma* is rabbinic only.<sup>12</sup>

So, too, there is a dispute concerning the obligation to separate *teruma* from the produce of trees. Ravad clearly states that the biblical obligation is limited to grain, oil, and

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9. Rambam, *Teruma* 1:26.

10. Ravad, commenting *ibid*.

11. See generally *Semag*, Positive Commandment 133, and *Yechave Da'at* 6:49 for a review of the various authorities; see also *Kerem Tzion Halachot Pesukot*, ch. 1, for a review of this issue and references to recent authorities who are inclined in this direction or who treat this issue as still in doubt.

12. *Turei Zahav* Y.D. 331 (1) and *Levush* Y.D. 331:1-3 indicate that he accepts Rabbi Karo's view, whereas *Shach*, writing in *Nekudat Hakesef*, is uncertain. The consensus of authorities, however, clearly is that the obligation is only rabbinic; see *Encyclopedia Talmudit*, "Eretz Yisrael" 2:199, 219-222; *Minchat Yitzchak* 1:85; *Pesakim Uketavim shel HaRav Herzog*, *Mitzvot Hateluyot Ba'aretz* 1; *Yechave Daat* 6:49.

wine products; that opinion is accepted by many *rishonim*.<sup>13</sup> On the other hand, Rambam indicates that there is no difference in obligation between fruit and grain.<sup>14</sup> (However, all agree that the obligation to separate *teruma* from vegetables is only rabbinic.)<sup>15</sup>

The sum total of these two disputes is that according to all authorities the obligation to separate *teruma* from the product of fruit trees or vegetables is clearly only rabbinic in nature – whether this is because the obligation to separate currently is always rabbinic, as most rule, or because only grain, oil, and wine are encompassed by the biblical obligation, as some rule.

Thus, in the case under discussion – the obligation to separate *teruma* from Israeli fruits and vegetables sold in America – the absence of even a possible biblical violation is significant.

#### **Is Produce that Leaves Israel Obligated in *Teruma* and *Ma'aser*?**

The issue of the obligation to separate *teruma* from Israeli produce that leaves the boundaries of Israel is clearly discussed by the Mishnah and the Jerusalem Talmud. The Mishnah in *Challah* 2:1 recounts:

Fruits from outside of Israel that come into Israel are obligated in *Challah*. If they leave Israel and go out of Israel, Rabbi Eleazer rules that they are obligated, and Rabbi Akiva rules that they are excused.

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13. Ravad commenting on Rambam *Ma'aser* 1:9; Rashi and Tosafot on *Bechorot* 51a; Ramban, *Bava Metzia* 88b; Rosh *Meshantz* commenting on *Ma'asrot* 1:1.

14. *Ma'aser* 1:9.

15. *Ibid*, Rambam and Ravad.

The Jerusalem Talmud (*Challah* 2:1) comments on this mishnah as follows:

*Fruits from outside Israel:* It states "To the land that I am bringing you to there" (Numbers 15:18). There you are obligated and you are not obligated in the area outside of Israel; this is the opinion of Rabbi Meir. But Rabbi Yehuda states that concerning fruits from outside Israel that come into Israel, Rabbi Eleazer relieves them of the obligation and Rabbi Akiva obligates them. What is the reason for Rabbi Eleazer? The Bible states, "bread of the land" – and not bread from outside Israel. What is the reason for Rabbi Akiva? The Bible states, "To the land that I am bringing you to there." There you are obligated but you are not obligated outside of Israel.

According to Rabbi Akiva, produce that is brought out of Israel is not obligated in *teruma* or *ma'aser*.<sup>16</sup> Nearly all of the decisors accept the opinion of Rabbi Akiva as normative.<sup>17</sup> Based on this Mishnah and Gemara, Rambam states that:

Fruits of Israel that go outside Israel are excused from the obligations of *challah*, *teruma*, and *ma'aser*, since it states "To the land that I am bringing you to there." There you are obligated – outside of Israel you are excused. If the fruits go to Syria, they are obligated [in *challah*, *teruma*,

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16. See *Mareh Panim* on *Challah* 1:1.

17. See Rambam's commentary on the Mishnah, *Challah* 2:1; Bartenura's commentary on the Mishnah, *Challah* 2:1; Rambam, *Teruma* 1:22; *Tur* and *Shulchan Aruch*, quoted *infra*. This ruling is an application of the general talmudic rule that the law is in accordance with Rabbi Akiva when he is in a dispute with one of his colleagues. It is thus surprising that *Sefer Yeraim* rules that one should accept the strictures of both Rabbi Akiva and Rabbi Eleazer; see *Sefer Yeraim* 148 and the explanation of *To'afot Re'am* as to this rule. *Yeraim's* rule has not been accepted.

and *ma'aser*] rabbinically.<sup>18</sup>

Contrary to this ruling is the opinion of Ravad. Commenting on Rambam discussed above, Ravad states:

To me it appears that Rabbi Akiva and Rabbi Eleazer are arguing only about the presence or absence of a biblical obligation. Rabbi Eleazer accepts that the biblical obligation follows the final *location* of the fruit and Rabbi Akiva rules that it follows the *time* when *ma'aser* would become obligatory – which is final processing.<sup>19</sup> But all agree that fruits that leave Israel and are processed outside Israel are obligated rabbinically [in *teruma* and *ma'aser*].

Thus, Ravad rules that after final processing in Israel the fruits are biblically obligated and even fruits that are removed prior to final processing are rabbinically obligated.

Radvaz and *Mishneh Lemelech*, in their commentaries on the same Rambam text, indicate their partial agreement with Ravad and assert that Rambam, too, agrees that fruits that are already obligated in Israel in *teruma* and *ma'aser* cannot have their obligation removed by taking the fruits out of Israel.<sup>20</sup>

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18. Rambam, *Teruma* 1:22 and *Teshuvot HaRambam* 129. For similar comments, see *Tosafot HaRosh*, *Challah* 2:1; *Semag*, Positive Commandment 133; and *Meiri*, *Challah* 2:1. This article will not deal with the special status of Syria in terms of laws limited to the geography of Israel; for a discussion of that issue, see Rambam, *Teruma* 1:2-8.

19. Throughout this article, the term "final processing" will be used as the functional translation for the terms *meruach*, which literally means "smoothing out" and *gemar melacha* which literally means "final work". Both of these terms refer to that activity last done to the fruit before it is ready to be sold. This term will be further discussed at the end of section IV.

20. As noted above, *Beit Yosef* in his commentary does not accept this understanding of the Rambam and clearly indicates that



These authorities argue that the opinion of Rabbi Akiva quoted in the Mishnah which excuses fruits brought out of Israel from *teruma* and *ma'aser* is limited to fruit which leaves Israel prior to the time at which it becomes obligated in *ma'aser* and *teruma*. The logic of these authorities is impressive. Essentially, they argue that it is halachically impossible that a product should be prohibited to be eaten in Israel, but once this same item is physically removed from Israel, it is permissible to eat it. Thus, they argue that the Mishnah must be referring to produce that is removed from Israel prior to the time it is obligated in *teruma* and *ma'aser*. However, as logically impressive as this insight is, it is important to realize that nowhere in the Mishnah, Tosefta, or Jerusalem Talmud – the authoritative sources of these rules – is this limitation found.<sup>21</sup>

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Rambam's opinion is that removal from Israel eliminates the obligation. See, too, *Minchat Chinuch* 284, who also understands Rambam that way and vigorously defends the position of Rambam. An examination of Rabbi Chaim Heller's edition of Rambam's *Sefer Hamitzvot* reinforces *Minchat Chinuch's* understanding of Rambam, in that Rambam clearly limits *teruma* and *ma'aser* to the physical land of Israel in his explanation in the *Sefer Hamitzvot*; see Positive Commandments 126-129. See also *Chidushei Rav Chaim Halevi Soloveitchik al HaRambam, Teruma* 1:22, who also appears to accept this as the approach of the Rambam.

Other *rishonim*, too, appear to adopt the opinion of Ravad; see e.g., comments of *Rash Meshantz* on *Challah* 2:1, whose explanation is contingent on the correctness of Ravad's assertion concerning final processing.

21. This criticism is voiced by Radvaz commenting on *Teruma* 1:22, concerning Ravad's opinion that there is always a rabbinic obligation, but it is just as applicable to Ravad's primary assertion. In addition, one could conceptually reply that just as *teruma* (and *ma'aser*) is a *mitzvah hateluyah ba'aretz* (an obligation connected to the land of Israel) so, too, the prohibition of *tevel* could be an *issur hataluy ba'aretz*, a prohibition connected to the land.

Among commentaries on the Mishnah (*Challah* 2:1), both the opinions of Rambam and Ravad are presented. Rav Ovadia Bartenura in his classical commentary interprets the Mishnah in harmony with Rambam's understanding. *Mishnah Rishonah* adopts the explanation of Radvaz and *Mishneh Lemelech*.<sup>22</sup> Rabbi Akiva Eiger reviews the various opinions without indicating which is in his opinion correct.<sup>23</sup>

However, it is the opinion of Rambam which is quoted almost verbatim by *Tur* (*Yoreh Deah* 331), *Bach*<sup>24</sup> and *Beit Yosef*. *Shulchan Aruch* quotes only the position of Rambam and states:

Fruits of Israel brought out of the Land of Israel are

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22. See also commentary of *Mishnah Rishonah* and *Tosafot Yom Tov* on *Demai* 2:1.

23. Rabbi Leibes, in *Beit Avi* 1:85-86, states that this is an indication that Rabbi Akiva Eiger agreed with the formulation of the halacha as found in *Shulchan Aruch*, which is in accordance with Rambam's understanding.

24. *Bach* explicitly discusses the issue of time of processing and concludes that the halacha is in harmony with Rambam and not Ravad. The relevance of the *Bach* on O.C. 210, which cites the opinion of Rabbenu Yonah (on *Berachot* 32a, *Rif* pages) that this matter is still in doubt, is debatable, since *Bach* resolves this dispute in Y.D. 331. Indeed, there is a significant problem in the text of this Rabbenu Yonah, as noted by *Perisha* (15). *Bach* cites a version of Rabbenu Yonah which makes his insights not relevant to the issue discussed in this article. Even if the text of *Perisha* is correct, one could claim that this case is a case of doubt which *Bach* resolved liberally, since the prohibition involved is rabbinic in nature. The same could be said about the comments of both *Beit Yosef* and Rabbenu Yonah. Indeed, the wording of the *Tur* itself indicates that the ruling discussed in O.C. 210 is dependent on physical presence in Israel and not source of origin. That would make *Tur* O.C. 210 and Y.D. 331 consistent.

exempt from the obligation to take *teruma* and *ma'aser*.<sup>25</sup>

None of the classical commentaries on *Yoreh Deah* (*Shach*, *Taz*<sup>26</sup> or *Gra*<sup>27</sup>) indicate disagreement with the ruling of

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25. Y.D. 331:12. *Levush* (*Yoreh Deah* 331:12) summarizes the rule as follows: Fruits of Israel that leave Israel are excused from *challah*, *teruma* and *ma'aser*, since it says "that which I bring you to there" – there you are obligated and outside Israel you are excused. Even fruits of Israel are excused from being separated since it is obvious that fruits from outside Israel are excused [from *teruma*] since *teruma* is an obligation of the land.

*Levush* clearly understands the nature of the obligation to separate *teruma* as dependent on physical presence in the land of Israel. *Shach* too appears to adopt the formulation of *Levush*; this is particularly noteworthy because he labels produce exported to Israel as biblically requiring separation if final processing occurs in Israel, yet clearly avoids stating that produce that is processed in Israel and then exported needs separation of *teruma*.

Any attempt to explain the position of *Shulchan Aruch* here in light of his comments in Y.D. 331:70 are likely not to succeed, as the words "outside of Israel" found in Y.D. 331:70 most likely refer to those areas immediately surrounding Israel, like Syria, which have their own independent obligation to separate *teruma*.

26. As noted by *Mikveh Mayim* 6:34 on this topic, silence by *Taz* and *Shach* when there is a clear dispute among the *rishonim* can only mean agreement with the position of the *Shulchan Aruch*. This is particularly true given the fact that *Shach* comments on a number of other halachic rules found in that same paragraph.

27. The position of the *Gra* is quite unclear and it might have some relationship to the position taken by *Gra* on the status of "sold produce" and its obligations. *Gra* addresses this issue at great length in his commentary on Y.D. 331 in notes 8, 9, 21 and 29, and this is related to the position taken by *Shach* 331(21-22) whether a product that is rabbinically obligated in *teruma* because of one rabbinic decree is any different from produce that is obligated because of two rabbinic decrees. Both Rabbis Meltzer and Kotler discuss the position of *Gra* at great length, although they reach opposite conclusions as to what his position is on the topic.

*Shulchan Aruch* on this matter. Indeed, Rabbi Karo (the author of the *Shulchan Aruch*) in his commentary on Rambam (*Kesef Mishneh*) clearly defends this ruling as being Rambam's position.<sup>28</sup> However, the *Tzvi LeTzadik*, commenting on *Shulchan Aruch* Y.D. 33:12, disagrees. He states:

This is limited to when final processing occurs outside Israel; however, when final processing occurs in Israel, there is no exemption for [Israeli] fruits found outside of Israel.

So, too, Rabbi Yechiel Michel Epstein, writing in *Aruch Hashulchan He'atid*, agrees with this approach and rules that fully formed fruit must have *teruma* and *ma'aser* taken in order to be eaten even when they are taken out of Israel.<sup>29</sup>

In sum, there are two approaches to this issue. Many authorities, including apparently *Shulchan Aruch* itself, rule that produce, even if obligated in *teruma* and *ma'aser* when in Israel, is excused from the obligation upon removal from Israel. Others disagree and rule that once produce is obligated in *teruma* and *ma'aser*, it is always obligated in *teruma* and *ma'aser*.

### **Modern Analyses: Israeli Apples and Oranges in the Diaspora**

The establishment of the State of Israel with a large Jewish population and the commitment of resources on the part of

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28. See *Kesef Mishneh* on *Teruma* 1:22. It is clear that Rabbi Karo, aware of the critique of Rambam by Ravad, is nonetheless accepting the position of Rambam as normative.

29. *Teruma* 57:2. *Mikveh Mayim* 6:34 attempts to argue that there is a conflict between *Aruch HaShulchan* here and his comments on *Yoreh Deah* 331 and elsewhere. His analysis appears unpersuasive on this point, however.

the Israeli government to agricultural development has made what was previously an issue reserved primarily to theoretical discourse into a practical question of Jewish law.<sup>30</sup> Modern decisors of halacha have fallen into three schools of thought on this issue: some, in accordance with the opinion of the *Tzvi LeTzadik*, rule that there is an obligation to separate *teruma* from fruits of Israel outside of Israel; others accept the opinion of the *Shulchan Aruch* and rule that no separation is needed; finally, some rule that it is better to separate *teruma*, but it is not required according to minimal halacha.

Two very detailed responsa permitting the eating of fruits and vegetables from Israel without separating *teruma* can be found in Rabbi Yitzchak Isaac Leibes' work, *Beit Avi*, and in a *teshuva* by Rabbi Issar Zalman Meltzer. Rabbi Leibes, after reviewing the discussion found in the Gemara, *rishonim*, and *Shulchan Aruch* discussed above, adds a number of factors which indicate to him that it is appropriate to allow the eating of this food without any separation.<sup>31</sup> Initially, he notes that *Shulchan Aruch* rules that there is no obligation to separate *teruma* once it physically leaves Israel. Second, he cites the position of *Maharsham* (1:72) who states that even those authorities who rule that produce grown in Israel requires separation limit their opinion to produce not grown for the sake of export. *Maharsham*, however, rules that produce grown explicitly for export, according to all authorities, need not have *teruma* separated.<sup>32</sup> Additionally,

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30. The Rabbinat of Israel does not typically separate *teruma* from produce designated for export (unless the fruit is clearly marked with a *hashgacha*); see "Separating Teruma and Ma'aser", *supra* note 6, where a letter from the Israel Rabbinat is reproduced indicating that *teruma* is not separated.

31. *Beit Avi* 1:85-86.

32. Such an approach can be implicitly found in *Chatam Sofer*

he notes that according to all authorities (see above) the obligation to separate *teruma* from fruits and vegetables, is only rabbinic nowadays.<sup>33</sup> Thus, based on these multiple doubts, it is permissible, in Rabbi Leibes' opinion, to eat such fruit.

A similar approach can also be found in the works of Rabbi Issar Zalman Meltzer.<sup>34</sup> Rabbi Meltzer initially defends the view of Rambam that it is the final location of the produce which determines the need to separate *teruma* and *ma'aser*. He then discusses the possibility that much of the processing and harvesting of the fruit in fact done by Gentiles, who frequently own the orchards at that point. So, too, he notes that the underlying obligation currently for *teruma* and *ma'aser* is rabbinic only. Finally, he quotes a famous responsum of *Mabit*<sup>35</sup> which states that there are certain circumstances where the Sages of the Talmud imposed a rabbinic obligation to separate *teruma* and *ma'aser* as a fence around the biblical obligation. Since the biblical obligation is

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6:63 as well (see also *Chatam Sofer* 1:128) and *She'elat David* Y.D. 18; it is explicitly argued with by *Achiezer* 4:43.

33. In addition, he asserts that while this produce has the status of being presumptively prohibited (אתרוג איסורא) to which one does not normally rule that doubts in a rabbinic prohibition are not enough to permit it (see *Shach* Y.D. 110:17), such is not the case with fruits and vegetables since this principle is limited to items that have a clear source in a biblical prohibition; see *Avnei Nezer* O.C. 489. Also, he notes that Rambam rules that fruit harvested to be sold anywhere and not to be eaten by its owner is obligated in *teruma* only rabbinically, Rambam *Ma'aser* 2:1.

For a reply to Rabbi Leibes, see *Shraga Hameir* 5:98, by Rabbi Schneebalg of London.

34. Published in *Kerem Tzion*, *Otzar Haterumat* 2:128.

35. Rabbi Moshe Trani (*Mabit*) 2:196.

no longer present generally,<sup>36</sup> one can be permissive of certain rabbinic prohibitions, claims the *Mabit*. In addition, Rabbi Meltzer discusses the possibility that there is no *re'iyat penai habayit* for much of the fruit, which too is a factor to rule permissively, as absent it according to many authorities there can be no biblical obligation to separate *teruma*.<sup>37</sup> Rabbi Meltzer concludes that "I am inclined to say that [fruits that leave Israel] are excused completely from the obligation."<sup>38</sup> Indeed, similar conclusions can be found in a number of other modern authorities<sup>39</sup> such as *Shoneh Halacha* and perhaps in *Mishnah Berurah* also.<sup>40</sup>

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36. See section II.

37. Along with all of the other requirements to be fulfilled before something becomes *tevel* (such as *gemar melacha*) many *rishonim* rule that the produce must be brought to the house; see *Teshuvot Hageonim HaKadmonim* 107; *Teshuvot Rashba* 1:361. See generally *Baba Metzia* 88b. This is even more so an issue in cases where there has been no *gemar melacha*.

38. This responsum was written in response to the responsum of Rabbi Meltzer's son-in-law, Rabbi Aharon Kotler, which is discussed *infra*.

39. *Mishpat Cohen* 46 (accepting position of Maharsham); *Torat HaAretz* p. 128 (combination of factors); *Mikveh Mayim* 6:34 (combination of factors); *Shearim Metzuyanin Behalacha* 173:4 (same); *Responsa Eretz Tzvi* (R. Aryeh Tzvi Frimer) 99 (same); *Tzeida Laderech* 94:2 (same). *Chochmat Adam, Mitzvat Ha'aretz* 1:16 cites two opinions on this matter, with the opinion that there is no obligation the primary one; *Aser Te'aser* 21. It can be implied as well from *Tzitz Eliezer* 5:19 (but see 1:9) and perhaps as well from *Divrei David* 44. See also *Shealat Yavetz* 1:127 who appears to adopt this formulation also.

40. *Sha'ar Hatziun* 649(48), while discussing an *etrog* of *tevel* states that one need not be fearful of this issue outside of Israel since "outside of Israel there is no prohibition of *tevel* at all since there is no *teruma* and *ma'aser* outside of Israel." He makes no distinction based on where the fruit originated, but rather focuses



Rabbi Moshe Malka adds an additional factor. According to many authorities, the obligation to separate *teruma* for produce that is sold does not fully develop until the item comes into the possession of the final purchaser (who intends to eat it).<sup>41</sup> According to this rationale, fruits shipped to America for export (as opposed to fruits purchased in Israel by a tourist and carried out in luggage) is excused from the obligation to separate, since the obligation to separate does not apply to the fruits until they are in the supermarket in America, and are thus excused even according to *Mishneh LeMelech* and Radvaz.<sup>42</sup>

The middle position is taken by Rabbi Yitzchak Weiss in

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on where the *etrog* is now, in accordance with Rambam's view. This approach is even clearer in *Shoneh Halacha* (648:33) who adopts this language verbatim concerning Israeli *etrogim* outside of Israel and starts his discussion of this topic with the words "*Etrog of tevel in Israel*" (as distinct from "*etrog of tevel from Israel*" which is the formulation used, for example, in *Netai Gavreal*, Laws of the Four Species, 36:2). The position of *Shoneh Halacha* is made even clearer by his discussion in the next paragraph concerning *shemita* and *orla etrogim* where he clearly discusses Israeli produce exported. The fact that he feels no need to discuss separating *teruma* for exported Israeli *etrogim* but instead relies on his general statement that there is no need to separate *teruma* outside of Israel – when he discusses the problem of *orla* and *shemita* for exported *etrogim* – indicates that he accepts Rambam's formulation and he understands *Mishnah Berurah* to be agreeing with him. (*Shoneh Halacha* was written to record the practices and decisions of Chazon Ish; see also note 53.)

*Kaf Hachaim* 349(41), on the other hand, indicates that there is a need to separate *teruma* from exported *etrogim* and states that quite clearly in his commentary; it is uncertain if he, too, is basing his analysis on *Mishnah Berurah*.

41. See Rambam, *Masser* 2:3, *Shitah Mekubetzet*, *Bava Metzia* 88a in the name of Ritva, Ramban, and Rashba.

42. See *Mikveh Mayim* 6:34.



*Minchat Yitzchak* 1:84-5. He too reviews the various positions taken by the *rishonim* and *Shulchan Aruch* on this topic,<sup>43</sup> adding the leniencies that no biblical obligation exists when the produce never enters the house of the grower,<sup>44</sup> and the approach of the *Maharsham*, concerning fruit to be exported. However, Rabbi Weiss notes that the *Chazon Ish*<sup>45</sup> clearly disagrees with the opinion of *Maharsham* that fruit grown for export is exempt. In addition, he adds that this produce is an object that can become permissible (*davar sheyaish bo matirim*).<sup>46</sup> Since it can become permissible through the simple act of separation, there is no need to accept a more permissive stance. He concludes that "[the obligation to separate *teruma*] is in doubt and certainly it is best to separate *teruma* and *ma'aser* without a *beracha*."<sup>47</sup>

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43. His initial discussion concerns the general status of the sanctification of the land of Israel.

44. *Shulchan Aruch* 331:83.

45. *Demai* 15:4. For an interesting reply to the discussion of the *Chazon Ish*, see Rabbi Avraham Horowitz, *Kinyan Torah* 2:135.

46. As a general rule, in a case where an item can easily be made permissible through a small time delay or other minor activity, halacha does not apply the normal rules of *bitul*; see *Shulchan Aruch Yoreh Deah* 102 and *Encyclopedia Talmudit* "Davar Sheyaish Bo Matirim" 7:5-29.

47. The position of Rabbi Chaim Ozer Grodzinsky is unclear to this writer and might be similar to *Minchat Yitzchak*'s. In *Achiezer* 2:39 he indicates some acceptance of Rambam's position (see paragraphs 1-3, 9-10, and 16) but he also frequently relies on Ravad and *Mishneh Lemelech*. (It is possible that he understood this dispute to depend on how one resolved the issue of the ability to sell portions of Israeli land to Gentiles nowadays, see par. 16). In *Achiezer* 4:43 a letter is reproduced in which he asks if Israeli oranges (presumably sent to Lithuania) have *teruma* and *ma'aser* separated. The second half of this responsum (after he was told that *teruma* was not taken) contains the following

A number of modern authorities advance a completely contrary rule and require the separation of *teruma* from all produce of the land of Israel. The two primary authorities who adopt this rule are Rabbi Moshe Feinstein and Rabbi Aharon Kotler, although they do so for different reasons. Rabbi Feinstein (in *Iggerot Moshe* Y.D. 3:127) after summarizing the various schools of thought in the *rishonim* and *acharonim*, resolves the dispute as follows:

Nonetheless, as a matter of halacha, all of the *acharonim* accept the novel insight of the Mishneh leMelech concerning fruits that leave Israel after processing [discussed in part II]. Thus all fruits after they are obligated in *teruma* and *ma'aser* [in Israel] must be separated, [otherwise] the prohibition involved is one of *tevel* [unseparated fruit].<sup>48</sup>

Thus, Rabbi Feinstein clearly rules that such fruits and vegetables must have *teruma* and *ma'aser* separated.

Rabbi Aharon Kotler, in a long and detailed letter (*teshuva*)

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phrase: "In truth it is difficult to rely on *Bach* [that no separation is required] since Ravad states explicitly against this ..." So, too, he states that he disagrees with the lenient ruling of *Maharsham* concerning fruits for export. However, in a very enigmatic statement, he appears to exclude from this strict ruling fruit which is not eaten by the one who grew it but was *both* sold and exported, and he ends the letter by stating "certainly one should make an effort to arrange for supervision [to separate *teruma*] at the least for produce sold in Israel," thus indicating a difference between produce exported and produce sold in Israel. This difference might be based on what he states in 2:14(4), concerning the status of fruit that is sold, and the position of Ramban, Ravad, and Ran; see generally Rambam *Ma'aser* 2:1-2 and commentaries *ad locum*, and his deference to the opinions of *Chatam Sofer* and *She'elat David*, cited in note 32, which accept this approach.

48. It is worth noting that Rabbi Feinstein clearly acknowledges that his position is not the position of *Shulchan Aruch*, which he understands to accept the ruling of Rambam.

to his father-in-law Rabbi Issar Zalman Meltzer (whose opinion is discussed above), essentially adopts the same position as Rabbi Feinstein.<sup>49</sup> He makes the following arguments:

1] Cases of doubt whether to separate *teruma* and *ma'aser* are to be resolved in favor of separation, for that was the decree of the Sages concerning *demai*.<sup>50</sup>

2] There is a dispute among the *rishonim* and *acharonim* concerning fruits that leave Israel after processing or fruits grown to be sold; however, he states that it is unclear what Rambam's position is, and Ravad clearly is strict on this matter.<sup>51</sup>

Thus he concludes that fruits that were fully obligated to have *teruma* and *ma'aser* separated from them in Israel must have it done in America. On the other hand, he agrees that it is possible that fruits that were never obligated in *teruma* and *ma'aser* at the time that they left Israel<sup>52</sup> might not, in fact, become obligated outside of Israel. Similar views can be

49. *Mishnat Rav Aharon* 1:40. See also *Chelkat Ya'akov* 2:78.

50. *Demai* is that produce which comes from people who perhaps separate *teruma* and perhaps do not.

51. Since both Radvaz and *Mishneh Lemelech* interpret Rambam too as being limited to fruit removed prior to final processing; see section III.

52. This occurs on a halachic level when there is *ראיית פניו* (literally: seeing of the house) in Israel or when there is no *gemar melacha*. Produce is only obligated to be separated according to biblical mandate after certain events happen, such as *gemar melacha* and, according to some, *re'iyat penai habayit* and, according to some, both; see *Respona Rashba* 1:361. For a list of the events which rabbinically obligate one to separate *teruma*, see *Shulchan Aruch* 331:83; see also note 37.

found in the works of other authorities.<sup>53</sup>

Two other sets of factors perhaps incline one to be lenient in this matter. Rabbi Ovadia Yosef and others are quoted<sup>54</sup> as permitting the eating of fruit purchased in the market *even in Israel* without separating *teruma*, based on the presence of three factual doubts that are of halachic significance:

1] Maybe the produce came from an area of Israel (like Eilat) not obligated in *teruma*;<sup>55</sup>

2] Maybe the produce was grown by a Gentile, and thus not obligated in *teruma*;

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53. See e.g. Rabbi Y.M. Tukachinsky, *Kitzur Dinai Eretz Yisrael* 40:12 (reprinted in many versions of the *Kitzur Shulchan Aruch*) *Hama'aser Vehaterumot* 3:16 (particularly n. 27 and 31) (same) and *Chazon Ish*, *Demai* § 15:4 and *Shevi'it* 2:2, who notes that the custom is to be strict on this matter; but see *Chazon Ish*, *Demai* § 5:3 who indicates that one perhaps could be permissive, and *Shoneh Halacha* cited in note 40; *Kaf HaChaim* 649(40) also indicates that he accepts this view; see note 41. See note 59 for a discussion of the view of Rabbi Menashe Klein.

*Kinyan Torah* 2:135 advances a lengthy explanation of the grounds to be lenient on this matter, but concludes "who is great enough to act contrary to the giant of our generation, the Chazon Ish, and it is the custom of *Charedi* communities to separate *teruma*... all that I have written should only be a *limud zechut* on those who are not careful..."

To the extent that there is a custom, it appears to this author that the common custom is to separate *teruma* for Israeli produce brought to America; see *Shraga Hameir* 5:98 who notes that this is the custom.

54. See generally R. Aharon Zakai, *Habayit Hayehudi* 1:76(6) in the name of Rabbi Yosef; see also *Yabia Omer* 6:24 and *Yaskil Avdi* 8:8(5).

55. For a discussion of the precise halachic boundaries of Israel, see *Encyclopedia Talmudit* "Eretz Yisrael" 2:199, particularly the map between pages 208 and 209.

3] Maybe the local rabbinate already took *teruma* (even though they normally do not).

In addition, for canned fruit or fruit brought to market around *shemita* year, the possibility exists that the fruit was produced in the sabbatical year with the sanctity of *shemita* fruit and is thus exempt.<sup>56</sup> These rationales apply even more strongly to fruit sold in America whose precise origin in Israel is completely unverifiable.

A second significant factual issue is present also. Discussion with various agricultural specialists indicates that frequently Israeli fruits and vegetables that are to be sold in America are typically picked and packed in Israel absolutely unripe (e.g., the tomatoes, bananas and persimmons are harvested completely green or inedible) with the expectation that they will ripen in transit prior to their being sold in America.<sup>57</sup> In situations where that is true, even those authorities who normally require that *teruma* be taken from Israeli produce in America, would most likely rule permissively, as these authorities focus on when *gemar melacha* – final processing – occurs, and a strong case can be made that final processing can never occur according to halacha before the fruit or vegetable is edible.<sup>58</sup> Thus, the

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56. However, it is important to note that vegetables (and perhaps fruit) grown in reliance on the *heter mechira*, but harvested by Jews, is obligated in *teruma* and *ma'aser*; see *Shulchan Aruch* Y.D. 331:19 and Rabbi Chaim David Halevi, *Mekor Chaim* 5:276(21). For a discussion of the propriety of the *heter mechira*, see Rabbi Yitzchok Gottlieb, "Understanding the *Heter Mechira*" *Journal of Halacha and Contemporary Society*, 26, (1993).

57. This factual possibility was first suggested to me by Dr. David Blumenthal at Congregation Beth Jacob in Atlanta.

58. See Rambam *Ma'aser* 2:3-4 where he states (without dispute) that unripe fruit is not obligated in *teruma* and *ma'aser* and may

location of the final processing would most likely be on a ship outside the boundaries of Israel. According to nearly all authorities, there would be no obligation then to separate *teruma* since *gemar melacha* (final processing) did not occur in Israel.<sup>59</sup>

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be eaten without first being separated for *teruma*. See *Encyclopedia Talmudit* "Gemar Melacha" 6:173-199 for a discussion of what constitutes *gemar melacha* for various produce.

Rabbi Eliezer Waldenburg uses this rationale as one factor concerning the obligation to take *teruma* and *ma'aser* from coffee beans and cocoa, which are inedible, he states, until processing; *Tzitz Eliezer* 5:19. The issue in dispute concerns the time when bitter olives are obligated in *teruma* and *ma'aser*. Radvaz is quoted as ruling that the time of *gemar melacha* is when these olives are pickled or salted, which makes them edible; *Pe'at HaShulchan* rules that since at completion of harvest these olives are naturally bitter, harvest is the time of *gemar melacha*; see *Pe'at HaShulchan Ma'aser Ani* 13. As noted by Rabbi Tzvi Pesach Frank (see *Yerechon* 5634:16) the halacha is in accordance with *Pe'at HaShulchan*. However, in the case of fruits picked prior to ripening, even the second view would admit that there is no obligation to separate *teruma* and *ma'aser* as the fruit is not in its natural form or edible.

A related issue is the presence or absence of *re'iy'at penai habayit*, without which according to many *rishonim* there is never a biblical obligation to separate.

59. It would only be the position of the Ravad that such fruits need separation rabbinically. Neither Radvaz, nor *Mishneh LeMelech* nor *Shulchan Aruch* supports that view. This author has found only one work which indicates that such a position need be followed – *Kerem Tzion Halachot Pasukot* 25:1 (some say). Rabbi Padwa, in *Chashev Haefod* 2:19, indicates that the custom to be strict about this issues is out of deference to the opinion of Ravad.

Rabbi Menashe Klein (*Mishneh Halachot Tanina* 2:238) accepts the view of *Mishneh Lemelech* and states that one must separate *teruma*. However, he adds that that is only true if their status as *tevel* is certain; if however there is even one doubt as to whether the fruits are obligated, the fruit becomes permissible as it is a

## Conclusion

This article started with a discussion of the basis for the obligation to separate *teruma* currently and concluded that the obligation even in Israel is rabbinic in nature for all fruits and vegetables. We then noted a dispute among the *rishonim*, early *acharonim*, and modern commentators as to whether one has to separate *teruma* and *ma'aser* from such produce once it leaves Israel. Finally, we have discussed various factual scenarios where one is uncertain if *teruma* and *ma'aser* need be taken. A practical conclusion can be suggested:

1] One who carries unseparated produce (*tevel*) directly out of Israel proper, and thus knows that the produce comes from a Jewish farmer in halachic Israel, should separate *teruma* and *ma'aser*, since many authorities rule that to be rabbinically required, and that is the custom.<sup>60</sup> However, one should do so without a *beracha*, since numerous authorities rule that fruits and vegetables – even once obligated in *teruma* and *ma'aser* in Israel – lose that obligation upon leaving the boundaries of Israel proper.<sup>61</sup>

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case of doubt on a rabbinic prohibition. Thus, on a practical level, in this author's opinion he would rule that there is no obligation in America.

60. See *Iggerot Moshe* Y.D. 3:127. In most cities in Israel produce sold in the supermarket has already had *teruma* separated by rabbinical authorities in Israel. While there are some authorities who reject certain halachic liberalities used by the Israeli rabbinate in separating *teruma* in Israel, in this author's opinion, certainly it is appropriate to rely on that separation in America, where the need to separate is in doubt.

61. See *Minchat Yitzchak* 1:84-85. Rabbi Moshe Sternbuch, after accepting that one needs to separate *teruma* in this case, states that this is done without a blessing, as the matter is in halachic doubt; *Teshuvot Vehanhagot* 1:668 (revised edition). But see R.



2] One who encounters fruits or vegetables sold in the United States as a "product of Israel", with no other information given as to its origins or its rabbinic supervision, need not separate *teruma* and *ma'aser*.<sup>62</sup> This is so, based on the presence of numerous halachic and factual doubts as to the obligation to separate *teruma* outside of Israel. They are as follows:

- (a) Many authorities, cited above, rule as a matter of halacha that outside Israel one never needs to separate *teruma*;
- (b) Rabbi Ovadia Yosef's factual analysis rules that one need not separate *teruma* from fruit purchased in the market even in Israel, since the fruit might come from Gentile farmers or areas outside halachic Israel that are part of Israel's political boundaries;
- (c) According to some authorities, fruits produced exclusively for export do not need to have *teruma* separated from them.

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Aharon Zakai, *HaBayit HaYehudi* 8:2 (21) where he indicates this as only a possible approach.

62. This author does not consider himself qualified to resolve a dispute which has split the giants of this century (Rabbi Feinstein and Kotler on one side and Rabbis Braun, Kook, Leibes, and Meltzer on the other). However, in this case, Rabbi Kotler's responsa clearly indicate that were *gemar melacha* to take place outside of Israel, he too would consider ruling permissively (and such appears to be the case factually now). Rabbi Feinstein's responsum simply does not address any of the numerous factual doubts present in these types of cases or discuss the possibility that fruits produced for export need not have *teruma* separated at all (in accordance with *Maharsham* discussed above). One suspects that Rabbi Feinstein's responsum was discussing the situation addressed in "case one" of the conclusion, concerning a person who takes oranges from a kibbutz in Israel and then brings them to America by hand.



- (d) The fruits might have left Israel prior to ripening and thus *gemar melacha* occurred outside Israel;
- (e) The produce might already have had *teruma* separated by Israeli rabbis;
- (f) For the year 5754 (1993-1994) there might be no obligation because it is a *shemita* year;<sup>63</sup>

Particularly since fruits and vegetables are currently obligated in *teruma* and *ma'aser* only rabbinically, even in Israel proper, the presence of these many factors is enough to eliminate completely the obligation outside of Israel. One who wishes to be strict in this matter and separate *teruma* and *ma'aser* without a blessing should do so (תע"ב המזמיר).<sup>64</sup>

This is a case of multiple factual and halachic doubts concerning a rabbinic prohibition, and thus it is proper to rule permissively according to halacha.<sup>65</sup>

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63. It is important to note that not each of these doubts is present in every fruit each year. Thus, for example, few citrons (*etrogim*) are harvested from Gentile orchards; but in the case of citrons the rabbinical authorities try very hard to separate *teruma* before shipping. On the other hand, few tomatoes have *teruma* separated from them; but they are shipped typically green and inedible and frequently come from Gentile farmers and territories outside halachic Israel. The same is true for Israeli persimmons. Oranges are quite frequently harvested and processed by Gentiles, and there are groves outside halachic Israel; typically they are shipped slightly immature; in addition, rabbis in Israel sometimes do separate *teruma* from oranges. Indeed, these conditions can change from year to year and factual information always requires updating.

64. Although to do so on vegetables, which are always inedible when shipped out of Israel, seems unnecessary.

65. See *Shearim Metzuyanim Behalacha* 173:4 where such a combination of rationales is explicitly found; see also *Responsa Eretz Tzvi* (R. Aryeh Tzvi Frimer) 99 who does the same; see also

3] Produce which is sometimes a product of Israel and sometimes not and whose point of origin cannot be easily determined (such as canned grapefruit sections which are now sometimes a product of Israel when sold in America)<sup>66</sup> certainly need not have *teruma* separated, as all of the leniencies of point two are applicable, as well as a final leniency – it is quite likely that the produce is not even a product of Israel. In this case there is no need at all to be strict on this matter.<sup>67</sup>

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*Tzeda Laderech* 94:2 for a similar conclusion. Indeed, there is an underlying dispute as to precisely how many uncertainties need to be present to permit food when *teruma* and *ma'aser* is concerned. Some understand one doubt to be sufficient (see comments of Rabbis I.Z. Meltzer and M. Klein); some rule two doubts need be present (see comments of Rabbi Aharon Kotler); and some rule three doubts must be present (see comments of *Gedulei Tzion* 151(3)). The reason that more factors inclining one towards leniency need be present in the case of *teruma* is that the Sages explicitly decreed that doubtful *teruma* (*demai*) must be separated. However, as demonstrated by Rabbi Ovadia Yosef in *Yabia Omer* 6:28, that principle clearly has its limitations and most likely is not applicable at all to a case of doubt as to the presence of an obligation to separate, rather than factual doubt as to whether a person actually did separate.

66. See "Separating Terumah and Ma'aser," *supra* note 6, where this is recounted.

67. So, too, when one is eating in the house of one who does not separate *teruma* – even if one's personal practice is to separate – it is inappropriate to publicly separate *teruma* if it will embarrass the host. This is even more true when one simply does not know for certain the person's personal practice. In addition, there are many circumstances where one can eat a small snack of fruit that should need separation without separating *teruma*; this is called the permissibility of eating *אכילת עראי*, see *Shulchan Aruch* Y.D. 331:83. One who wishes to separate *teruma* in a context where visibly doing so might embarrass a person should be aware that there is a procedure for eating most of the produce, leaving a

small amount over, and separating *teruma* from that piece later. This is explicitly permitted for *challah* in the diaspora; see Y.D. 323:11 and is implied by the *Derisha* Y.D. 331 (13) to be permissible for *teruma* also.

On the other hand, a person who knows another to be strict on this matter should not feed that person this fruit without first informing him of its status, as it is improper to feed a person a food which he thinks is prohibited whether or not the "true" halacha reflects that prohibition; see Broyde and Hertzberg, "Enabling Another to Sin", *Journal of Halacha and Contemporary Society* 19:5 section IV:C (1988).