Peah, Chapter 1

Tractate Peah, Chapter 1

Tosefta 1

[These are the] things that do not have a fixed measurement [by Torah law]:
- the Peah (corners of the field),
- the Bikkurim (first fruits),
- the sacrifices of Reiyah (showing up in the Temple on three pilgrimage holidays),
- deeds of loving kindness,
- and the study of Torah.

The Peah has a minimum measurement, but does not have a maximum measurement [by Rabbinical decree]. [If a person] makes his whole field into Peah, it is not [considered to be] Peah.

Notes:

1. Mishna Peah 1:1 lists five things that do not have a fixed measure by Torah law. This Tosefta repeats that list and adds some details regarding the fixed measure of Peah.

2. Meaning that according to the Torah a person can do as little as he wants or as much as he wants of these things, as long as he does them.

3. The Torah commands that a person must leave the corners of his field not harvested so that the poor can collect the produce from them instead. See Vayikra 19:9 and 23:22. However the Torah does not specify how much produce should be left on each corner. It is up to the discretion of every field owner to decide how much to leave. As the Tosefta comments further, the Rabbis have proscribed a minimum amount for Peah.
4. The Torah commands that a person must bring as a gift to God the first fruits of the harvest from his fields. See Shemot 23:19 and Devarim 26:1-11. This commandment applies to the seven fruits for which the Land of Israel is blessed: wheat, barley, grapes, figs, dates and pomegranates. See Mishna Bikkurim 1:3. The first ripened fruits were gathered right before the holiday of Shavuot and brought to the Bet Hamikdash (the Temple) on Shavuot where a procedure of waiving was done with them, although technically they could be brought all the way until Sukkot. See Mishna Bikkurim 1:10. The Torah does not prescribe how many fruits of each kind had to be brought. By Torah law the person could bring as few as one of each kind or as many as he wanted to. However the Rabbis have proscribed for the Bikkurim a minimum amount of 1/60th of the total produce of each type of fruit. See Talmud Yerushalmi (Bikkurim 3:1, Daf 10b).

5. The Torah commands that all Jewish men had to appear in the Bet Hamikdash three times a year on the pilgrimage holidays of Pesach, Shavuot and Sukkot and bring some kind of a gift to God. See Devarim 16:16-17. The “gift” consisted of two sacrifices, called Olat Reiyah – The Fiery Offering of Showing Up, and Shalmei Chagigah – The Peace Offerings of Celebration. See Tosefta Chagigah 1:6. According to the Torah law the person could walk into the courtyard of the Bet Hamikdash even for one second and fulfill his obligation of showing up. Also he could bring as little or as many of these sacrifices as he wanted to and pay for them as little as he wanted to or as much as he wanted to. However the Rabbis have proscribed for them a minimum amount of money that a person should spend on each type of sacrifice. See Mishna Chagigah 1:2 for various opinions on these values.

6. There is no explicit commandment in the Torah to perform deeds of loving kindness. However the Torah implies such a commandment by general statements or by giving other specific commandments which in themselves are deeds of loving kindness. For example, the Torah commands that you should love another Jew as yourself. See Vayikra 19:18. This implies that a person is obligated to perform various deeds of kindness to others in the same way he would like others to perform similar deeds towards himself. Also, the Torah commands to give
charity and help the poor, which is a deed of loving kindness. See Devarim 15:11. Talmud Yerushalmi (Peah 1:1, Daf 2b) clarifies that although for deeds of loving kindness that a person does with his body, such as visiting the sick, the Rabbis have not proscribed a minimum amount, for charity since it is performed with money the Rabbis proscribed a minimum and a maximum amount. The minimum being either $1/100^{th}$ (like Terumat Maaser) or $1/50^{th}$ (like Terumah Gedolah) of the person’s wealth and the maximum being $1/5^{th}$ of his wealth.

7. The main commandment of studying Torah is not written in the Torah itself, but rather in the book of Yehoshua (1:8) where God commands Yehoshua to study Torah day and night. The Rabbis have always treated this commandment as a Torah obligation although it is not written in the Torah itself. The Torah did not prescribe how much Torah should a person study per day or even if it should be studied every single day. God’s commandment to Yehoshua of studying it day and night is not to be taken literally. It simply means that people should study the Torah a lot. However the Rabbis in ancient times already have set minimum amounts for Torah study. Either Moshe himself or Ezra instituted that the Torah should be publicly read every three days, on Mondays, Thursday, and on Shabbat. See Talmud Bavli (Bava Kama 82a).

8. Mishna Peah 1:2 specifies that the Rabbis have instituted the minimum amount for Peah to be $1/60^{th}$ of the person’s field, unless his field is really small in which case $1/60^{th}$ would be a useless amount, so he should add to it accordingly so it would be useful for the poor to take. There is no specification how much produce should be allocated in each specific corner of the field. Rather the four corners together should add up to $1/60^{th}$.

9. The Tosefta clarifies that even though a person can leave as much produce as he wants for Peah he cannot designate his whole field to be Peah without harvesting anything. The reason is explained by Talmud Yerushalmi (Peah 1:1, Daf 1a) that a person is only obligated to give Peah by Torah law after he begins harvesting his field, since the Torah explicitly says (Vayikra 23:22) that Peah should be given during
the harvest. Therefore if he did not harvest anything from his field, not even one stock, then the obligation of Peah did not start. Therefore he must harvest at least one stock from his field in order to make the rest of it Peah. It should be noted that Talmud Bavli (Nedarim 6b) quotes a different Beraita that seems to be arguing on this Tosefta and says that a person can designate his whole field to be Peah, based on a different derivation from a verse in the Torah. It is also important to note, that rabbinically the person is obligated to give Peah in the end of the harvest, after he finished harvesting the field and not in the beginning of the harvest, as will be explained later in Tosefta 1:5.

Tractate Peah, Chapter 1

Tosefta 2

For these [evil] things they collect interest from the person in this world and the principal (i.e. main punishment) remains for the World to Come: for idol worship, for illicit sexual relations, and for murder. And for gossip [the damage and punishment are] equivalent to them all.

Notes:

1. Mishna Peah 1:1 listed three good things that a person can do in this world for which he receives physical benefit during his lifetime and in addition great reward in the Afterlife. The Mishna added that the reward for learning Torah is equivalent to the other three good things combined. This Tosefta states a similar list, but of evil deeds that a person can do for which cause great damage to his life in this world and will ensure great punishment in the World to Come.

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2. “They” in this case does not refer to anyone in particular, not even to God. It is used as “the big they”.
3. The Hebrew word פרע means to collect debts or interest. In this case it means that the person causes damage to his own life by performing these evil deeds and causes his own ruin.

4. Illicit relations refer to any type of forbidden sexual relations, such as incest, bestiality and homosexual intercourse, but most commonly it refers to sleeping with another person’s spouse.

5. Obviously the Tosefta uses the juxtaposition of gossip opposite the three most severe sins in Judaism, in the case of which a person if forced to do them by someone else must chose to be killed instead (see Talmud Bavli Sanhedrin 74a), in order to emphasize the severity of gossip. It does not literally mean that gossip is so evil that a person must chose to be killed if he is forced by another person to speak gossip about someone.

Tractate Peah, Chapter 1

Tosefta 3

A merit (i.e. a good deed) has principal (i.e. immediate benefit) and it has fruit (i.e. future benefit to the person who performed it), as it is said, “They say about the righteous man that it is good for him, that they will eat the fruit of their deeds.” (Yeshayahu 3:10) A transgression has principal (i.e. immediate damage to the person who committed it), but does not have fruit (i.e. future damage), as it is said, “Woe to the wicked man, it is bad for him. The product of his hands will be done to him.” (Yeshayahu 3:11) If so how is it true [when it says the following:] “And they will eat the fruit of their ways and will be full of their own schemes?” (Mishle 1:31) [But rather,] a
transgression that makes fruit (i.e. bad consequences in the future) has fruit (i.e. causes future damage to the person), [but a transgression] that does not make fruit (i.e. bad consequences in the future) does not have fruit (i.e. future damage to the person who committed it).7

Notes:

1. The Tosefta continues on a similar subject as the previous Tosefta. It is not related to any Mishna.

2. Most commentators on the Tosefta think that fruit and principal are references to this world and the Afterlife. However they argue which one refers to which, because it is not clear from the context. For various opinions see Tosefta Kifshuta and Higayon Aryeh. However, I have chosen not to explain it that way. I think that it is referring to immediate benefit and future benefit in this world for the person who performed the good deed. If a person helps someone at the least it makes him feel good right away, which is an immediate benefit. And the person whom he helped today may help him in return tomorrow, which would be a future benefit.

3. The verse is taken literally in this case. The verse says that it is good for the righteous in the present tense, referring to immediate benefit, and then it says in the future tense that the righteous will eat the fruit of their deeds, referring to future benefit.

4. On a similar note a person who commits a bad act causes damage to himself by committing it. The damage can be emotional that a person feels bad about what he did, or it could be physical that he may be searched for by others for committing his crime. However, as long as he does not get caught, his transgression will not cause him anymore grief in the future in this world. Obviously in the Afterlife God will punish him, but as I already mentioned above in note 2, this Tosefta is not talking about Afterlife.
5. This verse as well is interpreted literally as the previous verse. It says that it is bad for the evil person in the present tense, meaning that he causes immediate damage to himself by performing the transgression. However the second half of the verse seems to be in contradiction with the Tosefta’s explanation. It says that an evil person will reap the product of his hands, meaning that he will get punished in the future (i.e. his evil deed will cause him future damage). However the Tosefta says that a transgression does not have fruit, which is not what the verse implies.

6. The verse in Mishlei clearly says that evil people will reap their own fruit, meaning that they will get future damage. So it is in contradiction with the Tosefta’s previous statement that evil deeds do not have fruit. The question is very puzzling to me, since the previous verse from Yeshayahu said the same thing, although the Tosefta chose to ignore that.

7. The Tosefta resolves the question by clarifying that transgressions that have future consequences cause future damage where is transgressions that do not have future consequences do not cause future damage. A good example of this may be if a man cheated on his wife with another married woman. His act has major future consequences, because it will probably result in divorce, a custody battle over children and possibly a ruination of his mistress’ family as well. However, if a person steals a candy bar from a supermarket, as long as he does not get caught most probably nothing will neither happen to him nor to the supermarket. As I already explained, since the Tosefta is not talking about punishment from God the question of why bad things happen to good people and good things to bad people does not come into play here. All the Tosefta is talking about is natural consequences of a person’s actions.
A good thought is smelted\(^2\) by God into an action (i.e. God makes sure to turn it into an action). A bad thought is not smelted by God into an action (i.e. God makes sure that it does not become an action), as it is said, “Had I considered iniquity in my heart, the Lord would not have listened.” (Tehillim 66:18)\(^3\) If so how is it true [when it says the following:] “Hear Earth, I bring evil to this nation, the fruit of their thoughts ...”? (Yirmiyahu 6:19)\(^4\) But rather, [it should be stated as follows:] a good thought is combined by God with an action (i.e. God counts it as if it was done, even though it was not) and not a good [thought] is not combined by God with an action (i.e. God does not count it as if it was done).\(^5\)

Notes:

1. The Tosefta continues on a similar subject as the previous Tosefta. It is not related to any Mishna.

2. The Hebrew word צָרַף has two different meanings. It can mean to “smelt metal” or it can mean to “combine”. In the original statement of the Tosefta it makes more sense to translate it to smelt, because the Tosefta means to say that even though the person only had a thought God will make sure that it will become a real deed in the future. However in the final statement of the Tosefta not only changed the intent of the statement, but also the meaning of the word, which now means to combine, meaning that God counts a thought is if it was an action, even though in reality it was never implemented.
3. The verse in Tehillim is taken literally in this case, that if King David would have thought to do something evil God would not have listened to his plea.

4. The verse in Yirmiyahu is taken somewhat out of context since in the end of the verse which is omitted in the Tosefta God specifically addresses the Jewish people who He says performed evil deeds. However the Tosefta interprets this verse to be talking about people’s thoughts in general and about a particular people. It seems to me that the Tosefta’s question is really a philosophical question and this verse is simply brought as an Asmachta (a reference from the Tanach for a Rabbinical law). The question that bothers the Tosefta is that from the initial statement it would seem that whenever people have evil thoughts those thoughts should never become a reality, because God would make sure that it does not happen. However in the real world we see that people commit evil deeds all the time and clearly God does not prevent them from doing so, in which case the Tosefta’s original statement is simply not true.

5. Due to this philosophical problem the Tosefta changes its statement. Now it means to say that when a person has a good thought even if the person has never implemented it into a good deed God counts it as if he did and will reward the person accordingly. However if a person had an evil thought, but he never implemented it into an evil deed, then God simply ignores it and does not punish him for it. Talmud Yerushalmi (Peah 1:1, Daf 5a) interprets the Tosefta’s final intent in this manner. The wording of the Tosefta’s last statement that I have quoted above is from the Erfurt manuscript. However in the Vienna manuscript it is different. There the Tosefta says as following:

But rather, [it should be stated as follows:] a thought that has fruit is combined by God with an action and a [thought] that does not have fruit is not combined by God with an action.
Talmud Bavli (Kiddushin 40a) quotes this Tosefta, and although in the printed version of the Gemara the text reads as in the Erfurt manuscript, the Munchen manuscript of Talmud Bavli and Rashi (Kiddushin 40a, Machshava Sheosah Peirot, Metzarfah Lemaaseh) have the same reading in the Gemara as in the Vienna manuscript of this Tosefta. Rashi interprets it to mean that if a person took his thought and implemented it into a deed then God counts the thought on the same level as the deed and therefore if the thought and the deed were good then the person gets double the reward and if the thought and the deed were evil then the person gets double the punishment. However if the person never implemented his thought into a deed then God does not reward him at all if it was good and does not punish him at all if it was evil. I personally prefer the reading in the Tosefta according to the Erfurt manuscript since it flows better in the context from the Tosefta’s original statement.

Tractate Peah, Chapter 1

Tosefta 5

A person gives Peah (corners of the field) from the beginning of the field, and in the middle [of the field], and in the end [of the field]. But if he gave either [only] in the beginning [of the field], or [only] in the middle [of the field], or [only] in the end [of the field], he has fulfilled his obligation [of giving Peah to the poor]. Rebbi Shimon says, “If he gave either [only] in the beginning [of the field], or [only] in the middle [of the field], or [only] in the end [of the field] it is considered to be Peah, but he [still] needs to give the proper amount [of Peah] in the end [of the field].” Rebbi Yehuda says, “If he left [at least] one stalk [in the end of the field] he can...
add to it [from other parts of the field to make up the minimum amount and] it counts for him as Peah. But if [he did] not [leave even one stalk at the end of the field] he only gives [what he left in the beginning and the middle of the field [to the poor] as ownerless [produce, but not as Peah].” Rebbi Yehuda said, “When do we say this [that he can add the produce in the end of the field to the produce left in other parts of the field and all of it counts as Peah]? At the time that he [actually] gave Peah [by leaving at least one stock in the end of the field] and then he wants to add [to it more produce from other parts of the field].”

Notes:

1. Mishna Peah 1:3 mentions an argument between the Tanna Kama, Rebbi Shimon and Rebbi Yehuda about which parts of the field qualify as Peah. This Tosefta mentions the same argument with some additional clarifications.

2. The Tosefta says explicitly that when it says beginning, middle and end it is referring to the locations of produce inside the field. However the Beraita in the Sifra (Kedoshim, Parshitta 1, Perek 1) says the same law as our Tosefta without the word “field” in it. Based on the text in the Sifra, Saul Lieberman in his commentary Tosefta Kifshuta (on this Tosefta), claims that some Rishonim (medieval authorities) explain that it is referring to the time of the harvest (i.e. beginning of the harvest, middle of the harvest and end of the harvest) and not to the physical location of the produce in the field. See Rashi (Shabbat 23a, Lesof Sadehu) and Rabbeinu Hillel (Sifra, Kedoshim, Parshitta 1, Perek 1, Daf 40a, Veein Peah Ela Lebesof). However it seems to me that that is not the intent of these Rishonim, but rather they learn the Sifra in
the same manner as this Tosefta as I will explain further. From the Tosefta it is clear that that is not the meaning of this law and that it is referring to the location of the left produce in the field, because the Tosefta says the word “field”. In fact, most other Rishonim learn it to mean exactly that. See Rambam and Rash Mishantz on Mishna Peah 1:3. According to this explanation it is a little difficult to understand what is meant by “the beginning of the field”, since fields do not really have a beginning and an end, but rather the center and the edges. Talmud Yerushalmi (Peah 1:3, Daf 6a) implies that these three locations are relative to where the person began harvesting his field and they do not refer to constant points in the field. So the beginning of the field means the place in the field where the person began harvesting the crops, the middle of the field refers to the spot where he has harvested half of the crops and the other half still remains, and the end of the field refers to the spot where the last of the crops have remained after the rest of the field has been already harvested. This explanation is preferred by Rash Sirillio in his commentary on the Yerushalmi. The Ralbag in his commentary on the Torah (Vayikra 19:9) explains this logic of the Yerushalmi as follows. He says that the Torah does not care where the person started and ended harvesting his field. He could have started harvesting it from a corner in a spiral circle and the last patch of produce that remained from the harvest ended up smack in the center of the field, which is the location of the field which is most difficult to access. Still the Torah prefers this last remaining produce to be Peah despite the difficulty of access to it. The Torah does not care how hard it is for the poor people to get to the left produce as long as they can get to it. All the Torah is concerned with is that the farmer leaves the last of his produce for the poor. The Torah did not want the farmer to feel that his top priority is taking care of the poor and not of himself; therefore he is only required to leave the last of his harvested produce and not the first of it. In fact Tosefta 1:7 points out four reasons why the Torah preferred that Peah should be left in end of the harvest path. Physical accessibility to the produce is not one of those reasons. Therefore Rashi and Rabbeinu Hillel that are mentioned by Lieberman mention the beginning of the harvest not because they were talking about the time of the harvest season, but
rather the location of the produce in the field where the farmer began harvesting it.

3. This first statement of the Tosefta teaches us that a person can give Peah in the same field in many different locations simultaneously. He can leave some Peah in the beginning of the field, where he began harvesting, then leave some more in the middle, after he harvested half of the field, and the leave some more in the end where he finished harvesting the field.

4. The second statement of the Tosefta clarifies that even if the person left Peah only in one location in the field he has fulfilled his obligation of giving Peah regardless where that locations happens to be and he does not have to give any additional produce in the end of the field. The Tanna Kama (the first anonymous opinion) holds that not only by Rabbinical law, but even by Torah law there is no specific location in the field where the person must leave Peah. Therefore regardless where he left Peah he has fulfilled his obligation both according to the Torah and according to the Rabbis.

5. See above Tosefta 1:1, note 8. Rebbi Shimon holds that the whole amount required by the Rabbis – 1/60th of the produce of that field must be located in the end of the field and not in some other location.

6. Rebbi Shimon argues on the Tanna Kama and says that both by Torah law and by Rabbinical law he must give Peah in the end of the field (i.e. where he finished harvesting) and if he did not do so he did not fulfill the obligation of giving Peah. Therefore the whole amount required by the Rabbis must be located in the end of the field. However the person is allowed to add to the basic amount of Peah required by the Rabbis (1/60th) additional crops. These additional crops can be located anywhere in the field, even in the beginning or in the middle relative to where he began harvesting, and they are considered to be Peah, as opposed to just Hefker – ownerless produce. The difference is that Peah can only be collected by the poor, where as ownerless produce can be taken by anyone, even the rich.

7. Rebbi Yehuda’s opinion is in between the Tanna Kama’s and Rebbi Shimon’s. Rebbi Yehuda holds that by Torah law the person must
leave Peah in the end of the field (i.e. where he finished harvesting), however that applies only to the minimum amount required by the Torah, which is a single stock. The rest of it up to 1/60th is only required rabbinically and the Rabbis did not require Peah to be left in the end of the field, but rather anywhere in the field. Therefore as long as the farmer left one stock in the end of the field he has fulfilled the Torah obligation and now he can leave the rest of it up to 1/60th in any location. However if he did not leave anything in the end of the field then he did not fulfill his Torah obligation of giving Peah and it is impossible to fulfill the Rabbinical obligation without fulfilling the Torah obligation first. Therefore none of the produce left counts as Peah, but rather as ownerless produce, which can be taken by either poor or rich. Obviously if the person wants to leave additional produce beyond 1/60th for Peah he can do so and it will also be considered to be Peah and not just ownerless produce, but only as long as the minimum requirements of Torah and Rabbinical law have been fulfilled.

8. It should be noted that there are other explanations of the argument between the Tanna Kama, Rebbi Shimon and Rebbi Yehuda. For example, see the commentary of Rash Mishantz on the Mishna (Mishna Peah 1:3). I have explained their argument in a way which fits best into the language of the Tosefta.

Tractate Peah, Chapter 1

Tosefta 6

[If a person] did not give [Peah] (corners of the field) from standing crops he can give it from the sheaves. [But even if] he did not give [Peah] from the sheaves, he can [still] give it from the heap of sheaves. [But even if] he did not give [Peah] from the heap of sheaves, he can [still] give it from the pile [of grain] as long as he did not even it out. But if he
already] evened out [the pile of grain then] he takes off the tithes\(^7\) and [only after that] gives [Peah].\(^8,9\)

Notes:

1. Mishna Peah 1:6 says that a person can give Peah as long as the produce exists. This Tosefta comes to clarify what is meant by that.

2. Standing crops means crops that are still attached to the ground. The Torah says that Peah should be left during the harvest. See Vayikra 19:9. The Rabbis learned out from that that the best way to give Peah is while the crops are still attached to the ground. Meaning that the Peah crops should simply be left in the field and not cut. See Talmud Bavli (Bava Kama 94a).

3. The Tosefta’s example applies specifically to grain since bundling sheaves was only done to grain; however the general principal of what the Tosefta is saying is applicable to any type of produce including fruit. After the crops are harvested they are bundled into sheaves and sheaves are left to lay in the field before they are collected into piles. The Tosefta says that a person can simply leave some sheaves in the field for the sake of Peah and fulfill his obligation of Peah that way.

4. After all sheaves are bundled individually they are collected by the farmer and piled into big piles in the field. Then they are carried away to the threshing floor to be threshed. The Tosefta says that the farmer can simply leave some of the sheaves in the pile for the sake of Peah and fulfill his obligation of Peah that way.

5. After the sheaves are brought to the threshing floor they are untied, threshed and winnowed. After the grain has been winnowed it was piled into piles. The threshing floors were usually located in the fields preferably in an open location in order to get the full benefit of the winds. See International Standard Bible Encyclopedia 1913 (entry Agriculture). Therefore the poor people could simply go into the fields to the threshing floors and take the grain left their as Peah. Most probably they would not need to enter any kind of a closed silo where the grain was stored.
6. Once the grain has been piled the piles were evened out and often sealed. The process of sealing consisted of pressing a large wooden seal against the pile. When the instrument was removed it left an impression which would be destroyed should any of the grain be taken away. This allowed the government to keep track of taxes and enabled the owner to detect any theft of grain. Until the grain was put into bags and transported into silos someone slept in the field to guard the piles of grain. See International Standard Bible Encyclopedia 1913 (entry Agriculture).

7. The Terumah (heave offering) is the main gift that every Jew at the time of the Bet Hamikdash (The Temple) was obligated to give to a Kohen before he could eat his produce of grain, fruits or vegetables. See Bemidbar 18:8-12 and Devarim 18:4. It is called Terumah from the Hebrew word Ram which means “to lift” since it had to be separated from a larger quantity by lifting it out of the pile. Hence the English term “heave offering” since the word “heave” means to lift. The Terumah consisted generally of 1/50th of every type of produce that was gathered by that person, although it was possible to give 1/40th if the person felt stingy or 1/60th if he felt especially generous. See Mishna Terumot 4:3. This was known as Terumah Gedolah – The Big Terumah. Besides it when a Levi received his First Tithe (Maaser Rishon) from a regular Israelite he then had to separate from it 1/10th of what he received and give that to a Kohen. That was called Terumat Maaser – the heave offering of the tithe. See Bemidbar 18:26. Besides separating Terumah from all fruits and vegetables that grow in the Land of Israel a person is obligated to separate Maaser (tithe) as well. There were three types of Maaser, only two of which needed to be separated at any given time. Maaser Rishon was the First Tithe, which consisted of 1/10th of the produce that remained after Terumah (which is 1/50th) has been separated. That 10th was given over to the Levi. After Maaser Rishon was separated another 1/10th of the remaining produce had to be separated for Maaser Sheni – Second Tithe. Maaser Sheni was then brought to Jerusalem by the owner and was eaten there. Maaser Sheni was only separated on 1st, 2nd, 4th, and 5th years of the Shemitah cycle. On 3rd and 6th years of the Shemitah cycle a instead of Maaser Sheni a different tithe called Maaser Ani –
The Tithe of the Poor was separated. It consisted of $1/10^{th}$ of the remaining produce after Maaser Rishon and was distributed to the poor where ever the person who separated it lived. In the 7th year, called Shemitah (Sabbatical Year) no Terumot and Maaserot were separated, because all produce that grew was considered to be ownerless. See Vayikra 25:1-6. The Torah describes the various tithes in different places. Maaser Rishon is described in Bemidbar 12:21-32, Maaser Sheni in Devarim 14:22-27 and Maaser Ani in Devarim 14:28-29 and 26:12.

8. Once the produce was piled into piles and the piles have been smoothed out it was considered to be a finished product and now was obligated in Terumah (heave-offering) and Maaserot (tithes). Therefore if the person still did not give Peah he was obligated to remove Terumah and tithes from the produce and only then leave some for Peah. Peah, as well as other gifts to the poor and ownerless produce, are exempt from Terumah and Maaserot due to a special derivation from a verse in the Torah (Devarim 14:29). See the statement of Rav Yochanan in Talmud Yerushalmi (Terumot 1:3, Daf 6a) and Sifri (Devarim 109). However if Peah has not been given on time and the produce became obligated in Terumah and Maaserot after smoothing of the pile, then even the portion that later would be given as Peah had to have Terumah and Maaserot separated from it. Therefore once the pile has been smoothed out the tithes had to be separated first and only then Peah could be given. It should be noted that making of the pile is a required act only in the case of crops where it is normally one, such as grains. However, by other crops, where the normal way of storing them might be simply bringing them inside the farmer’s house, the obligation of Terumot and Maaserot falls out when this final act of harvesting is performed, as will be mentioned later in Tosefta 1:14.

9. The Tosefta does not say if the person can still give Peah after the produce has been moved into a silo. I would guess that the reason the Tosefta did not mention it is because it was a really uncommon case since the poor people could not walk inside the silo since it was a closed building. I suppose that the owner could still take produce
outside of the silo, bring it back to the field, and leave it there in order to fulfill his obligation of Peah.

Tractate Peah, Chapter 1

Tosefta 7

Rebbi Shimon said, “Because of four things the Torah said [that] a person should only give Peah (corners of the field) in the end of his field [and not in the middle or in the beginning relative to where he began to harvest from].² Because of theft from the poor, and because of wasting time of the poor, and because of suspicion, and because of cheaters.³ How so because of theft from the poor? That [the owner] should not see a time when there are no people there and he will say to a poor person who is his relative, ‘Come and take this Peah for yourself.’⁴ And how so because of wasting time of the poor? That the poor will not sit and watch [the field] the whole day and say, ‘Now he is giving Peah, now he is giving Peah’, but rather since [the owner] gives it in the end [of his harvest of the field, the poor person will] go and do his work, and [then] come and take [Peah] in the end [of his work day].⁵ And how so because of suspicion? That passersby should not say, ‘Look at so and so that he harvested his field and did not leave from it Peah, because so it says in the Torah, ‘You should not harvest the corners of your field ...’ (Vayikra 19:9,
And how so because of cheaters? That people should not say, ‘We already gave [Peah].’ Another explanation. That he should not leave the good [portion of the crops for himself] and give [Peah] from the bad [portion of the crops].

Notes:

1. The Tosefta explains now the opinion of Rebbi Shimon mentioned above in the Tosefta 1:5 and in the Mishna 1:3.

2. As I already explained previously in Tosefta 1:5, note 6, Rebbi Shimon holds that both the Torah and the Rabbis required Peah to be given in the end of the field relative to where the person began harvesting from. Rebbi Shimon now explains that this was done for four good reasons.

3. The Tosefta will now go into details and explain each of these four reasons.

4. A person is not allowed to give preference to any particular poor person regarding the gifts to the poor. But rather all gifts to the poor are given on first come, first serve basis. Therefore if the owner of the field actually has told a particular poor person to take Peah or any other gifts to the poor it is considered as if he is stealing from other poor people. It should be pointed out that later on the Tosefta says (Tosefta Peah 4:2) that a person can give out Maaser Ani (Tithe to the Poor) to which ever poor person he wants as long as he gives him only a portion of it and not the whole tithe. Based on that Tosefta, Minchat Yitzchak in his commentary Shirei Mincha (on this Tosefta, Vayomer Leani) quotes the Or Zarua (Hilchot Tzedaka 22) who points out that this law must apply to Peah as well and to resolve the seeming contradiction between the two Toseftot he explains that Rebbi Shimon would agree that the farmer is allowed to give a portion of Peah that he has left from that field to a poor person of his choice, but he is not allowed to give all of the Peah to that poor person. When Rebbi Shimon forbids it, he must be talking about giving all of the available...
Peah to the poor relative of the farmer. I have to admit that since none of the other Rishonim (medieval authorities) mention this difference I am not sure if this law of Maaser Ani applies to Peah as well according to all opinions.

5. This reason is puzzling, because it contradicts Mishna Peah 4:5. There the Mishna says that there were three designated times of the day when Peah was distributed, in the morning, at noon, and in the end of the day at Mincha time, which is about 1¼ hours before sunset. If there were designated times when Peah was distributed then there was no reason for the poor people to sit and watch the field the whole day so that they can take Peah as soon as possible. I would like to resolve this contradiction by proposing that Rebbi Shimon says these four reasons specifically according to Torah law, before any enactments of the Rabbis have been made. Therefore the Torah required that the farmer give Peah at the end of the field so that the poor do not have to wait the whole day. However the Mishna mentions a later enactment of the Rabbis who in order to improve the situation and reduce fights between the poor established three designated times when field owners would distribute Peah. Another possible explanation is that this enactment of the Rabbis mentioned in the Mishna was done not according to the opinion of Rebbi Shimon, but according to the opinion of the Tanna Kama mentioned earlier in Tosefta 1:5 that Peah can be distributed even in beginning or the middle of the field relative to the harvest. The Rambam rules according to both Mishna Peah 4:5 (Hilchot Matnot Aniyim 2:17) and the opinion of Rebbi Shimon in this Tosefta (Hilchot Matnot Aniyim 2:12) which implies that he did not hold like my second explanation, but rather these two opinions do not contradict each other.

6. If the farmer would not consistently leave Peah in the end of the harvest then passersby would constantly suspect him of not leaving Peah. Obviously the assumption is that they would not judge him favorably and assume that he would leave Peah later, since that is not human nature. Rebbi Shimon mentioned in the quote of these passersby the verse from the Torah to emphasize how people think. They would look at another Jew and judge him that he is not fulfilling a commandment in the Torah and they would quote the verse in the
Torah, because it would make themselves feel more religious as if they were saying, “Looks at us we are fulfilling a commandment in the Torah, but this guy is not.”

7. This is referring to the farmers who would cheat and not leave Peah at all. If Peah would not be left consistently in the end of the harvest then farmers can say that they already gave Peah and someone took it and therefore not leave any Peah at all. But since Peah was the last crops that they left in the field they would not have any excuse not to leave it.

8. It is not clear if this second explanation for the forth reason is a part of the original statement of Rebbi Shimon or was added later by the editor of the Tosefta. I have assumed that it is a part of Rebbi Shimon’s statement.

9. The farmer may encounter bad quality crops in his field throughout the process of the harvest. If he could leave Peah at any time, then he would always leave the bad crops as he encounters them. However since he had to leave the last remaining crops for Peah he could not leave bad crops, but rather had to leave whatever crops would be last. Obviously, if the last crops also happened to be bad crops then he could leave them for Peah, but the chances of that happening often were unlikely.

Tractate Peah, Chapter 1

Tosefta 8

Even though a vegetable² is gathered at one time³ it is not subject to storage. But figs, even though they are subject to storage,⁴ they are not gathered at one time.⁵

Notes:

1. Mishna Peah 1:4 states five conditions which have to be true in order for a type of produce to be obligated in Peah. The conditions are that it has to be eatable by people, owned by someone (i.e. not ownerless),
rooted in the ground (i.e. not mushrooms), gathered at one time (i.e. ripen simultaneously so that all produce will be gathered together in one shot), and subject to storage (i.e. that they do not rot fast without refrigeration). If any type of produce does not fulfill even one of these conditions it is not obligated in Peah. This Tosefta gives an example of two types of produce which do not fulfill one of these conditions.

2. The Tosefta is not referring to every type of vegetable. It is referring to only leafy green vegetables that grow above ground, wilt away fast and cannot be stored for a significant period of time such as lettuce or parsley, and which therefore are exempt from Peah. However it is not talking about other vegetables that grow below ground and can be stored for a significant period of time such as garlic or onions. Garlic and onions are obligated in Peah, because they fulfill all five conditions listed in the Mishna.

3. Vegetables ripen simultaneously, so there is no situation that some vegetables in the field are ripe and some are not. Therefore they can all be harvested from the field in one shot.

4. Figs do not rot fast if stored properly. They can be dried and preserved for months.

5. The Common fig (Ficus carica) bears a first crop, called the Breba crop, in the spring on last season's growth (wood). The second crop is born in the fall on the new growth and is known as the Main crop. This means that figs have two separate harvesting seasons and cannot be harvested in one shot. Therefore figs are exempt from Peah. Figs are unique in this way from other common fruit in the Land of Israel such as grapes, dates, pomegranates, olives and various nuts all of which ripen only one time a year and have a single harvesting season, which makes them obligated in Peah. It is my humble opinion that that the Rishonim (Medieval authorities) did not understand that the Tosefta is referring to this two season behavior of the fig or they simply were not aware of it since the Breba crop is not as plentiful as the Main crop and may have simply been ignored in their time. They thought that the Tosefta simply means that the figs do not all ripen in one day, but rather ripen over a period of a few days. The Rambam (Hilchot Matnot
Aniyim 2:2) writes so explicitly. Since what the Rambam writes is true about all fruit and not just figs, the Radvaz in his commentary on the Rambam (ibid.) says that the Tannaim must have made a special rule about figs since most other fruits also ripen over a span of many days, some earlier some later, and yet all of them are obligated in Peah as the Mishna Peah 1:5 explicitly says. However, if they would only realize that the Tosefta is referring to this double season phenomena of the Common fig then they would not have this dilemma.

On this picture you can see the fig Breba crop, which is dark brown and fully ripened, attached to the dark wood from last year’s growth. The Main crop is still small, green and unripe is growing off the green part of the branch which is this year’s growth. Photo: figs4fun.com
Rebbi Yossi Ben Rebbi Yehuda says, 
“Rutab dates are exempt from Peah (corners of the field), because the first [of the fruit] does not wait for the last [of the fruit].”

Rebbi Elazar Ben Rebbi Tzadok says, “Jujubes are obligated in Peah.”

Others say, “Even Stone pine and blue sweet peas are obligated in Peah as well.”

Notes:

1. Mishna Peah 1:5 states that dates among other fruit are obligated in Peah. This Tosefta quotes a dissenting opinion regarding dates as well as mentions other fruit that are obligated in Peah that the Mishna does not mention.

2. Dates ripen in four stages, which are known throughout the world by their Arabic names Kimri (unripe), Khalal (full-size, crunchy), Rutab (ripe, soft), Tamr (ripe, sun-dried). The following is a description of the four stages of dates growth from the Date Palm Products by W.H. Barreveld (FAO Agricultural Services Bulletin No. 101, Food and Agriculture Organization of the United Nations, Rome, 1993):

*Hababauk is the term used for the female flower and the period just after pollination when the young fruit is still creamy white before gradually turning green at the rutab stage. At the rutab stage there is a rapid increase in size, weight, and reducing sugars; it is the period of highest acid activity and moisture content (up to 85%). All factors level off at the end of this stage when the fruit starts to turn yellow (or red according to variety). At this point the date seed could already germinate and the fruit is botanically mature. At*
the khalaal stage weight gain is slow but sucrose content increases, moisture content goes down, and tannins will start to precipitate and lose their astringency. In some varieties this latter process evolves rapidly, which makes them already palatable at the khalaal stage, and one could speak of commercial maturity for this type of fruit at this stage. With (normally) the tips of the fruit starting to turn brown, the rutab stage sets in which is characterized by a decrease in weight due to moisture loss, a partial (the degree depending on the variety) inversion of sucrose into invert sugar and a browning of the skin and softening of the tissues. The moisture content goes down to about 35% and the dates at this stage are sold as fresh fruit. Only when the dates are left to ripen further on the palm will they turn into tamr, climatic conditions permitting, characterized by a moisture content at which the date is self-preserving. The upper limit for the date to be self-preserving lies at around 24-25%. Dates distinguish themselves therefore from most other fruit in that they have a botanical maturity and at least 3 distinct commercial maturation levels, the sweet khalaal, the rutab, and the tamr stage.

The Hebrew word Rotev is the same as the Arabic word Rutab, both of which mean “wet” or “moist”. The Tosefta is referring to regular dates in the Rutab stage and not to some special species of dates. Generally, dates in a cluster and all clusters on a palm do not ripen at the same time. A number of pickings may have to be made over a period of several weeks. See Julia F. Morton, “Fruits of Warm Climates”, Florida Flair Books, 1987, entry Date, p. 5-11. However it is not clear why Rebbi Yossi Ben Rebbi Yehuda would single out dates in the Rutab stage as opposed to just saying dates in general, since this phenomenon of non-even ripening occurs with dates of all stages. It is
possible that the specific cultivar of dates that he was referring to was specifically harvested in the Rutab stage, as opposed to other stages. The stage at which the dates are picked for consumption is highly dependent on the specific cultivar and climate where they are grown. It should be noted that the cultivar of the Date Palm (Phoenix Dactylifera) that grew in the Land of Israel during the time of the Mishna was the Judean Date Palm which has been extinct for over 1500 years, and only recently (2005) has been grown again from seeds found in Herod’s palace in Masada, so no information exists about the behavior of this specific cultivar of the date palm. See “Germination, Genetics, and Growth of an Ancient Date Seed”, Sarah Sallon, Elaine Solowey, Yuval Cohen, Raia Korchinsky, Markus Egli, Ivan Woodhatch, Orit Simchoni, and Mordechai Kislev, Science Magazine, 13 June 2008, Vol. 320. No. 5882, p. 1464. It is possible that in this specific cultivar some of the dates transformed from the Rutab to the Tamr stage earlier than others and had to be picked separately thus prompting Rebbi Yossi Ben Rebbi Yehuda to exempt them from Peah.

<table>
<thead>
<tr>
<th>Hababouk</th>
<th>Kimri</th>
<th>Kimri</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1 week,</td>
<td>(5 weeks)</td>
<td>(17 weeks, turning</td>
</tr>
<tr>
<td>creamy white)</td>
<td></td>
<td>yellow or red)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Khalal</td>
<td>Rutab</td>
<td>Tamr</td>
</tr>
<tr>
<td>(19-25 weeks, yellow or red)</td>
<td>(26-28 weeks, turning brown)</td>
<td>(29 weeks)</td>
</tr>
</tbody>
</table>

Formation and Ripening of the Dates. Used with permission from FAO.

3. Talmud Yerushalmi (Peah 1:4, Daf 8b) points out that the Mishna (Peah 1:5) argues on Rebbi Yossi Ben Rebbi Yehuda, since it plainly
says that dates are obligated in Peah, implying that all dates are obligated in Peah regardless of their stage. Yerushalmi points out that since all ripe dates swell at the same time it is considered to be that they all are ready for harvesting simultaneously. The Yerushalmi is probably referring to the initial swelling of the date when it reaches the Khalal stage and becomes eatable and suitable for harvesting. The fact that people prefer to wait for the dates to be picked at different stages is not considered to be significant enough for it to qualify for an exemption from Peah due to different times of picking. It seems to me that the Mishna requires completely different harvest seasons for fruit in order for them to be exempt from Peah as I already explained in the previous Tosefta, note 5, as is the case with the common figs.

4. Jujube (Ziziphus species) is a fruit of a thorn tree that tastes similar to an apple. The Hebrew name Shizfin comes from its Greek name ζίζυφον (Zizyfon) which in turn comes from the Arabic word Zizouf, which is the Arabic name for the Lotus Jujube tree (Ziziphus Lotus), a tree considered to be holy by the Muslims. Most probably the Tosefta is referring specifically to the Ziziphus Spina-Christi, commonly known as Christ’s Thorn Jujube, which is the most common type of jujubes that grows in the Land of Israel. It is also possible that it is referring to Ziziphus Vulgaris which is a cultivated species of jujubes, which is native to Syria was possibly imported into Israel by the Romans. Ziziphus Vulgaris produces larger and tastier fruit than Christ’s Thorn Jujube.
Ziziphus Vulgaris – Cultivated Jujube.
5. Jujubes produce fruit many months out of the year, but have a single long harvesting season, which would make them obligated in Peah according to the Mishna Peah 1:4. Saul Lieberman in Tosefta Kifshuta suggests that Rebbi Elazar Ben Rebbi Tzadok mentions the jujube (specifically Ziziphus Vulgaris) with regard to Peah, because it may have been imported in to the Land of Israel by the Romans during his lifetime and was a new type fruit whose cultivation was not yet very familiar to the Jews in Roman Palestine. There were two Tannaim by the name Rebbi Elazar Ben Rebbi Tzadok. The first one lived in the second half of the 1st, beginning of the 2nd centuries CE and was a witness to the destruction of the Second Bet Hamikdash. The second one lived in second half of the 2nd century CE and was associated with Rebbi Yehuda Hanassi, the author of the Mishna. It is not clear which one of these two Tannaim is the author of this statement regarding jujubes. If Lieberman is correct, then it makes more sense that Rebbi Elazar Ben Rebbi Tzadok I, is the author of this statement, because the cultivated jujubes (Ziziphus Vulgaris) were introduced into Italy from Africa by the consul Sextus Papinius Allienus in the year 36 CE, during the reign of emperor Augustus, as mentioned by Pliny the Elder.
(Natural History, 15:47). It was probably introduced into Palestine around that time as well.

6. Mishna Sheviit 5:1 states that Benot Suach fruit ripens once every three years. Yehuda Felix (Mishnat Sheviit p.124 on Mishna Sheviit 5:1) says that Benot Suach cannot mean literally “white figs” as stated by Talmud Bavli (Berachot 40b), because there is no such type of fig in the world whose fruit ripens once every three years as mentioned by the Mishna. Felix himself says that Benot Suach is some type of a pine tree. That makes sense since pine cones take 2 – 3 years, depending on the species, to mature on the tree and the Mishna mentions that Persian Benot Suach took 2 years to ripen as opposed to Palestinian ones that took 3 years. Saul Lieberman in Tosefta Kifshuta on this Tosefta identifies Benot Suach as pines as well. Lieberman goes further to say that Talmud Yerushalmi (Sheviit 5:1, Daf 13a) identifies Benot Suach with a plant called Pitirea, which he says should be really spelled Pitidea and comes from the Greek word πιτυδία (Pitudea) (meaning of which to me is not clear), which in turn comes from the Greek word πίτυν (Pitun) which means a pine tree. He says further that “white figs” was a folk name for pine cones used among Greeks and adopted by Jews as well. In fact, Josephus (Jewish Antiquities 8:7:1 (8:177-178)) writes that the pines that King Shlomo imported into Israel were a type of pine whose wood looked like the wood of a fig tree, but was whiter and more shining. So it is clear that Greeks referred to pine trees as white figs. Even though pine cones take 3 years to mature the tree produces eatable cones every year after its first 3 years of cone production, so the cones that grew in a given year all ripen together 3 years later, which is considered by Acherim (others) to be a single harvesting season, which makes them obligated in Peah. The specific species of pine tree referred to in the Tosefta is most probably Pinus Pinea, also known as Stone Pine, which grows in northern Israel in the Galil, has edible nuts, and which is one of few pine species whose cones mature in almost 3 years. Other pine species that grow in Israel such as the more common Pinus Halepensis, known in Hebrew as Oren Yerushalayim – the Jerusalem Pine, have their cones mature in 18 months.
The two large trees at center and left are Stone Pine (Pinus Pinea), at Wellington Botanic Gardens, Wellington, New Zealand.

Aruch Hashalem (Vol. 2, entry Benot Suach) identifies this plant as Small Goat’s Thorn (Astragalus Poterium), which is a large shrub with sharp tasting seeds that have a sweet scent. His identification is based on the same quote in Talmud Yerushalmi (Sheviit 5:1, Daf 13a) which explains that Benot Suach is a plant called Pitirea, which he identifies with the Greek word ποτήριον (Potirion) which is the Greek name for Small Goat’s Thorn. The problem is that Small Goat’s Thorn does not really produce a useful fruit that is harvested for food consumption so it does not make any sense that it would be obligated in Peah, and also its seeds ripen yearly and not once in three years, so this explanation is incorrect.

7. Saul Lieberman in Tosefta Kifshuta identifies this plant as Lathyrus Sativus, known as blue sweet peas or grass peas, which is a type of edible peas. He says that the correct spelling of the word probably should be חלחלין (Chalchalin), and not חלחלחין (Chalachlachin) as it is spelled in the Vienna manuscript, or חלחלוחין (Halachluchin) as it is spelled in the Erfurt manuscript. I have a suggestion for the origin of its Hebrew name – חלחל (Chalchal) means “poison”. See Marcus Jastrow, Dictionary of Targumic Literature, entry חלחלות. The seeds of blue sweet peas, contain variable
amounts of a neurotoxic amino acid \( \beta\)-N-Oxalyl-L-\( \alpha \),\( \beta \)-diaminopropionic acid or ODAP. ODAP is considered as the cause of the disease neurolathyrism, a neurodegenerative disease that causes paralysis of the lower body: emaciation of Gluteal muscle (buttocks). The disease has been seen to occur after famines in Europe (France, Spain, Germany), North Africa, South Asia, and is still prevalent in Eritrea, Ethiopia and Afghanistan (pan handle) when Lathyrus seed is the exclusive or main source of nutrients for extended periods. Research has shown that ODAP concentration increases in plants grown under stressful conditions, compounding the problem. See S. L. N. Rao, P. R. Adiga, P. S. Sarma, “The Isolation and Characterization of \( \beta\)-N-Oxalyl-L-\( \alpha \),\( \beta \)-Diaminopropionic Acid: A Neurotoxin from the Seeds of Lathyrus sativus”, Biochemistry, 1964, 3 (3), p. 432–436. It would seem that people at the time of the Tosefta knew about this property of blue sweet peas and therefore called it “poisonous”. Due to this reason the Tosefta had to specify it as a species obligated in Peah, since one might think that since they could be poisonous they should be exempt from a commandment meant for providing food to the poor. Despite this property it seems that it was still consumed as food, as it is many areas today, and therefore was still obligated in Peah, since it as a type of legumes, all of which are obligated in Peah as mentioned by Mishna Peah 1:4. Based on the above etymology I have corrected the spelling of the word Chalchalin in the main Hebrew text according to Lieberman’s emendation.
Lathyrus Sativus - blue sweet peas. Note the blue flowers. The peas themselves hang in peapods from the sides of the stem.

Tractate Peah, Chapter 1

Tosefta 10¹

These [landmarks] interrupt [the field] regarding Peah (corners of the field) [and obligate the owner to give Peah again from the second half of the
field, a stream, a water reservoir, a private road, a public road, a permanent public path [regardless if it was established] in the summer time or in the winter time, [a section of] fallow land, [a section of] newly broken land, [a section with] a different [type of planted] seed [than the rest of the field], [a section of] harvested [land] for [the purpose of] destruction [of the produce prior to its ripening], three ridges of a furrowed field, and a ditch with water [that is wide enough that both sides of it] cannot be harvested simultaneously [by standing on one side of it and harvesting the opposite side]. Rebbi Yehuda says, “If [a person must] stand in the middle [of the ditch even if it is without water in order that] he [is able to] harvest on this [side of the ditch] and on the opposite [side of the ditch, then it] interrupts [the field with regard to Peah], but if [he does] not [need to stand in the middle of the ditch in order to harvest on both sides of it, then the ditch does] not interrupt [the field with regard to Peah].” [If a section of the field] was eaten by grasshoppers, was eaten by locusts, was plucked by ants, was broken by wind or animals, everyone agrees that [if afterwards it was] ploughed over [then it interrupts [the field with regard to Peah], but if [afterwards] it was not [ploughed over, but rather was left as it was after
the damage, then] it does not interrupt [the field with regard to Peah].

Notes:

1. Mishnayot Peah 2:1 and 2:2 mention different landmarks that interrupt a field and obligate the owner to give Peah twice from both sections of the field, before and after the landmark. This Tosefta expands on that law.

2. The Torah says regarding the Mitzvah (commandment) of Peah, “… you should not cut the corners of your field …” See Vayikra 19:9. Talmud Yerushalmi (Peah 2:1, Daf 10b) learns out from the fact that the verse says “your field” that Peah must be left separately for each particular field. Meaning that if a person has two fields he is not allowed not to leave any Peah in one field and then leave double the amount of Peah in the second field, but rather he must leave the proper amount of Peah in each field. The Tosefta lists a list of landmarks that cut a single field in half therefore comprising two separate fields as far as the Mitzvah of Peah is concerned.

3. Hebrew word נחל (Nachal) means a stream that does not necessarily flow with water all year around, as opposed to a נ_chr (Nahar) – a river, which does flow constantly. In the land of Israel there are a lot of streams, known by their Arabic name – Wadi, that are dry most of the year, but fill up with water in the winter during the rainy season. There is only one real river (Nahar) in Israel and that is the Jordan (Nahar Hayarden). The Tosefta is referring to the Wadi type of a stream. Obviously if a river would cut a field in half it would constitute a divider with regard to Peah as well, but the Tosefta mentions the stream, because it is less obvious of the two.

4. There is an argument in Talmud Bavli (Bava Kama 61a) about what type of water reservoir שלולית (Shlulit) is. The Babylonian opinion of Rav Yehuda in the name of Shmuel explains that it is a place where rain water collects. The Palestinian opinion of Rav Bibi in the name of Rav Yochanan is that it is the main reservoir with water that feeds
water to other ditches in the field. The name Shlulit comes from the Hebrew word שלול (Shalal) which means “booty” or “something that is gathered” and therefore makes sense according to both opinions. According to Shmuel it refers to the collected rain water and according to Rav Yochanan it refers to the water that is collected by the pits from the reservoir. According to Rav Yochanan the reservoir could be full with water all year around due to some underground source and therefore permanent, whereas according to Shmuel the reservoir only gets filled up when it rains and is therefore temporary. Shmuel’s explanation makes more sense, because it is obvious that a permanent water reservoir would constitute a divider of the field. However if the reservoir is only temporary then it is similar to the Wadi stream listed before and needs to be listed in the Tosefta since we might think that it does not constitute a divider of the field since it is not there most of the year when it does not rain. The modern use of the word Shlulit in Hebrew follows Shmuel’s opinion that it is a temporary body of water created by rain regardless of its size, such as a small puddle or a large flooded area.

5. A road, known in Latin as Via, is a way where people could pass with carriages and animals in both directions. By differentiating between private and public roads the Tosefta is referring to the width of the road and not necessarily to its ownership. The Mishna (Bava Batra 6:7) states that a private road is 4 Amot wide and a public road is 16 Amot wide. Amah (plural: Amot) is a unit of measurement, usually translated as a cubit, used in the Talmudic times which approximately equals to 1.5 – 2 feet (55 – 70 cm). The measurement of the private road given by the Mishna is referring to the Roman law, known as the Law of Twelve Tables (Lex Duodecim Tabularum or Duodecim Tabulae). According to the Law of Twelve Tables (Table VIII, Law VIII) if a property owner was to make a road (i.e. a private road - Viae Privatae in Latin), “where a road runs in a straight line, it shall be 8 feet, and where it curves, it shall be 16 feet in width.” The Roman foot was approximately equal to 0.975 English feet (29.7 cm) (See William Smith, A dictionary of Greek and Roman antiquities, 2nd edition, 1859, entry Mensura, p. 757). Therefore 1 Roman foot roughly equals to ½ Amah, and 8 Roman feet equals to 4 Amot. The width of a public road
(Viae Publicae in Latin) was not clearly defined in Roman law, so various public roads varied in width, but average Roman roads were only 16 Roman feet in width, not 32 Roman feet as would be implied by the Mishna (16 Amot = 32 Roman feet). For a discussion of the correlations between Roman road standards and the measurements given in the Mishna see Daniel Sperber, “The City in Roman Palestine”, Oxford University Press, 1998, chapter 7.

6. A private path, known in Latin as Iter, is an unpaved narrow road across private land where people had the right to pass on foot to get to their fields. Travel on a path was intended only in one direction at any given time which is why the Roman law did not prescribe a minimum width for it. People could not pass on a private path with a carriage. Since the Tosefta says in the next statement that a public path had to be permanent it implies that a private path could even be temporary, meaning that it was not passable all year around, but only in certain months.

7. A public path, known in Latin as Actus, is an unpaved narrow road across public land where people had the right to pass with a carriage. The Tosefta specifically states that the public path had to be permanent, meaning that it was passable all year around. It should be noted that in many editions of the Mishna this statement is reversed and the Mishna says that it is the private path that had to be permanent, but not the public path, in order to constitute a divider with regard to Peah. According to either reading it is not clear why a temporary path would constitute a divider for Peah in one case, whether it was private or public, but not in the other, since the width of either path was roughly the same.

8. Fallow land is land where nothing has been planted during a particular season. If a field is planted with crops every single year non-stop then the soil gets depleted of its nutrients and crops do not grow well. Therefore farmers would leave whole fields or sections of fields fallow for a season so that the soil could replenish its nutrients.

9. Newly broken land is referring to fallow land that has been ploughed for the first time. Such land does not produce very good harvests in
the first season or two. Therefore it constitutes a divider with regard to Peah since agriculturally it is significantly different from the rest of the field.

10. For example, if in a wheat field there was a strip of land which was planted with cucumbers it would constitute a divider with regard to Peah.

11. Early harvested produce was unfit for human consumption and was used as feed for animals. Usually there were separate crops planted for human and animal consumption. However, I suspect that if in a particular year crops that have been intended for animal feed have been damaged, a farmer may end up harvesting regular crops early before they fully mature in order to provide enough food for his animals. This was considered to be harvesting in a destructive manner since the produce was not allowed to be fully mature and fit for human consumption. It should be noted that the Mishna quotes this statement regarding harvesting in a destructive manner in the name of Rebbi Meir, and it quotes the Chachamim (Sages) who argue on Rebbi Meir and say that such a strip of land does constitute an interruption of the field. Since the Chachamim are the majority the Halacha (law) would follow their opinion. However the Tosefta states this law anonymously implying that it is the Halacha.

12. A ridge is a small bump that goes in a line across the field. A furrow is a dip in the ground created by the plough. The ridges and furrows were created by the plough since the traditional ploughs turned the soil over in one direction only and therefore when the soil was pushed to the side it created a ridge. Depending how deep the plough was pushed into the ground the furrow and ridge could have been made bigger or smaller. I would assume that farmers made three ridges next to each other in order to create some kind of a visible marker in the field that would divide two different plots. Since this was a division marker it also divided the field with regard to Peah.

13. This is probably referring to the ditches that were used to irrigate the field. Since they were not used as dividers, but rather is pipes as long as they were narrow enough that a farmer could stand on one side of
the ditch and harvest the crops on the opposite side of the ditch it was considered to be a part of the field and not a divider. However if the ditch was wide enough that farmer could not harvest the opposite side of the ditch from his side it was considered to be a divider with regard to Peah despite the fact that it was not intended to be so.

14. It is not clear how Rebbi Yehuda argues on the Tanna Kama since both of them seem to say that if the farmer can stand on one side of the ditch and harvest the opposite side then it does not constitute a divider, but if the farmer cannot reach the opposite side of the ditch and must step inside the ditch itself in order to reach the opposite side then it does constitute a divider with regard to Peah. Due to this problem the Vilna Gaon adds an extra word into Rebbi Yehuda’s statement so it reads as follows: “אֵם עָנַךְ בָּנָאִים אני קָאָר מַכָּאָר מַכָּאָר ... מקסיק” – If [the farmer] is standing in the middle [of the ditch] and he cannot harvest on both sides [because he cannot reach either side from the center of the ditch, then] it interrupts [the field with regard to Peah ...], but if he can reach each side from the center of the ditch, even though he cannot reach the opposite side of the ditch from the other side of the ditch then it does not interrupt the field. However the Tanna Kama is more stringent than Rebbi Yehuda and holds that even if he can reach each side of the ditch by standing in its center and yet he cannot reach the opposite side of the ditch while standing on one side then it does interrupt the field with regard to Peah. However this textual emendation was the Vilna Gaon’s invention and is not supported by any manuscripts. Saul Lieberman in Tosefta Kifshuta solves the problem of this argument differently without any textual emendations. He says that they do not argue about the width of the ditch, but rather whether the ditch contains water in it or not. According to his explanation Rebbi Yehuda is more stringent than the Tanna Kama and he holds that the ditch interrupts the field if the farmer cannot reach the opposite side even if the ditch does not contain any water. However the Tanna Kama holds that in interrupts the field only if it has water in it, however if it does not have any water in it then it does not interrupt even if the farmer cannot reach from one side of the ditch to the other. I have chosen to explain the Tosefta according to Lieberman’s explanation, because it does not require any
textual emendation, even though I admit that it is somewhat forced into the text.

15. Hebrew word חָבָג (Chagav) refers generally to all short-horned grasshoppers of the family Acrididae that are Kosher, as mentioned by the Torah. See Vayikra 11:22. Talmud Bavli (Chulin 65a) quotes a Beraita that says that a Chagav is a נָדַיָן (Nadyan), per the correct reading in the Aruch (entry נָדַיָן) and not גדיאן as in the printed editions of Talmud Bavli. Aruch Hashalem (entry נָדַיָן) says that Nadyan comes from the Persian word Nida which means “to call” referring to the grasshoppers chirping and twittering ability which is their mating call. This of course does not provide a specific hint to the particular species of grasshoppers. Tosefta Chulin 3:9 lists four identification marks of a Chagav that makes it Kosher. There is a bunch of different grasshopper species that live in the Land of Israel or migrate from Egypt or the Arabian peninsula and fit this description so there is simply not enough information to identify the specific species. Most probably the word Chagav refers to all species of grasshoppers that fit this vague description and therefore I have simply translated it as grasshopper.

16. Aramaic word גֹּבַי (Govai) refers generally to locust. The same Beraita in Talmud Bavli (Chulin 65a) identifies Govai with the ארבה (Arbeh), as mentioned by the Torah, which means locust. See Vayikra 11:22. Locust is the swarming phase of short-horned grasshoppers of the family Acrididae. It is simply a behavior of the grasshoppers when they gather in large groups and start consuming crops in large quantities, even though normally grasshoppers are solitary insects. As was mentioned in the previous note the word Govai does not refer to a particular species of locust, because the signs that define it are very vague.

17. The Tosefta is most probably referring to the most common genus of ants found in Israel – Messor, known in Hebrew as נְמֵלָת קַקִזֵּר (Nemalat Hakatzir), Harvester ant. These ants live in fields and collect seeds for their nests. There are a few species of the Messor genus of ants that live in Israel, such as Messor Semirufus, Messor Ebeninus, Messor Arenarius Ratus, Messor Aegyptiacus and Messor Arenarius,
all of which exhibit similar behavior. They can cut down significant amounts of crops that contain seeds like wheat and barley. For a details about how much produce can harvester ants collect see below Tosefta Peah 2:17, note 3.

18. Since the Tosefta mentioned an argument between Rebbi Yehuda and the Tanna Kama it now clarifies that everyone agrees regarding this next statement.

19. Talmud Yerushalmi (Peah 2:1, Daf 11b) explains that the reason that he is only obligated in Peah if he ploughed the land afterwards is because in order to become obligated in Peah the farmer has to do an act of harvesting, as was explained earlier in Tosefta Peah 1:1, note 9. Since in this case the crops were not harvested by the farmer, but rather were damaged by some outside force they never became obligated in Peah and crops that themselves are not obligated in Peah cannot interrupt the field with regard to Peah. However a ploughed section of land does interrupt the field with regard to Peah was stated earlier in the Tosefta and therefore in order for this section of crops to interrupt the field it has to be ploughed over. Obviously the Tosefta is talking about that the damaged crops were the same kind of crops as
the rest of the field, since a different kind of crops interrupts by itself was stated above.

Tractate Peah, Chapter 1

Tosefta 11

[If a person] harvested [only] half [of his field, and not the whole field] and [then he] sold what he has harvested, [or] he harvested [only] half [of his field, and not the whole field] and [then he] sanctified (i.e. donated to the Bet Hamikdash (Temple))\(^2\) what he has harvested, he gives Peah (corners of the field) from what [crops] remain [in the field] for everything [including what he already sold or sanctified.]\(^3,4\)

Notes:

1. Mishna Peah 2:8 states that if a person harvested only half of his field and then sold the other half of his field then the buyer of the second half has to give Peah for the whole field including the first half that was harvested by the original owner. Also if a person harvested half of his field and then sanctified the second half of his field, meaning that he donated it to the Bet Hamikdash and then the treasurer of the Bet Hamikdash sold it off for money, then whoever bought it from the Temple treasury has to give Peah for the whole field, including the first half that was harvested by the original owner. The Tosefta cites a similar case to the case in the Mishna but with a difference that in the end half of the field remained not harvested and the first half that was harvested was either sold or sanctified by the owner, then the original owner of the field is responsible for giving Peah from the remaining half and not the buyer of the produce as is in the case of the Mishna.

2. By Torah law a person can sanctify any object in his possession and that way donate it or its value to the Bet Hamikdash. This is specifically known as Hekdesh (שהות), meaning “consecrated”. Generally there
were three types of donations to the Temple. A person could donate cash, an animal that was fitting for a sacrifice, or any other object, including property. Donations of cash were done for various reasons, such as Machatzit Hashekel (מחלקת השכלה), which was an annual donations of half a shekel to the Temple that had to be given by all male Jews (see Shemot 30:11-16), or a person could give his value, Erech (ארך), as specified in the Torah (see Vayikra 27:1-8), or a person could simply give a cash donation to the Temple for no specific reason. Donations of animals that were fit to be brought as sacrifices were known as Kadshei Mizbeach (קדשי מזבח), meaning “consecrated for the altar”. Donations of all other objects, including property, were known as Kadshei Bedek Habayit (קדשי בדיק הבית), meaning “consecrated for repairs of the building.” The money that was donated in these different ways had to be tracked separately and was spent on different things in the Bet Hamikdash. Donated objects and property, Kadshei Bedek Habayit, were collected by the Temple treasury and then auctioned off for cash. The different ways that in which the Temple treasury used the money from various donations are discussed in various places in the Mishna, the Tosefta and the Talmud, most of them in tractates Shekalim, Arachin and Meilah.

3. The farmer would have to give the minimum amount of Peah that is rabbinically required, which is 1/60th of the total produce of the field, as was mentioned above in Tosefta 1:1, note 8. Since the best way to give Peah is considered to be at the end of the harvest, as was mentioned above in Tosefta 1:5, the farmer did not have to set it aside until he completely finished harvesting the whole field. Therefore even though he was planning to sell half of the produce of the field before he finished harvesting the rest of the field, he could leave Peah in the end of his harvest to cover the complete amount of crops, including what he sold earlier.

4. I would like to point out that Pinchas Kehati in his commentary on Mishna Peah 2:8 (Pinchas Kehati, “Mishnayot Mevuaret”, Peah 2:8, Halokeach Noten Peah Lakol) seems to have made a mistake regarding the case mentioned in this Tosefta. He writes that it is obvious (from the Mishna) that if the farmer sold half of the produce and then
harvested the second half of the produce for himself, then each owner would have to give Peah for his own produce, the farmer for his half and the buyer for his half. However from this Tosefta it is clear that the buyer of the first half does not have to give any Peah and the farmer has to leave enough Peah from the second half of the produce to cover the whole amount, including what was sold. It seems to me that the reason for this law is since the Mishna (Peah 2:7) states that the main Mitzvah (commandment) is to give Peah from the standing crop, even though the person can give, post factum (Bediavad), from harvested crops, as was mentioned earlier in Tosefta 1:6, the Rabbis required that the responsibility of giving Peah remains with the farmer since he is the one who has access to standing crops in the end of his harvest. Therefore the farmer was obligated to give Peah from the standing crops for the whole amount as opposed to the buyer giving Peah for his half and the farmer giving only for his half.

Tractate Peah, Chapter 1

Tosefta 12\(^1\)

[If there is produce planted on top of ground in the shape of] steps\(^2\) that are ten Tefachim (handbreadths) high,\(^3\) [then the farmer must] give Peah (corners of the field) from each [step separately].\(^4\) But if the tops of rows [of produce] are mixed up [and are not evenly leveled one above the other\(^5\)] then the farmer must] give Peah from one [row] for everything.\(^6\)

Notes:

1. Mishna Peah 3:1 mentions an argument between Bet Shammai and Bet Hillel about separate rows of produce that are planted in between trees, whether Peah is given from one such row for everything or separately in each row. However both of them agree that if the tops of rows are mixed up and are not evenly separated by trees then Peah is
given from one row for everything. The Tosefta cites a similar case regarding separate rows of produce.

2. The Tosefta is talking about the same type of produce that is planted in a garden that is on a slope, so that each row of plants is growing one above the other, as shown on the picture below.

![Stepped garden with rows of grass growing one above the other.](image)

This type of planting technique is called Terracing and was used in the hills of the Land of Israel since the time the Jews have conquered the land. The reason the Jews have developed this technique was because when they originally entered the land they were not able to use the best planting land due to it being heavily guarded and controlled by the Canaanites, so they had to resort to planting in the hills which were not really usable for planting. For more details on this technique and its usage in ancient Israel see Oded Borowski, “Agriculture in Iron Age Israel”, Eisenbrauns, 2009, pp. 15-18.

3. A Tefach (plural: Tefachim), known in English as a handbreadth, is a unit of measure used in Talmudic times, which is roughly the size of an adult fist. There are 6 Tefachim in one Amah. Since an Amah approximately equals to 1.5 – 2 feet (55 – 70 cm), one Tefach
approximately equals to ¼ - ⅓ feet (9.1 – 11.6 cm). There is a principal that an area that is elevated by at least 10 Tefachim above ground level is considered to be a separate domain from the area on the ground level and can have different rules apply to it. We find this principal used in a variety of applications throughout the Jewish law. For examples see Tosefta Shabbat 1:1 and Tosefta Eruvin 2:3.

4. Since each step is considered to be a separate domain it is like its own separate field and Peah must be left from each and every step. Obviously the minimum amount of Peah that needs to be left is 1/60th of the produce located on each step. From this Tosefta and from another Beraita quoted in Talmud Yerushalmi (Peah 2:2, Daf 12a) it is clear that if each step is lower than 10 Tefachim then the farmer should leave Peah on one of the steps for the whole field. The reason is obvious that since each step is not considered to be a separate domain, all of the steps together are like a single field from which Peah needs to be left only in one place. However the conclusion of the Sugya (discussion) in Talmud Yerushalmi (ibid.) is that it is not dependent on the height of the steps, but rather on whether the farmer needs to lift up his plough as he moves from one step to the next. So even if the steps are lower than 10 Tefachim if the farmer needs to pick up the plough in order to move it to the next step then Peah needs to be left separately on each step. It seems to me that the conclusion of the Yerushalmi was not the original intent of this Tosefta, but rather is a new conclusion based on the contradiction in various sources that the Yerushalmi quotes.

5. It is not clear what the Tosefta means by having the tops of each step mixed up. Saul Lieberman in Tosefta Kifshuta proposes that it is referring to a garden in a shape of a spiral around a mountain where each step is not flat, but rather slanted, so the top of each step is roughly at the same level as the bottom of the next step. I would like to suggest that the Tosefta is probably referring to a farmer who planted produce on the slopes of rocky Judean Hills, such as shown on the picture below. Due to many rocks in the ground natural uneven steps are formed on the hill.
A hill in Ramat Bet Shemesh, Israel. Notice the natural uneven steps that are formed on the side of the hill. If you look closely at this picture you will notice remnants of stone walls that seem to go along the hill. Those are remains of ancient terraces that were built on this hill for farming purposes.

6. Since there is no clear separation of domains between the different levels all of them together are considered to be a single field and therefore Peah needs to be left only on one of these steps that would cover the whole field. The amount of Peah left on that one step would be 1/60\textsuperscript{th} of the whole field.

Tractate Peah, Chapter 1

Tosefta 13\textsuperscript{1}

[A farmer] who selectively picks\textsuperscript{2} [some produce from his field early for immediate sale and leaves the remaining produce to ripen further for storage] is obligated [to leave Peah (corners of the field)] in the beginning [after he picks some of the produce for immediate sale] and [also] he is

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\textsuperscript{1} מסכת פאה פרק א

\textsuperscript{2} הַמְאָרֵג חַיָּיב בִּתְחִילָּתוֹ וְחַיָּיב בִּתְחִילָּתוֹ וְחַיָּיב בִּתְחִילָּתוֹ וְחַיָּיב בִּתְחִילָּתוֹ וְחַיָּיב בִּתְחִילָּתוֹ וְחַיָּיב בִּתְחִילָּתוֹ וְחַיָּיב בִּתְחִילָּת
obligated [to leave Peah] in the end [after he harvests the remaining produce for storage].³ [If a farmer] had [in his vineyard only] four or five⁴ grape vines, [and then] he harvested them and brought [the harvested grapes] inside his house [in order to eat them, and not inside the wine press in order to press them into wine], he is exempt from [leaving] Peret (individual fallen grapes),⁵ from [leaving] Shikcha (forgotten sheaves),⁶ from [leaving] Peah (corners of the field), but he is obligated in [leaving] Olelot (incompletely formed grape clusters).⁷ [However,] if [after the farmer brought some grapes into his house to eat, he also] left [more grapes in the vineyard in order to press them into wine] he gives [Peah] from what has remained [in the vineyard] for that which he has left [there to be pressed into wine, but not for what he already brought into his house to eat, because that part is exempt from Peah].⁸ And [a farmer] who plucks (thins) [some grapes from the vineyard in order to give the remaining grapes more room to grow does not leave any Peah from the plucked grapes, but rather] he gives [Peah only] from what has remained [in the vineyard] for that which he has left [there to be pressed into wine].⁹ Rebbi Yehuda said, “When do we say that [that the farmer only gives Peah from what he has left in the vineyard
for only that which he has left to be pressed into wine later, and not for what he has plucked? When [the farmer] plucked [the grapes] in [order to sell them on] the market. But [if] he plucked [them in order to eat them] inside his house [and not sell them] he has to give [Peah] from what has remained [in the vineyard] for everything, [including what he has left to be pressed into wine and what he has plucked in order to eat himself.]

Notes:

1. Mishna Peah 3:2 mentions an argument between Reffi Akiva and the Chachamim (sages) in a case where the farmer selectively picks some crops from his field and leaves other crops, whether he is obligated to leave Peah separately for each section of produce or from the remaining section for all of the produce. This Tosefta expands on this case. Also, Mishna Peah 3:3 mentions a case of a farmer who picked some onions to be sold in the market and left some onions for storage that he is obligated to leave Peah separately from each section of produce, and adds that the same would apply to peas and grapes. The Mishna also adds that if the farmer picks some produce in order to give more room for the remaining produce to grow, he only has to leave Peah for the produce that is left in the field and not for what has been picked. This Tosefta expands on these laws.

2. Aramaic word מְאָרֶג (Meareg), sometimes spelled as מַרְיִג (Marig), used by the Tosefta means the same as the Hebrew word מֶנָּאֶר (Menamer), used by the Mishna (Peah 3:2), which is “to leave spots” or “to make something spotted”. In this case it is referring to selectively picking the produce from the field. Since the produce is picked randomly from among the remaining produce empty spots are created in the field. Therefore this procedure of selective picking is called by the Mishna and the Tosefta “spotting”.
3. The Tosefta follows the opinion of Rebbi Akiva mentioned in Mishna Peah 3:2 that Peah has to be left from each group of produce separately. The reason is because according to him each picking is considered to be a separate harvest which is begun and completed, therefore requiring Peah to be left in the end of each harvest for the produce that was harvested in that batch. However the Chachamim say that Peah should be left from the remaining crops to cover everything, including the crops that were harvested earlier. The reason is that they hold that this initial harvest is not considered to be a separate harvest but rather the beginning of the main harvest which is one complete cycle. Therefore Peah would have to be left only at the end of the harvest cycle from the crops that remain last. Talmud Yerushalmi (Peah 3:1, Daf 14b) points out an important detail regarding this argument. It explains that Rebbi Akiva and the Chachamim argue only in a case where the farmer had different intent for the usage of the produce. For example, if the farmer plucked the initial produce in order to sell it on the market and he planned to keep the remaining produce for storage, then it is considered to be different usage of the produce. However if some of the produce simply ripened a little earlier than the rest and the farmer picked these ripe fruit or vegetables early and then later he harvested the remaining produce, but he intended to keep both of them for storage, then both, Rebbi Akiva and the Chachamim agree that this is considered to be a single harvest and Peah needs to be left only from the remaining crops in the very end to cover the whole harvest, including the crops that ripened and were picked early. I have emphasized this point in the translation of the Tosefta and pointed out that the case which the Tosefta is referring to is only the case where the farmer selectively picked some of the produce to sell right away on the market and kept the remaining produce for storage and not the case where all of the produce was intended to be used in the same manner but since some of it ripened earlier than the rest the farmer had some of it picked early.

4. The Tosefta simply means that the farmer did not have a very large vineyard, but rather he only had a few vines. It is a common expression in the Talmudic literature to say “four or five” when a few
are being meant. The reason that the Tosefta uses a case of a farmer with only a few vines is because it is referring to a common case where the farmer grew the grapes in order to eat them straight and not to make wine out of them, which normally was the main purpose of grape growing. In order to produce wine the farmer must have a large vineyard so that he can press enough grape juice that it would be worth for him to make wine. However if he only has a few vines then their purpose would be to eat the grapes and not to make wine. For a discussion of various cases in the Mishna and the Tosefta where the expression “four or five” is used see the article, Tzvi Novick, "Crafting Legal Language: Four or Five in the Mishnah and the Tosefta", Jewish Quarterly Review, Volume 98, Number 3, Summer 2008, pp. 289-304.

5. The Torah commands that the farmer is not allowed to pick individual fallen grapes during grape harvest, because he has to leave them for the poor. See Vayikra 19:10. This particular gift to the poor is known as Peret, meaning “individual”. Mishna Peah 6:5 points out that this applies only to individual grapes, such as one or two, but not to whole grape clusters with at least three grapes on them, which the farmer is allowed to pick up in case they fall. Peret is the same thing as Leket (fallen stalks), just that Peret refers to grapes and Leket refers to grain.

6. The Torah commands that the farmer is not allowed to go back and pick up forgotten sheaves of grain in the field, forgotten olives and forgotten grapes. See Devarim 24:19-21. This particular gift to the poor is known as Shikcha, meaning “forgotten”. Tosefta Peah 3:10 says that by grapes this applies to two whole vines of grapes that grow separately from each other, meaning that they are not intertwined, that have not been picked. However if three vines have been forgotten to be picked then the farmer can go back and pick them.

7. The Torah commands that the farmer is not allowed to pick incompletely formed grape clusters during harvest, because he has to leave them for the poor. See Vayikra 19:10 and Devarim 24:21. Mishna Peah 7:4 explains that an incomplete grape cluster is a cluster which either does not have grapes attached to a central stem, or does not have grapes lying one on top of the other, or has a single grape growing on it. The Rambam (Hilchot Matnot Aniyim 4:16) explains that
the reason such clusters are called Olelot (singular: Olelet) is because the name comes from the word לילָ ה (Olal) meaning “an infant”, since the cluster never fully developed compared to other clusters it is just like an infant compared to grown men. The term Olelot is often translated as “gleanings” however that is not accurate, since gleanings are left over crops which are left by the farmers after the harvest. All gifts to the poor, Peah, Shikcha, Leket, Peret, and Olelot would qualify as gleanings since they are left on purpose by the farmers in the fields to be collected by the poor.

In order to understand what Olelot are it is critical to understand how the grapevine grows and develops. There are 7 stages in the annual growth of a grapevine: bud break, flowering, fruit set, Veraison (ripening), harvest, leaf fall, and winter dormancy. In the Northern Hemisphere, and therefore in the Land of Israel, bud break begins in March, when the vine begins to bleed water and small buds form on the vine from which shoots begin to grow. 40-80 days after bud break, around May time, flowers appear on the tips of the new shoots. Almost immediately after flowering the fruit set stage begins, also in the month of May. The flowers that have been fertilized begin to turn into small berries, where as unfertilized flowers fall off the vine. This is the critical stage which determines the potential crop yield of the vine. It is during this stage that some clusters do not form properly and become designated as Olelot. Olelot clusters are deformed from the very beginning of fruit set and are not something that occurs later during the harvest of the grapes. This is the reason why Tosefta Peah 3:19 states that Olelot belong to the poor from the beginning of their formation and not from the time of the harvest as other gifts do, such as Peah or Shikcha. Following fruit set, the grape berries are green and hard to the touch. They begin to grow to about half of their final size during the stage of Veraison, which begins 40-50 days after fruit set, around the end of July and the beginning of August. During this stage the final color of the grapes takes form. Once the grapes are fully ripe harvest begins, roughly in the month of September. Following the harvest the leaves turn from green to yellow and eventually when it gets colder fall off. The vine remains dormant during the winter until it begins the annual cycle again in the beginning of spring.
Normal Chardonnay grape cluster. Notice how the grapes overlap one another. Photo: TravessiaWineBlog.com

Chardonnay grape cluster with poor fruit set. Notice how the grapes do not overlap one another and most grapes on the cluster have not developed at all. Such cluster would be considered Olelot. Photo: TravessiaWineBlog.com
The Tosefta mentions all four gifts to the poor that apply to grapes: Peret, Shikcha, Peah and Olelot. The reason for this law is not explicitly stated in the Talmudic literature however it can be inferred from a Beraita quoted in Talmud Yerushalmi (Peah 3:2, Daf 15a). The Beraita states that by Leket the Torah says (Vayikra 19:9) לֶֽקֶט הַיּוֹם - the individual fallen stalks of your harvest, meaning that the stalks have been harvested and not plucked. The Beraita implies that the stalks have to be harvested in the normal manner of harvesting, meaning that they have to be cut off using a harvesting tool such as a sickle and not simply plucked out of the ground. Based on this Beraita Higayon Aryeh (Peah chapter 3, note 10) explains that since by the regular harvest of grain there is a requirement that the harvest must be done in the normal manner and for the main purpose of that produce, it also applies to all types of produce as implied by the discussion in the Yerushalmi (ibid.). Therefore in order to become obligated in these gifts to the poor the grape harvest also has to be done not just in the normal way of harvesting grapes, but for the main purpose of harvesting grapes, which is making wine. Harvesting grapes in order to eat them is not considered to be the main purpose of grape harvest and therefore if the farmer harvested his grapes for direct consumption he is exempt from leaving Peret, Peah and Shikcha. However by Olelot the Torah does not explicitly say the word “harvest” (see Vayikra 19:10), and therefore even though the grapes were harvested for direct consumption and not for making wine they would still be obligated in Olelot. It should be pointed out that by Peret it also does not say the word harvest (see Vayikra 19:10), however that does not pose a problem, because Peret by grapes is the same as Leket by grain and by Leket the Torah does mention harvest as I already explained. Also the reader should not be confused by the verse by Shikcha of grapes (Devarim 24:21) which on the surface seems to mention grape harvest and Olelot, since it says לא תועלו אלא אחריך, because it is not talking about Olelot but rather about grapes forgotten on the vine (Shikcha) as implied by the word אחוריך - “after it”, meaning that the farmer should not go back to pick off the grapes that he forgot on the vine.
A different explanation for this law is proposed by Chazon Yechezkel. He says that the word harvest by Peret, Peah and Shikcha implies that the produce has to be able to be stored since the main reason why people harvest crops is in order to preserve them for later use. Since grapes cannot be stored in the form of grapes for a long time without refrigeration these gifts to the poor would not apply to them if they are harvested for direct consumption. The only way to obligate the farmer in these gifts to the poor is to harvest the grapes in order to make wine out of them which allows the grapes to be preserved for a long time. However Olelot are different from the other three gifts, because they belong to the poor from the very beginning of their formation, during the fruit set stage as I already explained above, and not from the beginning of the harvest as the other gifts, as implied by the Tosefta (Peah 3:19). Therefore the way the harvest is done does not have any effect on Olelot and the farmer is still obligated in leaving them for the poor regardless how and for what purpose he harvested the grapes.

8. Since only the grapes intended for the wine press are obligated in Peah, as was explained above, the farmer has to leave Peah only at the very end of the harvest of the second group of grapes.

9. There are a few possible reasons why the farmer would pluck some grapes from the vine early. One reason is in order to improve his crop yield by a process known as “thinning”. There is a minimum requirement for the amount of leaf area required to acceptably ripen a grape crop. A value of 10 to 14 cm² of leaf area per gram of fruit is often quoted as the minimum requirement for maturing a crop in a temperate climate. See Thomas J. Zabadal, "Crop Control in Grapevines", Southwest Michigan Research and Extension Center, Michigan State University, SWMREC Report #17, http://www.grapes.msu.edu/pdf/cultural/cropControl.pdf, Last accessed on 11/29/09. In order to meet this ratio sometimes clusters have to be physically removed from the vine in order to allow more leaves to grow. There are two kinds of thinning that are potentially done on grape clusters: flower cluster thinning and cluster thinning. Flower cluster thinning is when some of the flower clusters are cutoff the vine during the flowering stage, before fruit set. Cluster thinning is
when almost mature grape clusters are removed during the Veraison stage. It is considered to be the easiest and best method of reducing the crop on overloaded vines. The Tosefta is referring to a case of cluster thinning during the Veraison stage. Since the grapes during Veraison are already eatable we may think that it would be considered to be a real harvest and therefore Peah would have to be left for it. Therefore the Tosefta teaches us that since the purpose of thinning is to improve yield and not to actually harvest the grapes it is not considered to be a real harvest and therefore Peah does not have to be left. For more information on the process of thinning see Albert Julius Winkler, "General Viticulture", University of California Press, 1974, chapter 14: Means of Improving Grape Quality, p. 338-345. A second possible reason why the farmer would pluck some grape clusters from the vine early is a process known as “green harvest”, or in French “vendange verte”. A green harvest is the removal of immature grape bunches, typically for the purpose of decreasing yield. Removing the immature grapes while they are still green induces the vine to put all its energy into developing the remaining grapes. This results in better ripening and the development of more numerous and mature flavor compounds. In the absence of a green harvest, a healthy, vigorous vine can produce dilute, unripe grapes. This practice is done most often in order to produce fine wine. However, it is unlikely that the Tosefta is referring to green harvest, because it is done during the fruit set stage, before Veraison, and therefore the grapes are still completely inedible. It is also not clear how ancient this practice is since some sources claim that this is a relatively modern practice and may not have been done at the time of the Tosefta. Therefore I have translated the main text to refer to the process of thinning and not green harvest. There is also a third, although unlikely, possibility that the Tosefta is referring to removing complete vines and not just clusters, in order to reduce congestion in the vineyard or simply because he needs the wood. The word Hameidal is used in this way in Mishna Sheviit 4:4. However, I think it is really unlikely here, because in the next statement Rebbi Yehuda says that he removed the grapes in order to be sold or eaten, which implies that it is referring to just clusters and not complete vines. A forth reason could be because the farmer simply wants to eat some grapes or wants to make a little
bit of money now by selling the grapes instead of waiting until he makes the wine and can sell the wine, as is implied by Rebbi Yehuda’s statement. According to this explanation it would have nothing to do with improving grape quality or crop yield, and therefore technically would be considered to be a part of the harvest.

10. It is not clear if Rebbi Yehuda is arguing on the previous statement of the Tosefta, or just clarifying it. He says that it depends on whether the farmer is intending to somehow store the grapes or immediately sell them. If the farmer intends to immediately sell them then it is not considered a normal harvest and therefore he is exempt from leaving Peah. However if he intends to eat them at home that is considered to be a form of storage, although it is not as prolonged as storing wine, and therefore he would obligated in leaving Peah. Talmud Yerushalmi (Peah 3:2, Daf 16b) also adds that even according to Rebbi Yehuda it depends on the farmers’ intent of why he plucked the grapes. If he thinned all of his vines in order to improve grape yield or grape quality then that is not considered to be a real harvest and therefore if he ended up selling the thinned grapes he is still exempt from leaving Peah for them. But if he ended up eating them then Rebbi Yehuda says that he has to leave Peah for them. However if his original intent had nothing to do with the improvement of the crop or the yield and he plucked some of the grapes in order to eat them or sell them, because he wanted to receive immediate payment or simply have some for dinner, then it is considered to be a harvest and he is obligated in leaving Peah on everything.

Tractate Peah, Chapter 1

Tosefta 14

[A farmer] who plucks [the produce and does not harvest it in the normal manner or for the main purpose of harvesting that produce] and brings it inside his house [and not inside the storage silo], even [if he has done so to] his whole field, is exempt from
[leaving] Leket (fallen stalks), from [leaving] Shikcha (forgotten sheaves), and from [leaving] Peah (corners of the field), but he is obligated in [taking of] Maaserot (tithes).

Notes:

1. The Tosefta states a new law regarding Peah which is a clarification of the laws mentioned in the previous Tosefta. It is not related to any Mishna.

2. This depends on which produce is being plucked. For example, the normal manner of harvesting wheat is cutting it with a sickle. Plucking would be ripping the stalks of wheat out of the ground and not cutting them off with a harvesting tool.

3. For example, the main purpose of harvesting wheat is to make bread from it. However if the farmer harvested wheat in order to eat parched grain directly or feed it to his animals or to weave some kind of mats from wheat stalks that would be considered plucking and not harvesting. Even if the person cut a few stalks with a sickle in order to make bread, but he did not harvest the whole field in order to store the grain for later usage it is considered to be plucking as explained by Talmud Yerushalmi (Peah 3:2, Daf 15a). It appears from the Yerushalmi that all of the conditions of regular harvest must be fulfilled in order to be obligated in Peah and other gifts to the poor related to the harvest.

4. Normally the harvested produce is stored in special silos in the case of wheat, or on the wine press in case of grapes. However if the farmer simply brought inside his house to be used in some other manner that would not be considered a normal way of harvesting.

5. For an explanation of what Leket and Shikcha are see above, Tosefta 13, notes 5 and 6. The reason for this law is not explicitly stated in the Talmudic literature however it can be inferred from a Beraita quoted in Talmud Yerushalmi (Peah 3:2, Daf 15a). The Beraita states that by Leket the Torah says (Vayikra 19:9) לֶקֶט – the individual fallen
stalks of your harvest, meaning that the stalks have been harvested and not plucked. The Beraita implies that the stalks have to be harvested in the normal manner of harvesting, meaning that they have to be cut off using a harvesting tool such as a sickle and not simply plucked out of the ground. Based on this Beraita Higayon Aryeh (Peah chapter 3, note 10) explains that since by the regular harvest of grain there is a requirement that the harvest must be done in the normal manner and for the main purpose of that produce, it also applies to all types of produce as implied by the discussion in the Yerushalmi (ibid.). In the case of wheat that would be making bread, in the case of grapes that would be making wine, and in the case of lives that would be making oil. The same law that applies to Leket also applies to Shikcha and Peah. The reason is because the obligation of all of these gifts to the poor falls at the same time, namely during the harvest. However other gifts to the poor, such as Maaserot and Olelot (incompletely formed grape clusters), are still obligatory after such plucking, because their obligation does not fall during the harvest but either before or after and therefore does not depend on the particular manner of harvesting.

6. For an explanation of what Maaserot are see above Tosefta Peah 1:6, note 7. Since the obligation of Maaserot came when the person completed the harvest and did some finishing act of the harvest, such as making a pile of wheat or bringing the produce into his house for food consumption, as was explained earlier (ibid., note 8), it does not depend on the act of harvesting itself. Therefore even if the harvest was done in a not normal manner, such as plucking, as long as the farmer finished the act of harvesting and brought the produce into his house, he is still obligated in separating all of the tithes.

Tractate Peah, Chapter 1

Tosefta 15

[A person who is either dangerously ill or healthy,²] writes away [in a contract all of] his [movable and immovable]³ property to his sons and [also] writes

משכת פאה פרק א

הוספנות טו

הַכּוֹתֵב נְכָסָיו לְבָנָיו וְכָתַב לְאִשְׁתּוֹ קַרְקָע כָּל שֶׁהוּ-אִיבְּדָה. כְּתוּבָּתָה אָמַר רַבִּי יוֹסִי בַּמֶּה בָרִיםדְ? אֲמוּרִים בִּזְמָן שֶׁקִיבְּלָה עָלֶיהָ לְשֵׁם קַרְקָע כְּתוּבָּתָה אָבַל לֹא.
away [in the same contract] to his wife land⁴ of any size⁤ – [the wife] loses⁶ [the right to claim the value of] her Ketubah (marriage contract)⁷ [upon the husband’s death or divorce]. Rebbi Yossi said, “When do we say this [that the wife loses the right to claim the value of her Ketubah upon the husband’s death or divorce]? At the time when she accepted upon herself [to receive this land] as a part of her Ketubah. But if she did not accept upon herself [to receive this land] as a part of her Ketubah, whatever [the husband] gave her [is considered to be] given [to her as a regular gift] and she [can still] claim her Ketubah [upon his death or divorce] from [his] other property [that he gave away to his sons in the above mentioned contract].”⁸

Notes:

1. Mishna Peah 3:7 mentions the case of the husband who is dangerously ill giving away all of his property while he is still alive to his sons and to his wife. The Mishna mentions an argument between the Tanna Kama and Rebbi Yossi regarding the wife’s eligibility of claiming the value of her Ketubah upon the husband’s death from the property that was given away to his sons if she received any land in this transaction. This Tosefta expands on this law and changes some of the details of the case itself and of Rebbi Yossi’s opinion. The reason that this law is mentioned here in Peah is because the previous Mishna (Peah 3:6) discussed a law regarding Peah that applied to a minuscule amount of land. Mishnayot Peah 3:7 and 3:8 discuss additional laws that have to do something with a miniscule amount of land even though they have nothing to do with Peah. The Tosefta does
not comment on Mishna Peah 3:6, however it does comment on Mishnayot Peah 3:7 and 3:8, so it appears as if this and the next Tosefta are out of context, but really they are not. From this particular structure of the Tosefta it is clear that the Tosefta was written after the Mishna as an addition to it and not like some scholars claim that it was written before the Mishna.

2. The Mishna (Peah 3:7) implies that it is only talking about a person who writes this contract is dangerously ill, however if he is healthy then this law would not necessarily apply and his wife would still be able to claim her Ketubah if later he dies or divorces her. For an explanation of what the Ketubah is see note 7 below. The reason is because if the husband is dangerously ill then the wife assumes that this act of him giving away his property is his final act and she will not have any other rights to receiving anything from his possessions later on and so therefore if she does not explicitly say that she is still holding on to her right to claim the value of the Ketubah after his death she forfeits that right, because she implies that she is satisfied with this gift of land to her as his final will. However if the husband is healthy then the wife assumes that he is simply giving away a gift both to her and to his sons and this is not his final will then she does not forfeit her right to claim the Ketubah later if he dies or divorces her. In fact some commentators explain this Mishna in this way. See the commentary of the Rambam and Rav Ovadyah Mibartenura on the Mishna (Mishna Peah 3:7) and Pnei Moshe on Talmud Yerushalmi (Peah 3:9, Daf 18a, Avdah Ketubata). However the Tosefta does not mention whether the husband is dangerously ill or not, so it implies that this law applies in both cases, whether he is healthy or dangerously ill. The reason would be that since the husband is giving away all of his property and leaves nothing to himself the wife assumes that this is his final will and this is all she is ever going to get out of him in case of his later death or divorce, and therefore she does not have any future claims to the property that his sons received from him. The Rambam rules (Hilchot Zechiyah Umatana 6:9) that this law applies in both cases, whether the husband is healthy or dangerously ill. Since the Rambam himself wrote in his commentary on the Mishna that the Mishna is talking about only someone who is dangerously ill
and not who is healthy it would make sense to conclude that the Tosefta argues on the Mishna and the Rambam rules according to the implication of the Tosefta and not according to the implication of the Mishna.

3. In order for this case to make sense the husband has to give away all of his property, both movable and immovable, and not just immovable property (i.e. land), because theoretically the wife can claim the value of her Ketubah upon the husband’s death or divorce out of any type of property (see the next note) and since in this case he gave everything to his sons except for that miniscule piece of land that he gave to his wife, there is nothing of his property left in his possession for her to claim the value of her Ketubah in the future except to take it out of the property that was already given away to his sons. Talmud Yerushalmi (Peah 3:9, Daf 18a) explicitly makes this point in the conclusion of the discussion of this case.

4. It is not clear from either the Tosefta or the Mishna if land is meant here literally or it is just an example and the same law would apply if the husband gave her some movable property instead. For a discussion of various opinions see Saul Lieberman’s Tosefta Kifshuta on this Tosefta (Karka Kol Shehu, p. 141). Based on the premise that according to the basic law which existed at the time of the Mishna and the Tosefta the Ketubah can be collected from either movable or immovable property the land in this case is just an example and the same would apply even to movable property. For a detailed discussion of the law regarding from what type of property the Ketubah could be paid from see Tosaofot (Ketubot 51a, Memikarkai Velo Memitaltelei). Based on that Tosafot the statement of Rava in Talmud Bavli (Ketubot 51a) that the Ketubah could only be collected from land and not from movable property was a later Babylonian enactment of Rava himself and was not the accepted opinion in the Land of Israel at the time of the Mishna and the Tosefta, just like it is not the accepted opinion today. Daniel Sperber (see Daniel Sperber, “Roman Palestine, 200-400, The Land.”, Bar-Ilan University, 1978. p. 180-182.) points out that this particular law if the Ketubah can be claimed from movable property or not actually changed back and forth depending on the economic
situation of the location, as can be seen from Talmud Yerushalmi (Ketubot 10:3, Daf 59a).

5. Any size means literally “any size”, even if it is so small that a person cannot even stand on it, because land always has value to it.

6. The word “loses” is spelled in all Tosefta manuscripts איבדה (Ibda), with the letter Yud, meaning “she loses” referring to the wife and not אבדה (Avda), without the letter Yud, meaning “it is lost” referring to the Ketubah, as it is written in some editions of the Mishna. The Rambam in his commentary on the Mishna (Peah 3:7) points out the correct spelling is איבדה (Ibda), with the letter Yud, because it is specifically referring to the wife’s ability to speak up that this gift of land is just a gift and she still keeps her right at a later time to claim the value of her Ketubah from the property given to the sons. And since the wife was quiet and did not explicitly say that this is just a gift she loses her Ketubah by her inaction.

7. The accepted opinion is that according to Torah law when a man marries a woman he does not have to write any marriage contract that promises money to his wife in the case of his death or divorce. However the Rabbis have decreed that the husband is obligated to write a marriage contract called Ketubah in which he promises that in the case of his death or divorce his wife can collect out of his property 200 silver Denarii if this was her first marriage (i.e. she was a virgin when he married her) and 100 silver Denarii if this was her second or more marriage (i.e. she was a widow when he married her). See Mishna Ketubot 1:2 and Talmud Bavli (Ketubot 39b). Denarius (plural: Denarii) was the most common Roman silver coin in circulation at the time of the Mishna (up to the year 220 CE) and the amount of 200 silver Denarii was roughly equal to an average salary of an unskilled worker for half a year, based on the daily wages of 1-2 Denarii. See Avot Derebbi Natan (Schechter ed. Vienna 1887, page 27b, Nuscha 2, Chapter 26, Maaseh Behillel Hazaken), Talmud Bavli (Avodah Zarah 62a), and Tosefta (Bava Metzia 6:5). So this was a very significant sum of money that protected the woman financially from the husband’s sudden death or most importantly from a rash decision to divorce her, since by both Torah and Rabbinical law the husband can divorce his
wife against her will. See Talmud Bavli (Gittin 21a). The remaining property after the wife collects the value of her Ketubah is inherited by his sons, regardless if they are also her sons or only his sons from another marriage, since by default inheritance by Torah law passes only from the father to the sons and not to the wife or the daughters. There are various exceptions to this rule if the husband does not have any sons; however the Tosefta is discussing a standard case where the husband has sons. The sons do not have any power of the wife’s claim to the Ketubah, so if their father gave all of his property to them during his lifetime, and later on when he died or divorced his wife he did no own anything, as long as the wife is still eligible to receive the value of her Ketubah, she can claim it out of the property of his sons, even though it belonged to them before his death or divorce. The Tosefta is discussing precisely this situation and the question is not whether she can or cannot collect it out of the sons’ property, because that is a given, but rather whether she is still eligible to the right to collect her Ketubah or not.

8. Rebbi Yossi argues on the Tanna Kama and says that it is not enough for the wife to simply be quiet when she receives this gift of land from her husband and not speak up. Rebbi Yossi holds that she must speak up and explicitly say that this gift of land counts as the payment of her Ketubah, in which case she would be able to claim it later upon her husband’s death or divorce from the property that he has already given away to his sons. However if she was simply quiet and did not say anything it is not enough of an indication that this gift is intended to be her Ketubah payment and therefore she retains her right to claim it later. This clarification of the Tosefta is critical in Rebbi Yossi’s opinion, because from the way it is stated in the Mishna it is understood completely differently. The Mishna quotes Rebbi Yossi saying that if she accepted upon herself that this land is her Ketubah payment, even if the husband never wrote this gift of land to her in the contract, but only mentioned it verbally she still loses her future ability to claim the value of the Ketubah, because she intended to be given this land from the property received by the sons. According to the Mishna Rebbi Yossi is not arguing with the Tanna Kama in any way, but rather is adding a separate case to his statement. However, from
the Tosefta it is clear that he is arguing, and if the land has not been explicitly written in the contract then for sure she does not lose her later ability to claim the value of the Ketubah, because then it is obvious that the husband is simply giving her a gift and not intending in any way for this to be his final will to his wife since he did not write it down. The way the Mishna presents Rebbi Yossi’s opinion is very peculiar, because he essentially says that it is possible to somehow nullify a written contract (i.e. Ketubah) with a verbal proclamation (i.e. the husbands unwritten promise to give her land). However from the Tosefta no such claim is made and Rebbi Yossi’s opinion is a lot more balanced, since according to the Tosefta, it is a written contract that nullifies the Ketubah and not simply a verbal proclamation.

Tractate Peah, Chapter 1

Tosefta 16

[A person who is either dangerously ill or healthy,²] writes away [in a contract³ all of] his [movable and immovable]⁴ property to his [non-Jewish]⁵ slave, [the slave] goes out a free person.⁶ [But] if [the owner] left [for himself] land⁷ of any size,⁸ [then the slave] does not go out a free person.⁹ Rebbi Shimon says, “[A person] who says, ‘All of my [movable and immovable] property is given to so and so, my slave, except for [this] one of many thousands [of items] among them,’¹⁰ [it is as if] he did not say anything [and the slave does not go out free, but rather remains his slave].¹¹ [But if a person said that he is giving all of his movable and immovable property to his slave, ‘except for a particular city, [or] except for a particular field’,¹² even
though there is no [anything else] there except for that field or that city (i.e. the owner did not have any other possessions anyway) this slave has acquired the [only other] property [of that person] (i.e. himself) and [therefore] acquired himself [to go out as a] free person.”¹³ And when [these] words [of Rebbi Shimon] were said in front of Rebbi Yosse,¹⁴ he said “Lips will kiss the one who replies straight things.” (Mishlei 24:26)¹⁵

Notes:

1. Mishna Peah 3:8 mentions the case where a person gave away either all of his property or some of his property to his slave and if that automatically renders the slave free or not. This Tosefta expands on that case.

2. It makes no difference whether the person is dangerously ill or healthy when it comes to giving away his property to his slave, because his slave is also considered to be his property which gets passed on to his inheritors and does not have an official termination point, like a marriage which disappears with the husband’s death.

3. The most common way for a slave to be freed is by receiving from his master a document that declares the slave’s freedom called Get Shichrur (Bill of Freedom), which is similar in content to a regular bill of divorce. See Mishna Kiddushin 1:3 and Mishna Gittin 9:3. Therefore since this transaction of the master’s property in the end frees the slave it must be written in a contract and not merely verbal.

4. According to Torah law slaves themselves are considered to be immovable property just like land. See Talmud Bavli (Shevuot 42b). However there is a question in Talmud Bavli (Bava Batra 150a-b) if slaves are considered to be like immovable or movable property in Rabbinical law. See Tosafot (Bava Batra 150a, Avda). Depending on how that question is resolved in that Sugya (Talmudic discussion) it
would make a difference whether this Tosefta is talking about only immovable property or movable property as well. If slaves are immovable property even by Rabbinical law then the master would only have to give away all of his immovable property to his slave, but not his movable property. Since immovable property would include the ownership of the slave himself giving it to the slave himself is in reality giving him his freedom. However if by Rabbinical law slaves are considered to be like movable property then the slave would have to be given both the immovable property, in order acquire his freedom by Torah law and the movable property in order acquire his freedom by Rabbinical law. The conclusion of that Sugya seems to be that by Rabbinical law slaves are considered to be movable property and therefore in this Tosefta the master must give away both the immovable and movable property to his slave in order for the slave to acquire his freedom.

5. There are two kinds of slaves that can exist by Torah law – Jewish (Eved Ivri) (see Shemot 21:1-5) and Non-Jewish (Eved Canaani) (see Vayikra 25:44). A Jewish slave is a very particular case of slavery which usually occurs when a Jew is unable to repay his debts to another Jew, all his possessions get taken away and he is forced to sell himself into slavery in order to survive or if Jewish thief is unable to pay back what he stole and is sold into slavery by the court. Non-Jewish slaves are simply purchased or captured in war. Either type of the slave can be freed by granting them the Bill of Freedom, Get Shichrur, and therefore the Tosefta can be referring to either type of slaves in this case.

6. Since the slave is included into the property that the master gave to him he acquires his freedom.

7. The Tosefta does not literally mean land, but movable property as well as was already explained above in note 4.

8. Any size means literally “any size”, even if it is so small that a person cannot even stand on it, because land always has value to it.

9. Since the master kept some of his property to himself, no matter how miniscule, it is considered that he intended to keep the slave as well.
And even though the master wrote in the contract that he is giving away all of his property, since he kept some of it is clear that he did not intend to give literally everything away to his slave and therefore the slave does not go out free. Since the slave does not go out free he also does not acquire the property that he master gave him, because all property that the slave acquires is automatically acquired by his master.

10. Meaning that the master did not specify which item he wants to keep, but rather he just said that one of them he wants to keep.

11. Rebbi Shimon holds that since the master did not specify which item he wants to keep we assume that the item that he wanted to keep was this slave and therefore the slave does not go out free. Since the slave does not go out free he also does not acquire any other property that he master gave him as was already explained above in note 9. That is why Rebbi Shimon says that it as if the master did not say anything at all, because his complete proclamation ended up being in vain, since nothing got accomplished, not the freedom of the slave and not the slave’s acquirement of the master’s property.

12. Meaning that the master specified exactly which item he intends to keep.

13. Since the master specified that he intends to keep a particular city or field obviously he intended to free the slave, and therefore the slave goes out free and is therefore able to acquire all of the other property that the master gave him except for what the master specified that he wants to keep. According to the Tanna Kama even if the master specified which item he wanted to keep still the slave does not go out free, because we assume that the master intended to keep the slave as well and never referred to him in his other possessions. However Rebbi Shimon argues and holds that the master is capable to differentiate between the specific thing that he intended to keep and the slave. Talmud Bavli (Gittin 9a) explains that the reason for Tanna Kama’s opinion is that the Get Shichrur must contain a description of a single act that completely releases the property described in it. Since in this particular case it contained both an act of release for most of
the property and an act of keeping for the particular item that the master specified it is not considered to be a complete document of release which makes it invalid and therefore the whole transaction did not take place. However Rebbi Shimon is not concerned with that and holds that since the master specifically indicated what he intends to keep and what he intends to release it is considered to be a valid Get Shichrur and that transaction described in it takes place.

14. Rebbi Yossi’s name is sometimes spelled ‘יוסי’ (Yossi) and sometimes spelled ‘יוסה’ (Yosse), even though it refers to the same person. I have kept the spelling here that appears in all Tosefta manuscripts even though it may appear inconsistent with previous Toseftot.

15. When Rebbi Yossi heard how much Rebbi Shimon’s statement makes more sense than the Tanna Kama’s he proclaimed about him the verse in Mishlei, meaning that a person who says something straight and correct deserves to be kissed.