Peah, Chapter 2

Tractate Peah, Chapter 2

Tosefta 1

[If a poor person] took a section of Peah (corners of the field) [that was standing in the field] and threw it on the remaining [Peah that is still standing2 in order to cover it up so that other poor people would not see it],3 he does not get [to keep] any of it (i.e. standing Peah on top of which he threw the Peah which he already took).4 Rebbi Meir says, “We5 fine him and take away from him [both] this (i.e. Peah which he took legitimately) and this (i.e. Peah on top of which he threw his legitimate Peah in order to steal it from other poor people).”6

Notes:

1. Mishna Peah 4:3 states that if a poor person already took some Peah from the field and then decided to steal more Peah from other poor people by taking the stalks that he already took and throwing them on top of Peah that is still standing in the field in order to cover it up and this way preventing others from taking it, he does not get to keep it. Our Tosefta restates the Mishna’s law and adds to it the opinion of Rebbi Meir regarding this case.

2. This particular case is talking about produce that can be covered up by other stalks, such as grains. It would be possible to throw a bunch of cutoff grain on top grain that is still growing and this way concealing it from passersby.

3. Poor people are only allowed to take as much Peah as they can carry away in a single shot, meaning that they must detach it from the
ground in order to acquire it. They are not allowed to try to hide some of it in the field while it is still attached to the ground in order to take it later. This law is explained in more details in the next Tosefta. However, it is implied from this and the next Toseftot that if a poor person was to cut off a lot of produce and pile it up on the ground, he would be allowed to keep it and no one else would be allowed to take it away from him since by detaching it he acquired it, even though technically he is not able to carry all of it away in one shot. Since there is no limit on how much Peah a single poor person is allowed to take at a given time the Tosefta must be talking about a case when a poor person simply was not able to carry away all of the Peah and did not want to or think about that he could have detached it and piled it up on the side of the field to carry away later. He took as much as he possibly could and then he wanted to bring that back home and come back and take more Peah. However he wanted to make sure that while he is walking back and forth no one else comes and takes the Peah that is still standing in the field. Therefore he decided to hide it from others by covering it up with some Peah that he already took. It is also possible that after he saw how much Peah was still available he went to get some kind of a wagon or a cart in order to be able to carry more away, so he took the Peah that he was holding in his hands and used it to cover up the Peah that was still standing so that no one would take it until he comes back for it.

4. I have explained the meaning of this phrase according to the explanation of the Rash Mishantz in his commentary on Mishna Peah 4:3. When the Tosefta says that he does not get any of it, it is referring only to the Peah that is still standing that he covered up. However the Peah that he already cut off and used to cover up the standing Peah belongs to him legitimately and he gets to keep it. The reason I have chosen this explanation is because it makes more sense in the text, since the Tosefta implies that Rebbi Meir comes to argue on this statement of the Tanna Kama. Since Rebbi Meir says that he does not get to keep both Peahs due to a fine it must mean that the Tanna Kama meant that he does get to keep the Peah that he took legitimately. Also the phrase Ein Lo Ba Klum literally means “he does not have anything in it”, which implies that the word “it” is referring to
the last object of discussion, namely the Peah that is still standing that was covered up.

5. “We” is used here as a royal we, referring to the court (Bet Din). If other poor people would go to court and complain that this particular individual tried to hide Peah from them the court would fine him and order him to return back to the field both the Peah that he took legitimately and the Peah that he tried to hide. After he returns it, it can be retaken again by other poor people.

6. Rebbi Meir argues on the Tanna Kama and says that since this person tried to steal Peah from other poor people by hiding it he gets fined and he does not get to keep any Peah, not the one that he took legitimately and not the one that he tried to hide.

The Rambam in his commentary on the Mishna (Peah 4:3) and in the Mishneh Torah (Hilchot Matnot Aniyim 2:18) seems to imply that Rebbi Meir is not arguing on the Tanna Kama, but rather comes to explain what the Tanna Kama meant to say. The way this is implied by the Rambam is because the Rambam quotes Rebbi Meir’s Halacha (law) as if it was the Mishna’s main intent and not an argument between them. According to this explanation the Tanna Kama also meant to say that he gets fined and does not get any Peah at all. Since the phrase that the Tanna Kama used is obscure Rebbi Meir had to clarify it. I have to admit that this explanation does not fit very well with the structure of the Tosefta, since the Tosefta seems to imply that Rebbi Meir argues on the Tanna Kama as I already mentioned in the previous note. It is possible that the reason the Rambam explained the Mishna this way is because Talmud Yerushalmi (Peah 4:2, Daf 21a) quotes his opinion as a comment upon the Mishna and not as a descending opinion, although technically the Yerushalmi could be viewed either way. The Yerushalmi does not quote our whole Tosefta, but only Rebbi Meir’s opinion thus implying that the Halacha follows Rebbi Meir, which pushed the Rambam to rule like him. I would to suggest that the argument between the Rash Mishantz and the Rambam is really an argument between the Tosefta and the Yerushalmi. Since the Yerushalmi does not quote the whole Tosefta, but only Rebbi Meir’s opinion and begins its quote with the words
Tanni Beshem Rebbi Meir (it was taught in a Beraita in the name of Rebbi Meir), it is not quoting the Tosefta, but rather a different Beraita and uses it to argue on the Tosefta, that Rebbi Meir is really only explaining the Mishna and is not arguing on it, as opposed to the Tosefta which quotes both opinions one after the other to imply that they are arguing on each other.

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[If] the owner [of the field] gave Peah (corners of the field) to [specific] poor people and [before they physically took the produce] another poor person came and took [this Peah] from behind them, he [has legally] acquired it [and gets to keep it].

[If] two poor people were [trying to] drive each other off from the bundled sheaf [of Peah] and [another] poor person came and took it (i.e. the sheaf of Peah that they were fighting over) from behind them, he [has legally] acquired it [and gets to keep it], because a poor person does not [get to] take [home] Leket (fallen stalks), Shikcha (forgotten sheaves) and Peah, until it falls into his hand (i.e. he physically takes it into his hands).

Notes:

1. This Tosefta continues from the previous Tosefta with the discussion of the procedure how the poor people acquire Peah. It is not related to any Mishna.

2. Literally: the owner of the house.
3. The Tosefta does not specify how the owner of the field gave the produce to these poor people. It could have been done verbally, that the owner merely told them that they can take it or it could have been done physically, where the owner cut off the Peah from the ground himself and bundled it up all ready to be taken by the poor people. The Tosefta leaves it open on purpose, because its main point is to emphasize regardless how far the owner went to prepare this Peah for these particular people, as long as they did not physically take it themselves they did not acquire it and it can be taken by any other poor person.

4. The Tosefta will explain in its next statement why this other poor person gets to keep it despite the fact that the owner promised it to someone else.

5. The word מִתְכַּשֶּה (Mitkashin) is an Aramaic word which comes from the Aramaic root כשש (Kashash) which means to drive someone off or chase away by hitting them. This word is closely related to the Syriac word Katash, which means “to fight” or “be driven about”. In fact, in the first edition of the Tosefta this word is spelled Mekatshin, which looks exactly like the Syriac word. Saul Lieberman in Tosefta Kifshuta suggests that the correct spelling of the word in this Tosefta should be the way it appears in Talmud Yerushalmi (Peah 4:2, Daf 21b) which is Mitkatshin. All 3 forms of this word mean the same thing and I have left it in the main text the way it appears in the Vienna manuscript.

6. In the Vienna manuscript this word is spelled לֵעֹמֶר (Imur). Imur is the process of carrying bundles or sheaves of grain. Since the Tosefta is not referring to the process of carrying the bundles, but rather to the bundle itself, over which the poor people are fighting, it would make a lot more sense if the reading would be לֵעֹמֶר (Omer), which means the sheaf itself. In fact this is the reading that appears in the Geniza fragment, ENA 3630.7. Therefore I have changed this word in the main text according to the Geniza fragment.
7. The Tosefta implies that the sheaf of Peah was already lying on the ground all ready to be taken from before the poor people got there and they began to fight over it before any of them picked it up. This goes along with the explanation of the previous statement in the Tosefta regarding the owner of the field who set aside a bunch of Peah for specific poor people. With this illustration the Tosefta wants to emphasize that even if the owner of the field physically set aside bundles of Peah ready to be taken by these specific poor people, the bundles do not belong to them until they physically pick them up.

8. For a description of what Leket is see above, Tosefta 1:13, note 5.


10. In the Vienna manuscript the text appears as I have quoted it above. However, in the Erfurt manuscript and in the Geniza fragment, ENA 3630.7, there is an extra item added to this list and that is הבשרל ירא קראות, and a Selah (type of coin) of a finding, meaning that if a person found a coin on the street he does not acquire it until he physically picks it up. I did not include this phrase into the main text, because it does not fit well here for a few reasons. First of all, it has nothing to do with a poor person since anyone can find a coin on the street. Second of all, it does not totally make sense why the Rabbis would enact that a person cannot acquire a found object by a verbal proclamation as is the basic Torah law, as I will explain in the next note. It is possible to resolve both of these questions. Perhaps only a poor person would pick up a Selah that he finds on the street, where as a rich person would not bother and would simply leave it lying there, although this is not compelling since a Selah is a relatively large coin in value. The Mishna (Bava Metzia 5:2) says that a monthly rent for a courtyard was a Selah, which makes it such a substantial sum of money that even a rich person would definitely pick it up. Also, the reason that the Rabbis would enact such a law by a lost object is because the Rabbis wanted to avoid disputes and court cases between people. So they enacted that only a physical acquisition gives a person the right to keep a found object, since then it is obvious that he is the new owner, where as a verbal acquisition can be easily disputed by another party. Since the text of the Tosefta flows much better without
this phrase I have decided to leave it out from the main text of the Tosefta, based on the reading in the Vienna manuscript.

11. It is not clear if this requirement of needing to physically take the gifts to the poor in order to acquire them is a Torah law or a Rabbinical law. It seems to me that it is a Rabbinical enactment which was done in order to make sure that all poor people would be able to get the gifts to the poor based on a first come first serve basis. If not for this enactment there would be a constant problem of where the owners of the fields would play favorites with the poor people who are their friends and save all of these gifts for them, thus leaving out many poor people without a means for sustenance. The reason I do not think that it is a Torah law is because by Torah law a person can acquire an object with a verbal proclamation of his intent without an action of acquisition (Kinyan), as stated by the Mishna (Bava Metzia 1:3) and explained further in Talmud Bavli (Bava Metzia 10a). Therefore by Torah law there should be no reason why a poor person cannot come over to the field and from a distance say that this Peah that is still standing there belongs to him. Obviously, by Torah law if the owner of the field specifically set it aside for him he should acquire it as well, since the whole discussion in Talmud Bavli (Bava Metzia 10a and Beitza 39b) if a person can acquire a lost object for someone else seems to imply that there is a potential Rabbinical enactment which prevents a person from doing so, however by Torah law there should not be any problem of one person acquiring an object for another person. It should be noted that there is an argument between Rebbi Eliezer and the Chachamim in Mishna (Peah 4:9) whether a rich person who is not eligible for Peah himself, and who is not the owner of the field, can acquire Peah for a specific poor person. Although the Talmud Bavli (Bava Metzia 9b) assigns complicated logical explanations for both opinions, from the gist of the argument it can be easily inferred that everyone agrees that by Torah law the rich person should be able to acquire Peah for the poor person and only due to a Rabbinical enactment he is not able to do so.
If workers were harvesting [produce\(^2\) directly] into their baskets [without allowing the produce to fall on the ground at all,\(^3\) then] we\(^4\) remove them (i.e. fire them) [since they are not following the laws of Leket (fallen stalks) and end up stealing from the poor by not allowing Leket to take place].\(^5\)

Notes:

1. Since the previous two Toseftot discussed cases where someone prevents the poor from collecting their gifts, this Tosefta states a new law about such a case with regard to Leket. It is not related to any Mishna.

2. This would apply to any type of produce, whether it is fruit or grain, since Leket applies to any type of produce that can fall to the ground during the harvesting process.

3. The Tosefta is referring to a case where the workers were harvesting in a way that all of the produce was picked directly above a basket, that even if a stalk or a fruit would fall out of the hands of the worker, it would still fall into his basket and not on the ground.

4. “We” is used here as a royal we, referring to the court (Bet Din). The court is responsible to enforce that the owners of the fields tell their workers to make sure that they have to harvest in a way that it is possible for Leket to take place. In the end, it is the responsibility of the owner to make sure that his workers do this or get fired. However by saying “we” the Tosefta teaches us, that even if the owner himself instructs his workers to harvest above baskets so that nothing would fall on the ground, the court has the power to fire all of the workers for non-compliance with the laws of Leket. It is important to note that
the court does not punish the owner directly in this case by imposing on him some kind of a fine, but rather the workers get fired since in the end it is their responsibility to comply with the laws of Leket, even if it means not to follow the owner’s instructions, since they are the ones who perform the harvest and it is up to them if Leket will occur or not.

It seems to me that this particular law is of rabbinic origin since technically there is nothing wrong with not allowing produce to fall to the ground, even if it is done on purpose so that the poor will not get anything and the owner gets to keep everything. Although I have to admit it may not be very ethical. The Torah specifically says (see Vayikra 19:9 and 23:22) that a farmer should not pick up fallen produce and should leave it laying on the field for the poor. However it does not say that the farmer has to make sure that some of the produce actually falls down onto the ground, implying that as long as nothing falls down the Mitzvah of Leket does not apply, even if the farmer is preventing it from falling on purpose. However, the Rabbis were concerned about the welfare of the poor and wanted to make sure that there is something left for them. Therefore they enacted a law that required the farmers to harvest in such a way that something would be left for the poor. In contrast to this see below Tosefta Peah 2:6 regarding the workers’ obligation of leaving Peah even if the owner told them not to leave it.

5. Since the Torah gave the poor fallen produce as a gift, actively preventing them from getting it is considered to be a form of theft. The concept of theft from the poor by somehow preventing them from getting their gifts was is mentioned in Tosefta Peah 1:7, as well as in Mishna Avot 5:8. Obviously since this law is of rabbinic origin this concept is based on ethical grounds in this particular case as enacted by the Rabbis, since by Torah law it would only be considered theft from the poor if the farmer would pick up a fallen stalk which already became Leket, but not by preventing the stalks from falling down since in that case they never became Leket in the first place.

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The owner [of the field] should not take actual fallen stalks that naturally fell during the harvesting process, which are Leket (fallen stalks) [away] from the poor people in order to take [the same amount of produce] from the [regular] sheaves [that have been bundled as a part of the regular harvest and give that produce to the poor instead of the naturally fallen stalks]. Rebbi Yehuda says, “In the morning the owner [of the field] needs the say [the following:] ‘Everything that the poor people will take [today] from the [regular] sheaves [that have been bundled as a part of the regular harvest and belong to the owner] should be considered ownerless,’ [in order that the poor people who stole it will not violate the prohibition of stealing].” Rebbi Dosa says, “[He should say that] around the evening time [at the end of the day and not in the morning].” And the Chachamim (Sages) say, “Ownerless [property that was proclaimed as such by the owner] due to coercions [beyond his control does not become] ownerless, because [we can] not [take] responsibility for cheaters [who steal other people’s property and try to prevent them from violating commandments by using legal loopholes].”

Notes:
1. The Tosefta states a new law regarding Leket. It is not related to any Mishna.

2. Literally: the owner of the house.

3. Leket by definition is only produce that the farmers dropped during the harvest. Any other produce that was actually bundled on purpose cannot be added to or substituted for Leket, even if the owner wants to do so as a good will gesture to the poor people.

4. Saul Lieberman in Tosefta Kifshuta suggests that the reason the owner would not want to give the poor people the actual stalks that fell and instead offer them stalks from his own produce that he bundled during the harvest, because he does not want the poor people to walk inside his field, because either he simply does not want them to trespass or he still has some crops left in the field and they may trample on top of them. So what he does to avoid this is he does not allow the poor to enter his field, and since they cannot collect Leket he provides them with produce that he specifically set aside from his harvested bundles as a replacement for Leket.

Chazon Yechezkel proposes a different scenario where the owner’s bundles were left in the field and wind blew them apart and mixed them up with Leket that was lying on the ground. So the owner wants to go into the field and pick up his blown apart bundles, but by doing so he inadvertently will end picking up also Leket stalks since everything is mixed up. Then he simply selects some of the stalks from the bundles that he picked up and gives that as Leket to the poor. This explanation is completely wrong, because Mishna Peah 5:1 says explicitly that if the wind blew apart the bundles the owner can recover his bundles and he can just leave as much Leket is would normally fall from that amount of produce on the ground. He does not have worry about which specific stalks were original Leket and which specific stalks were his. The whole idea of Leket is to make sure that the owner leaves something that most people don’t care about for the poor, but not that he takes a heavy loss. It is possible to suggest that Chazon Yechezkel’s explanation goes according to the opinion of Rebbi Meir (see Mishna Peah 4:11) where he says that whenever there is a
doubt if something is Leket or not everything is considered to be Leket and has to be given to the poor, even if the owner would take a loss by doing so. However that is not the accepted opinion as Mishna Peah 5:1 clearly indicates and our Tosefta implies that it is going according to the accepted view. Also this case does not fit very well in the text of the Tosefta, because the Tosefta implies that the owner did this exchange on purpose and not by accident during the recovery of his bundles.

5. Rebbi Yehuda is not coming to argue on the statement of the Tanna Kama. But rather he adds a new law which says that not only is the owner not allowed to exchange Leket for other produce, but he even must make sure that the poor people do not violate any commandments if they end up taken from the owner’s harvested produce instead of picking up Leket.

6. The reason the owner has to do this in the morning is because it has to be done before the poor people take the produce since after they took the produce already the owner is not able to control it in any way and cannot declare it ownerless. This does not mean that the stolen property now belongs to the thief and not to the owner. It still belongs to the owner even though it is in the thief’s possession, however since the owner cannot control what happens to it while it is in the thief’s possession he cannot give it away to someone else by declaring it ownerless. See Talmud Bavli (Bava Kama 68b-69a).

7. By taking the produce from the owner’s sheaves and not from the fallen stalks the poor people end up violating the commandment of stealing, since they are not taking Leket which belongs to them, but rather the owner’s produce. Stealing is forbidden by the Torah. See Vayikra 19:11 and 19:13.

I would like to point out that most commentators on the Tosefta explain that the poor people violate a prohibition of eating Tevel (untithed produce) and not stealing, however that explanation is not correct in the Tosefta as I will explain below. Fallen stalks are defined as Leket only if the farmer dropped one or two stalks, however if he dropped three stalks or more then they still belong to the owner and
the farmer can pick them up. See Mishna Peah 6:5. Many poor people do not know this law and therefore end up picking up stalks where they can clearly see that three or more stalks fell down. They do not violate the prohibition of stealing, because obviously the owner did not care that three or more stalks fell down and he did not pick them up thus indicating that they can be taken. The Talmudic term for this is Yiyush (giving up), meaning that the owner has given up on that produce and now anyone can take it. However this creates a different problem for the poor people. Leket is exempt from tithes (Maaserot). See Mishna Chala 1:3. However the owner’s produce has to be tithed before it can be eaten. The poor people thinking that it is Leket since they picked it up from the ground end up eating it without taking off the tithes and violate the Torah’s prohibition of eating Tevel (untithed produce). For a detailed description of what tithes are see above Tosefta Peah 1:6, note 7. Rebbi Yehuda holds that it is the responsibility of the owner to prevent the poor people from violating the prohibition of Tevel and therefore he says that the owner must declare all of the produce that will be taken by the poor ownerless, in which case they are allowed to take it and it is exempt from Maaserot, since ownerless produce is exempt from tithes just like Leket. See Mishna Chala 1:3. This explanation was originally proposed by Rashi (Bava Kama 69a, Rebbi Dosa) on the Beraita in Talmud Bavli (Bava Kama 69a) which quotes the argument between Rebbi Yehuda and Rebbi Dosa. However it is obvious that the Beraita quoted by Talmud Bavli is not our Tosefta, but rather a different Beraita, because it does not say that the poor people took from the owner’s bundles and it does not mention the opinion of the Chachamim who explicitly say that the poor people are cheating in this case. That Beraita simply says that the owner must make this declaration because of the actual Leket in his fields. Therefore Rashi was forced to explain that the poor people do not know the laws of Leket and by accident end up picking up the produce which is not Leket and therefore is still obligated in Maaserot. However our Tosefta explicitly says that the poor people are stealing the owner’s produce which they know belongs to the owner since it is bundled by him and therefore there is no way for them to mix it up with Leket, which means that they also know that Maaserot need to be taken from it and therefore that reason cannot
apply in the case of our Tosefta. The commentators on the Tosefta did not notice this difference in the Beraitot and therefore applied Rashi’s explanation to the Tosefta, even though it does not make any sense here.

It is important to note that the reason Rebbi Yehuda is capable to says that the owner can declare something ownerless before he knows which specific part of the produce will be taken is because he holds of a concept called Breirah (Selection). The concept of Breirah says that a person can chose a part of the homogenous mixture in his mind and when later on in time some part of the mixture will be separated his intent retroactively falls on that part of the mixture which was physically selected. To illustrate this concept better I will cite the classic example of Maaser that cannot be separated on Shabbat, because it is forbidden to separate Maaserot on Shabbat. A person has barrel of wine from Maaser has not been separated yet and therefore he is forbidden to drink it, because it is Tevel. After the start of Shabbat the person wants to drink some of the wine from the barrel. Due to the concept of Breirah he is allowed to say that whatever part of the wine that he drinks is not the part that he will separate for Maaser after Shabbat, but rather the Maaser always remains in the barrel after he drinks. After Shabbat is over he removes a part of the wine from the barrel for the Maaser and we consider that this removed portion of the wine was originally selected to be the Maaser before Shabbat began. The Maaser portion is assigned retroactively back to the time before he drank from the wine thus making it not Tevel at the time of drinking. Therefore in our case, as well, the owner says that whatever the poor people will take from his produce will be ownerless retroactively from the moment of his declaration in the morning, although the poor people do not take the produce until later in the day. It should be noted that there are other Mishnayot and Beraitot which imply the Rebbi Yehuda does not hold of Breirah. For a discussion of this matter see Talmud Bavli (Bava Kama 69a-b).

8. The word לְעִיתוֹתֵי (Leitotei) is very strange. It should not have the letter Yud in it and the phrase should read לְעִיתוֹת אֵרֶב (Leitot Erev). The word אֵרֶב (Et), time, can have two possible plural forms: נַחֲמוֹם
(Itim) or לַעֲתַוָּה (Itot). If the plural form לַעֲתַוָּה is used then in the double worded phrase the Mem gets dropped and there is a connecting Yud, so the phrase should read לַעֲתַוָּה עֶרֶב (Leitei Erev). However this seems to be a non-preferred expression, since it is not mentioned in any ancient Hebrew writings. The form לַעֲתַוָּה is preferred in a double worded phrase, however it should not get a connecting Yud, which means it should read לַעֲתַוָּה עֶרֶב (Leitot Erev). I believe that Rebbi Dosa specifically used a plural form of this phrase and not its singular form לַעֲתַוָּה עֶרֶב (Leit Erev) in order to emphasize that he is not assigning a specific time in the evening, but rather any time during the evening is fitting to make this declaration. However, it is completely unclear why he adds a Yud at the end of Leitot. Marcus Jastrow writes in his Dictionary (entry לַעֲתַוָּה) that Leitotei has a special meaning. It does not simply mean “the time of the evening”, because that would be Leit Erev, or “the times of the evening” – Leitot Erev. But rather it means specifically “a time of evening appointments” meaning the time when the work in the field is over and the owner is making accounts of how much money he has to pay to his workers and how much produce was gathered. I do not know where Jastrow got this explanation from, although I have to admit it is very interesting and fits very well into the Tosefta. I have chosen to translate it “around the evening time” in order to emphasize the plural usage of the word Et as I explained above, but not assigning any specific meaning to the Yud in the end of the word Leitotei.

9. Minchat Yitzchak explains that the reason that Rebbi Dosa says that this declaration has to be said in the evening, after the poor people already took the produce, and not in the morning, is because he is trying to protect the owner from taking a heavy loss. If the owner would make all produce that the poor will take ownerless, and the poor people will know about that, then they will take much more than the normal amount they take as Leket since whatever they will take will not be considered stolen anyway. As a result the owner will lose a significant portion of his crops. Therefore Rebbi Dosa recommends that he should say this in the evening after the poor already took as much as they took, thinking that it is Leket, and therefore not exceeding the normal amount. According to this explanation Rebbi
Dosa’s statement is more of a suggestion than a law, since the owner could say it in the morning also if he is willing to take the risk of losing more crops.

From Talmud Bavli (Bava Kama 69a) it seems that the reason for Rebbi Dosa’s opinion is different. Rebbi Dosa does not allow this proclamation to be said in the morning, because he does not hold of the concept of Breirah, which is required for the proclamation to work. Since the owner does not know which produce will be taken by the poor people he cannot make that specific produce Hefker without coming on to using the idea of Breirah.

The obvious question with Rebbi Dosa’s opinion is how does he deal with the problem that in the evening the produce is not in the owner’s possession anymore which means that he cannot declare it Hefker, as was mentioned above in note 6? The Meiri (Bava Kama 69a, Af Leinyan Hefker) resolves this problem by saying that since this law is of rabbinical origin, Rebbi Dosa holds that the Rabbis must have made a special exception in this particular case and allowed the owner to make something Hefker that is not in his possession in order to save the poor people from violating the prohibition of theft. Another possible explanation is that the law that the owner cannot change the status of his ownership to an object which is not in his possession, such as making it Hefker or Hekdesh (consecrated to the Temple), is not a universal law, and there is a dissenting opinion of the Tznuin (pious people) who do not hold that such a law exists altogether. See Talmud Bavli (Bava Kama 68b). It is possible that Rebbi Dosa would hold like their opinion and therefore this issue of the produce not being in the owner’s possession anymore does not exist.

10. The word און (Ones) is often translated as “accident” however in this case it would not be an accurate translation, because the owner did not do accidentally, but rather he was forced into it by a rabbinical law. The main connotation of the word Ones is something that happens beyond the person’s control, which could be an accident or a coercion by an outside force. Therefore I have chosen to translate it in this case as “coercion”.
11. The word אֵין (Ein), meaning “not” does not appear in any Tosefta manuscript. It only appears in a similar Beraita quoted in Talmud Yerushalmi (Sukkah 4:2, Daf 18a and Maaser Sheni 5:1, Daf 29a). Without emending the reading in the Tosefta with the word “not” the opinion of the Chachamim does not make any sense as was already pointed out by many commentators. Therefore I have added it in square brackets in the Hebrew text.

12. The Chachamim hold that a person can only declare something ownerless out of his own free will and he cannot be coerced into it even if the coercion comes from a legitimate legal power such as a court. The court only has power to confiscate someone’s property but it cannot force the person to declare his own property ownerless if the person does not want to do so.

13. The Chachamim clarify their ruling that besides the fact that this proclamation cannot work, it is also not necessary, because it is not the responsibility of good people to go out of their way and try to prevent cheaters from sinning by using legal tricks. The Chachamim do not mean that in general people should never prevent others from doing bad things, but rather it should be done directly by preventing the people’s bad actions from taking place. However once the bad action has taken place anyway the good person does not have to perform legal tricks in order to justify the bad action and this way prevent the bad person from a violation of the law.

Tractate Peah, Chapter 2

תוספתא ה

מוסכת פאה פרק ב

כמה שנה פק

[If] the owner [of the field already] gave Peah (corners of the field) to poor people [from one side of his field, and then the poor people complained and] they said to him, “Give us [Peah specifically] from this side [of the field and not from the side from which you already gave us],” and he gave them
from this [side, from which they asked] and [also from] this (i.e. other) [side, which he gave originally], [all of] it is [considered to be] Peah [and it is exempt from Maaserot (tithes)].

Notes:

1. The Tosefta states a new law regarding Peah. It is not related to any Mishna.

2. Literally: the owner of the house.

3. It was already mentioned in Tosefta Peah 1:5 that the owner of the field can give the minimum obligation of Peah and then add to it additional crops, which would also count as Peah even though technically the owner already fulfilled his obligation of Peah with the original crops that he left for this purpose. As correctly explained by Chasdei David, this Tosefta is clarifying that despite that it might appear that the second batch of produce that the owner gave the poor people is merely a gift since they asked for it and the owner did not originally intend to give it to them and therefore is not considered to be Peah, because he already gave the required amount of Peah, this second batch is still considered to be Peah with all of its ramifications. If the owner gave the poor people a gift of crops, but it is not officially considered to be Peah then the poor people must take off from it Maaserot. However if it is Peah then it is exempt from Maaserot. See Mishna Chala 1:3. The Tosefta is coming to teach us that the second batch is still considered to be Peah, because the poor people specifically asked for it to be given as Peah, and therefore it is exempt from Maaserot. For an explanation of what Maaserot are see above Tosefta Peah 1:6, note 7.

There are some commentators, such as the Cheshek Shlomo, Minchat Yitzchak and Chazon Yechezkel, who confuse this Tosefta with the Beraita quoted in Talmud Bavli (Bava Kama 28a) and explain it in the same manner. The Beraita there mentions a case where the owner told the poor people to take Peah from one side of the field and they did not listen to him and went and took Peah from the other side of
the field, in which case the Beraita says that both sets of crops are considered to be Peah. Rava in the Gemara clarifies that when the Beraita says both are Peah all it means is that both of them are exempt from Maaser as Peah would be, but that both of them are literally Peah and have to be given to the poor. The Meiri (Bava Kama 28a, Baal Habayit) explains that what Rava means and it is the essential meaning of the Beraita as well is that the poor people do not get two sets of Peah. Since they decided to take Peah from the other side of the field, which the owner did not give them, the owner gets to keep the crops which he originally intended to give them. However, those crops revert automatically from their status of Peah and become Hefker (ownerless), which makes it just like Peah in terms of the exemption from Maaserot, since Hefker is exempt from Maaserot. See Mishna Chala 1:3. The owner then acquires those crops back from Hefker and gets to keep them. It seems to me that the Meiri’s explanation stems from an obvious question that arises from a surface reading of the Beraita. Why is it not considered stealing when the poor people went and took different crops than what the owner left for them to be taken as Peah. The Meiri resolves this by his explanation, since the owner left a bunch of crop at the end of the field, which the poor could have taken for Peah, but they did not, the owner gets to keep them himself, but they change their status and become Hefker, which makes them exempt from Maaserot. So essentially the owner traded his personal crops for the Peah that the poor people took and since he did not lose anything it is not considered to be theft what the poor people did.

The commentators on the Tosefta learn that Beraita in a different way than the Meiri and say that it means exactly the same thing as our Tosefta. They say that the Beraita teaches that once the owner declared specific crops to be Peah he cannot change his mind anymore and switch them for different crops. So even though the owner gave them specific crops as Peah, once they went and took different crops as Peah, the owner cannot ask back for the original crops that he meant to give them, because once they have become Peah their status cannot be changed and his only option is to give them to the poor people as well. Not only does this explanation not fit well in the
wording of the Gemara, and does not resolve the question of why it is not considered to be theft by the poor people, since in the end they got to keep both sets of crops, but it for sure cannot be used to explain this Tosefta. It is clear from the wording of our Tosefta that it is not talking about that case, because in the Tosefta the owner did not have to give in into the poor people’s request and give them the second batch of crops. He could have simply refused them, because he already gave them Peah. He decided out of his own volition to be nice to them and give them the crops for which they asked and he did not intend to ask back for the original set of crops that he gave them. The only thing that is not obvious from his action is whether he gave them the second batch as Peah or as a simple gift. And so the Tosefta clarifies that it is considered to be Peah and not just a gift, since they asked for Peah, which means that it is exempt from Maaserot.

Tractate Peah, Chapter 2

Tosefta 6

Workers that were doing [work] by the owner [of the field] are not allowed to finish [harvesting] the whole field, but rather they have to leave the proper amount [of crops] for Peah (corners of the field). However it is not considered to be Peah until the owner [of the field] separates it for the sake of Peah.

Notes:

1. The Tosefta states a new law regarding Peah. It is not related to any Mishna.

2. Literally: the owner of the house.

3. See above Tosefta Peah 2:3, note 4 regarding the workers’ obligation to leave Leket. Although their obligation to leave Leket is of rabbinical origin, as I explained above in that Tosefta, their obligation to leave...
Peah seems to be of Torah origin. The Torah commands that the workers are responsible for ensuring that the poor people will get Peah, as much as the owner. Chasdei David proposes that the source of this law is the specific wording in the verses that command the Mitzvah (commandment) of Peah, which say וּבְקֻצְרְכֶם (Uvekutzrechem), “and during your harvest”. See Vayikra 19:9 and 23:22. The Hebrew expression “your” is written in the plural form referring to many people. If it would have been written in the singular form then it would obviously refer only to the owner of the field, however since it is written in the plural form, it must also be referring to someone else besides the owner, and that have to be the workers. The fact that it is a Torah obligation also seems to be implied by the wording of the Tosefta. By Leket the Tosefta said that if the workers do not allow Leket to fall then “we”, referring to the court, fire them. This is an obvious reference to the rabbinical origin of the law. However, here the Tosefta does not refer to the court in any way, but rather it says that the workers “are not allowed” to harvest the whole field and not leave anything for Peah. This implies that this prohibition is of Torah origin. You may wonder that may be the Tosefta could not say in this case by Peah “we fire the workers” since the crops were already cut and there is nothing to be done about that. However that is not an issue, because Bediavad (post factum) Peah can even be given to the poor from cut crops if it was not left standing in the field during the harvest, as was already mentioned above in Tosefta Peah 1:6. Therefore the Tosefta could have said that if the workers harvested the whole field and did not leave anything for Peah, then we fire them, so that they do not do this again on the next field or a separate section of it which may be obligated in a separate portion of Peah, and make the owner give Peah to the poor from harvested crops. However, since the Tosefta did not say that it makes sense that it tried to emphasize that it is a Torah obligation for the workers to make sure that they leave Peah. As with Leket, the workers are obligated to leave Peah even if the owner specifically told them not to do so, and if they do not then they violate a positive commandment of the Torah to leave Peah.
4. The Tosefta clarifies that in order for Peah to be actually considered Peah the owner must designate it, verbally or in his mind, to be so. Even if the workers left Peah in the field, but the owner did not designate it to be Peah, such as in the case where he specifically told his workers not to leave Peah, then these crops do not become Peah, but rather they still belong to the owner and the poor people are not allowed to take them, as interpreted by the Rambam based on this and the next Toseftot. See Rambam (Hilchot Matnot Aniyim 2:14) and Kesef Mishna and Radvaz there. This is in contrast to Leket which becomes the property of the poor people as soon as the produce falls out of the farmer’s hands during the harvesting process and the owner does not need to designate it as such. See Talmud Yerushalmi (Peah 7:3, Daf 32b and Terumot 6:2, Daf 34a) and Talmud Bavli (Temurah 25a). It is not explicitly stated anywhere that Shikcha also becomes the property of the poor automatically when it gets forgotten. Saul Lieberman in Tosefta Kifshuta writes that it does just like Leket and it is a reasonable assumption in my opinion.

Chasdei David suggests that the reason why Peah needs to be designated as such by the owner is because the Torah says (Vayikra 19:9-10 and 23:22) (Tazov), “leave” it to the poor people, implying that the owner must actively leave it to the poor and not just leave it in the field without a specific designation. However this explanation is not correct, because in both of the above mentioned verses the Torah is talking about Peah and Leket together and it says לַעֲזֹב אֲנִיָּם (Tazov Otam), “leave them”, meaning says לַעֲזֹב אֲנִיָּם (Tazov Otam), “leave them”, both Peah and Leket, for the poor people. So if his explanation would be correct then this law should apply to both Peah and Leket, however Talmud Yerushalmi (Peah 7:3, Daf 32b and Terumot 6:2, Daf 34a) explicitly says that Leket does not require any designation by the owner and becomes the property of the poor automatically when it falls out of the farmer’s hands. I would like to suggest a practical reason for this law that does not stem from any verses. The key difference between Peah and Leket is that the minimum and maximum amount for leaving Leket is well defined where as for Peah it is not. Dropped produce is considered Leket if and only if it is either 1 or 2 stalks. If it is 3 stalks or more then it is not
Leket and it belongs to the owner. See Mishna Peah 6:5. Therefore when a poor person is in the field collecting Leket he can clearly see whether 1 or 2 stalks have been dropped or more and therefore there is never a doubt in his mind whether the owner intended to leave this produce as Leket or not. However by Peah the minimum amount is not well defined at all and the maximum amount does not exist since technically the owner can leave almost his whole field to be Peah. See above Tosefta Peah 1:1. Therefore the poor person is never really sure whether the produce left in the field as Peah was meant to be as such and can be taken or it still belongs to the owner, thus requiring the poor person to make sure that it was left for him.

I would like to point out that in the above discussion I was really careful to differentiate between Leket and Peah, but not between Shikcha and Peah. Nowhere in Talmudic literature does it say explicitly if Shikcha needs to be specifically designated as such by the owner like Peah or if it becomes Shikcha automatically when the sheaf is forgotten regardless of the owner’s intent. Saul Lieberman in Tosefta Kifshuta (on this Tosefta, note 12) writes that Shikcha is just like Leket and it does not require the owner to proclaim it as such. He does not state a source for this statement. Even though based on the reasoning that I just explained that the minimum and maximum amounts by Shikcha are well defined (only 1 or 2 sheaves, but not 3) I am not so sure that it is completely the same in this aspect as Leket. The reason I am skeptical is because the Mishna Peah 5:7 says that if the workers forgot a sheaf in the field, but the owner did not forget it himself then it is not considered to be Shikcha. Talmud Yerushalmi (Peah 5:6, Daf 27b) learns out this law from a verse in the Torah. It also adds that not only the owner must be personally aware that he forgot this sheaf, but he also must be present in the field during the harvest when this sheaf was forgotten. However if he was not present in the field during the harvest and still he said that the sheaves that his workers forgot in the field should be considered Shikcha, they are not considered to be Shikcha and therefore remain in the owner’s possession. The Yerushalmi learns this particular law from a verse in the Torah as well. All of this implies that Shikcha requires a certain amount of intent from the owner. We can even suggest that since the case of the
Mishna where the workers forgot sheaves without the owner’s knowledge is really common, then for sure it would be the responsibility of the poor person to go and find out if the owner intended to leave these particular sheaves in the field, since if he does not do so he may end up inadvertently stealing them, because they are not considered to be Shikcha. However it is definitely not like Leket where the owner does need any intent to leave it at all and it becomes Leket as soon as it falls out of the workers’ hands without any knowledge of the owner.

Tractate Peah, Chapter 2

A poor person who saw [produce standing in the field] in the amount\(^2\) [which appears to be] Peah (corners of the field), whether it is grain, [or] whether it is [fruit growing] on a tree,\(^3\) is not allowed to touch it, and it is forbidden [for him to take it] because of [the prohibition of] theft,\(^4\) until he makes sure that it is [set aside by the owner of the field for] Peah.\(^5\)

Notes:

1. The Tosefta continues the discussion from the previous Tosefta of how Peah has to be set aside by the owner as Peah before the poor person is allowed to take it. It is not related to any Mishna.

2. The Hebrew word כְּידֵי (Kedei) used in this context means “enough for” or “in the amount of”. The Tosefta means to say that the produce is standing isolated in the field and judging by the amount of how much produce is there it was probably left for Peah. See Mishna Peah 1:2 which says that there is no specific amount of produce that the owner must leave for Peah and everything depends on the size of the field and on the amount of poor people in the area, although the owner should not leave less than 1/60\(^{th}\) of the field. I suppose that it was still
fairly obvious most of the time which produce was left in the field for Peah, because usually it was left in the end of the field where the owner finished harvesting, as was explained above in Tosefta Peah 1:7, and the poor people could see that a little bit of produce was still standing in a harvested field. The only reason why that produce was still standing there is because it was Peah. Otherwise everything would have been harvested without leaving anything at all.

3. See Mishna Peah 1:4 about the general rules of which types of produce are obligated in Peah and Mishna Peah 1:5 which lists some examples of fruit which is obligated in Peah.

Chasdei David explains that the reason that the Tosefta needs to separately emphasize that this law applies even to Peah on a tree is because of the following law. Mishna Peah 4:1 states that the owner should not leave Peah on certain types of trees that require climbing for the poor people to climb up and get it, but rather he should cut it down and leave at the bottom of the tree, because it is dangerous to climb such trees and the poor person might get hurt. Due to this the poor person may specifically be inclined to climb up the tree and take Peah first without verifying that it is Peah, because he will think that he is doing the owner a favor by taking it down and not making him climb up and get it himself, since if he asks the owner about it then the owner will most probably climb up the tree and get it for him. Therefore the Tosefta emphasizes that even in the case of a tree the poor person is forbidden to touch the produce until he finds out that the owner intended to leave it for Peah.

4. It is not clear why the Tosefta uses this double expression. If the Tosefta would have said that it is forbidden to take it due to theft then obviously he is not allowed to touch it. See Chazon Yechezkel who proposes a reason for this double statement; however his explanation does not fit into the text and does not make any sense to me. I would like to suggest that perhaps the reason the Tosefta uses this double statement is to teach us that the poor person is not allowed to first cut off the produce and then go and find out whether the owner dedicated it for Peah or not. He might even want to do this on purpose in order to for sure get it, because if he goes to the owner with cut
produce in his hands and asks him if he meant to leave it for Peah or not, the owner might feel bad for him and give it to him even if he did not intend to leave it for Peah. This is especially true in the case of Peah on a tree where the poor person would be even more inclined to cut it down first, as I already explained in the previous note. Therefore the Tosefta says that the poor person is not even allowed to touch it and it is considered stealing, even if he eventually goes to ask for permission, because perhaps by doing so he will force the owner to give it to him even though the owner did not plan on it originally. The poor person must verify with the owner first that he intentionally left the produce for Peah and only then he is allowed to cut it down.

5. See the end of the previous Tosefta where it was explained that the owner must explicitly set the produce aside for Peah even if it was left in the field for that purpose by his workers.

Tractate Peah, Chapter 2

Tosefta 8

[If] a Non-Jew sold his standing crops to a Jew in order [that the Jew will] harvest [them, then the Jew is] obligated in [leaving] Peah [from this grain. However if] a Jew sold his standing crops to a Non-Jew in order [that the Non-Jew will] harvest [them, then the Jew is] exempt from [leaving] Peah [from this grain].

Notes:

1. The Tosefta states a new law regarding Peah. It is not related to any Mishna.

2. Standing crops means crops that are still attached to the ground.

3. It does not really matter why the Jew sold the crops to the Non-Jew. All the Tosefta is trying to emphasize is that the crops were sold while they were still standing, before they were harvested. The Tosefta
simply gives an example of why someone would want to sell standing crops. Because he did not want to deal with the harvest and therefore he sold the standing crops so that the buyer would harvest them himself.

The Tosefta implies that the field itself still belongs to the Non-Jew and only the crops themselves were sold to the Jew. This is obvious, because if this was not the case then it would be obvious that the Jew is obligated to leave Peah since the whole field with the crops now belongs to him and it makes no difference who owned that field before. However since the field itself belongs to the Non-Jew we may think that the Jew would be exempt from leaving Peah in this case, because in the verses in the Torah (Vayikra 19:9 and 23:22) that talk about Peah it specifically says פְּאַת שָׂדְךָ, “the corner of your field”, implying that the field must belong to the Jew as well. Therefore the Tosefta teaches us that even though in this case the field belongs to the Non-Jew, since the crops themselves belong to the Jew, he is obligated in leaving Peah.

4. In this case the law follows the same logic that since the Jew does not own the crops themselves, even though he owns the field, he does not have to leave Peah. Obviously, the only possible way for him to leave Peah in such case would be before the sale took place (i.e. he had to not sell some of his crop in order to leave it as Peah), because once the crops were sold he cannot tell the Non-Jew to leave some of them for the poor, because the Non-Jew is not obligated in leaving Peah. The reason why the Tosefta need to teach us this case as well would be for the same reason as was explained in the previous note, that since the Torah implies that the field must belong to the Jew, then maybe we would think that even if only the field belongs to the Jew, but not the crops, he still has to leave Peah somehow.

The reason that in both of these cases the obligation of Peah follows who ever does the harvest and not whoever owns the field is because the verses in the Torah about Peah (Vayikra 19:9 and 23:22) say והָיוּ דַּעַת闪电, “and when you harvest”, meaning that the law of Peah applies only to the owner of the harvested crops. This supposition overrides the implication from the rest of the verse that says “your
field” that the field should be owned by the Jew, because it creates a condition for the commandment of Peah, that Peah takes place only during harvest, by the owner of the harvest.

Tractate Peah, Chapter 2

Tosefta 9

[If] a Jew and a Non-Jew were partners in standing crops,² [then] the portion of the Jew is obligated [in Peah] and the portion of the Non-Jew is exempt [from Peah].³ Rebbi Shimon⁴ says,⁵ “[If] a Jew and a Non-Jew were partners in standing crops, [then everything (i.e. both portions)] is exempt [from Peah].⁶ [However,] when [do we say that everything is exempt from Peah]? At the time when the Non-Jew protests [that they should leave a part of the crops as Peah for the poor],⁷ but when the Non-Jew does not protest, [about leaving some crops as Peah for the poor then everything] is obligated [in Peah].”⁸

Notes:

1. The Tosefta continues from the previous Tosefta and states a new law regarding Peah which involves a Non-Jew. It is not related to any Mishna.

2. I.e. they owned all of the crops in a field as partners.

3. The amount of crops in each portion would depend on the arrangement of their partnership. For example, if they are equal partners then each of them owns 50% of the crops. In that case the Jew would have to select half of the crops in the field and when they
get harvested he would leave Peah from those crops (i.e. 1/60th or more of half the crops). The other half will get harvested completely, because it belongs to the Non-Jew. However, if the partnership is not equal, such as the Jew owns 25% of the crops and the Non-Jew owns 75% of the crops then the Jew would leave Peah after ¼ of the crops were harvested based on that amount (i.e. 1/60th or more of 25% of the total crops) and then the remaining ¾ of the crops would get harvested completely since they belong to the Non-Jew. As I already explained in note 3 on the previous Tosefta, it does not matter who owns the actual field itself, whether it is the Jew, the Non-Jew or some other third party. What matters with regard to Peah is who owns the crops themselves.

4. In the Erfurt manuscript the name of this Tanna is abbreviated to שמע. Usually it is a reference to Rebbi Shimon, although the abbreviation itself can mean refer to other names, such as Shemaya. I am sure that this name is supposed to be Shimon, because in the Sifra (Kedoshim, Parshitta 1, Perek 1) there is a Beraita with similar content and it is quoted in the name of Rebbi Shimon, which implies that he is the one who makes this statement here. In the Geniza fragment (G4 ENA 3630.7) of this Tosefta the first two letters of the name of this Tanna are visible and they are שמע, which is most probably supposed to be read as Shimon. In the printed editions the person who makes this statement is Rebbi Yishmael and not Rebbi Shimon, however that is probably not correct, because later on in Tosefta Peah 3:18 there is a similar argument between Rebbi Shimon and the Tanna Kama if a vineyard which is owned as a partnership between a Jew and a Non-Jew is obligated in Olelot (incompletely formed grape clusters), and the reading there in all manuscripts as well as the printed editions is Rebbi Shimon and not Rebbi Yishmael.

5. In the Vienna manuscript the opinion of the Tanna Kama and the name of Rebbi Shimon are not mentioned. The Tosefta begins from this point as an anonymous statement quoting only the opinion of Rebbi Shimon. If we would assume that the argument in this Tosefta is based on the exactly same logic as the argument in Tosefta Peah 3:18 about Olelot in a vineyard owned in a partnership with a Non-Jew,
then it makes sense to assume that the copyist of the Vienna manuscript simply made a mistake and omitted the opinion of the Tanna Kama and the name of Rebbi Shimon or he was copying from another faulty manuscript which already was missing that portion of the text, since it makes total sense following the same logic that Rebbi Shimon and the Tanna Kama would have this argument about Peah, as opposed to it being a single universal opinion as is implied from the Vienna manuscript. The argument appears in the Erfurt manuscript and the Geniza Fragment (G4 ENA 3630.7), as well as all of the printed editions, as I have quoted it above.

6. Even the crops that technically belong to the Jew.

7. The Tosefta does not specify what the Non-Jew is protesting in particular. He could be protesting a variety of things. For example, he could be protesting the fact that a part of the crops should be left as Peah for the poor, and instead he wants to harvest and sell all of the crops. Or he could be protesting that the Jew is harvesting his portion of the crops as if they are his own and not owned as a partnership, which would imply that the Non-Jew wants the crops to continue to be owned as a partnership even after they have been harvested and he may only want to divide up the profited money after the crops are sold. I have chosen the first explanation in the main text of the Tosefta. However, Minchat Yitzchak (in Shirei Mincha) and Chazon Yechezkel (in Biurim) chose the second explanation, which can also be read in to the Tosefta if some of the additional text in square brackets that I have inserted is changed. I will illustrate both of these interpretations in the next note.

8. The source of the argument between Tanna Kama and Rebbi Shimon seems to be the concept of Breirah (selection). For the explanation of what Breirah is see above Tosefta Peah 2:4, note 7. The Tanna Kama holds that there is such a thing as Breirah and therefore all of the crops can be divided in advance between the two partners. Whatever the first partner gets in the end when they decide to divide the crops or the money from the sale of the crops belongs to him retroactively at the time of the harvest. Therefore if the Jew owns 25% of the crops, to use the more extreme example, then he can simply say at the end
of the harvest that his quarter of the crops was the last portion that
got harvested and he is leaving Peah at the end of the field from that
portion. However, Rebbi Shimon does not hold of the concept of
Breirah and therefore he says that since the crops are owned as a
partnership and have not been divided between the partners then
each separate stalk is owned by both of them and therefore
everything depends on whether the Non-Jew gives permission to the
Jew to leave Peah. If the Non-Jew does not give him permission then
each stalk individually is exempt from Peah, because the Non-Jew
owns a part of it and since we do not know which part then all of it is
exempt from Peah. However, if he gives permission to the Jew to leave
Peah then we consider it as if he forfeited his right of administration of
the produce which exempts everything from Peah, and now it is as if
the Jew is responsible for the administration of the produce which
makes everything obligated in Peah since the Jew is now capable to
decide on his own (because he has permission to do so) to leave Peah
for the poor from all of the produce.

I would like to illustrate using the method of a proof by contradiction
why the argument between the Tanna Kama and Rebbi Shimon cannot
be explained using the second reason that I mentioned in note 7 which
was that the Non-Jew protested the fact that they can divide their
crops at the time of the harvest and therefore it is as if the Jew owns
only his portion of the crops from which he leaves Peah. Let us say for
the sake of argument that the Non-Jew gave permission to the Jew to
take his share of the crops before they were harvested. That would
mean that for all intent and purpose they are not partners any more. It
is as if the Jew took his share of produce, removed himself from the
partnership and is now the sole owner of his portion of the crops,
whereas the Non-Jew is the sole owner of the remaining crops. That
would mean that only the Jew’s portion is obligated in Peah and the
Non-Jew’s portion is obviously not obligated in Peah since he is not
commanded at all in the Mitzvah (commandment) of Peah. This then
brings us back to the opinion of the Tanna Kama who said that the Jew
leaves Peah from his portion and the Non-Jew does not, so it comes
out that the Tanna Kama and Rebbi Shimon do not argue, and that is
obviously not the case.
I will play devil’s advocate and try to defend the second explanation in note 7 by changing the interpretation of the Tosefta that so far I have assumed to be correct and have not commented upon, which in turn would make my proof by contradiction irrelevant. IN the main text of the Tosefta I have interpreted the statement of Rebbi Shimon as follows: “[If] a Jew and a Non-Jew were partners in standing crops,[ then everything (i.e. both portions)] is exempt [from Peah]. Note that the Tosefta itself does not say what is exempt from Peah. I have inserted the word “everything” to refer to all of the crops. However, now I would like to propose that may be that is not the correct explanation, and may be Rebbi Shimon means that only the Jew’s portion is exempt from Peah, except he clarifies it by adding that the Jew’s portion is only exempt from Peah if the Non-Jew protested their division of the crops prior to the harvest and therefore the Non-Jew still owns a portion of each and every stalk thus exempting it from Peah. However if the Non-Jew did not protest that the Jew can harvest his section of the crops as if they are his own then the Jew owns his crops separately and therefore the Jew’s portion is obligated in Peah. In fact, Minchat Yitzchak explains Rebbi Shimon’s statement exactly in this way that when he says “obligated” and “exempt” he does not refer to everything, but rather only to the Jew’s portion. I do not like this explanation for a simple reason that it essentially requires the cancelation of the partnership between the Jew and the Non-Jew. Once the Jew harvests his portion as his own that means that they are not partners anymore and each person owns his share individually. The Tosefta does not say that their partnership was canceled. It implies that even after the harvest they remain partners; otherwise Rebbi Shimon’s case becomes kind of trivial, because obviously if the Jew pulled out of the partnership before the harvest then during the harvest his crops become obligated in Peah. Also, later on in Tosefta Peah 2:11 the Tosefta uses a similar language as here of a Non-Jew protesting without a clear explanation of what. There the implication is that the Non-Jew is protesting the poor people from taking Peah, Leket and Shikcha from his field. It would make sense that the same expression in this Tosefta is used to mean exactly the same thing that the Non-Jew protests the Jew from leaving Peah from his field.
Regardless of which explanation is chosen it comes out from this Tosefta that Rabbi Shimon does not hold of the concept of Breirah, at least in the case of Peah, which is consistent with his opinion in other cases. See Talmud Bavli (Eruvin 37b) where it is implied based on other cases that Rabbi Shimon does not hold of the concept of Breirah at least by laws of Torah origin, such as Peah. Rav Yosef's opinion there that that is not the case is generally rejected as shown in Talmud Bavli (Beitza 38a).

Tractate Peah, Chapter 2

Tosefta 10

[If] a convert died [without leaving any relatives who can inherit his property] and Jews distributed his property [between themselves, then] whoever acquired [his field itself (i.e. the land) and the produce] that is attached to the ground [inside that field] is obligated in everything (i.e. all gifts to the poor and tithes), [whoever acquired the produce] that is detached from the ground, [but not yet piled] is exempt from everything (i.e. from all gifts to the poor and tithes), [and] whoever acquired the standing crops, [but not the field itself] is exempt from Leket (fallen stalks), from Shikcha (forgotten sheaves) and from Peah (corners of the field), but is obligated in Maaserot (tithes).

Notes:

1. The Tosefta states a new law regarding gifts to the poor. It is not related to any Mishna.
2. The word written in the Vienna manuscript is גוי (Goy), which means “Non-Jew”. However that is not correct, because in Talmudic literature the Non-Jew is never used as an example of someone who lived in the Land of Israel and died without any relatives to inherit him. However a convert (Ger) is the classical example of such a case, because in the Land of Israel during the Talmudic times, a lot of Non-Jews who converted to Judaism came from another country and all of their relatives remained in the country of origin. The only relatives who would be able to inherit a convert would be his Jewish wife and children and if the convert never got married in Israel after his conversion then he would essentially be alone. It is also possible that the Non-Jewish relatives of the convert were not allowed to inherit him, because they were not considered his relatives anymore after his conversion. However I am not sure if this law was universally accepted at the time of the Tosefta. See Talmud Bavli (Yevamot 48b) where Tannaim argue about the status of the convert being like a newborn baby or not after his conversion, which essentially severs his ties to his blood-relatives, and also Talmud Bavli (Bechorot 47a) where Rav Yochanan and Reish Lakish continue to argue about the same question. Both of them lived during the middle of the 3rd century CE already after the Tosefta has been completed and therefore it is clear that even by then it was not universally accepted whether the Non-Jewish relatives of a convert inherit him after his death or not.

I would like to suggest that the reading גוי (Goy) in the Vienna manuscript is actually an error that occurred from another manuscript where it was written גי (Ger) and then the vertical line of letter Reish (ר) cracked, which made it look like two separate letters, Vav (ו) and Yud (י), spelling the word גי (Goy). The copyist not realizing that it is a defect simply copied what he saw and as a result of that the word Goy crept into some manuscripts. Therefore I have decided to keep the reading of the Erfurt manuscript, which is גי (Ger), meaning “convert”.

3. By Jewish law, when a person dies without any relatives to inherit him all of his property automatically becomes Hefker (ownerless) and anyone who acquires that property by performing some kind of an act of acquisition (Kinyan) becomes its new owner, on a first come first
serve basis. See Mishna Bava Batra 4:9 where the Mishna just assumes this rule to be true. The source for this rule is unknown, although it might just stem from logic that since there was no set government office in the ancient world that takes ownership of ownerless property it simply remains ownerless and can be taken by anyone who wants to do so. A similar concept existed in Roman law, known as Caduca, which essentially was property left by a person who died without any kind of heirs. Such property became public property or from the reign of Emperor Caracalla became the property of the Caesar, known as Fiscus. See Sir William Smith, A dictionary of Greek and Roman antiquities, 2nd edition, Little, Brown, and Co., 1859, entry Bona Caduca, p. 206. The Rabbis have never made any kind of a special decree that would make such property transfer over into the possession of the king, the court or anyone of greater authority, and therefore the law remained as dictated by logic that such property becomes ownerless and can be acquired by anyone on first come first serve basis. For various types of Kinyanim (acts of acquisition) on different types of property see Mishna Kiddushin 1:2-5.

4. The Tosefta does not say that he acquired the land itself and implies that he only acquired standing crops. However if that was the case then this case and the last case of the Tosefta would both mean exactly the same thing. Therefore all commentators agree that the first case of the Tosefta must mean that he acquired both the field and the standing crops, where as in the last case he only acquired the standing crops, but not the field. It should also be noted that a similar Beraita is quoted in Talmud Yerushalmi (Kiddushin 1:5, Daf 12a) and there it says that the first person who “acquired the land” is obligated in everything. Chazon Yechezkel proposes that the reading in this Tosefta should be changed to read like the Beraita in the Yerushalmi, since that is what it means anyway, however I think that it is unnecessary, especially when it is clear that the Yerushalmi is quoting a different Beraita and not this Tosefta, because it says that in the case when the person acquired just the standing crops he is obligated in Leket Shikcha and Peah, but is exempt from Maaserot, which is the opposite of what our Tosefta says. The reading in all Tosefta manuscripts, printed editions as well as quoted in the Rishonim
5. Since the person acquired both the field and the produce that is growing in the field he is obligated in all gifts to the poor (i.e. Leket, Shikcha and Peah) and in Maaserot as well, as any other regular owner of the field would. Obviously the gifts to the poor themselves are exempt from Maaserot as is mentioned in Mishna Chala 1:3. But all the produce that the owner collects for himself is obligated in all tithes.

6. If a person acquired detached produce regardless if it was bundled up then he is exempt both from all gifts to the poor and from Maaserot, but for different reasons. The reason he is exempt from gifts to the poor is because the obligation to leave the gifts to the poor occurred during the harvest as implied from the verses in the Torah as I already explained earlier in Tosefta Peah 2:8, note 4. Since during the harvest the crops were owned by the convert he was the one who was obligated in leaving the gifts to the poor. Whether he actually left them or not is irrelevant for the new owner. Since the new owner acquired these crops already after they have been harvested he is exempt from leaving all of these gifts.

The reason that the new owner is exempt from Maaserot is a lot more complex. For a detailed description of what tithes are see above Tosefta Peah 1:6, note 7. Generally, the produce remains Tevel (untithed produce), and therefore forbidden for consumption, forever until someone removes all of the tithes from it. The obligation of removing the tithes comes when the farmer performs an action which signifies the end of the harvest, such as the farmer piled up the produce, whether in the field or in the silo, or simply brought it inside his house. See Mishna Maaserot 1:5. It is not clear from the Tosefta’s language if is talking about produce which has been piled and its harvesting process has been completed, or if it is talking about bundles that have been left in the middle of the field and have not yet been piled up. In either case, this law is hard to understand, because the produce should be obligated in Maaserot regardless of when it was taken. If the bundles have not been piled yet then when the new
owner piles them he essentially makes this produce obligated in Maaserot from that point on, and if it was the convert who piled them already, then this produce should have become obligated in Maaserot then, and the new owner simply has to remove the Maaserot from the Tevel produce.

Before I explain what exactly the Tosefta’s opinion is I would like to digress a little and mention the opinion and explanation of this law based on the Beraita quoted in Talmud Yerushalmi (Kiddushin 1:5, Daf 12a), because it will better illustrate the significance of the Tosefta’s opinion. This issue is discussed by the Rash Mishantz in his commentary on Mishna Peah 1:6 and is further expanded upon by Rav Yisrael Yehoshua Trank in his book on the Rambam’s Mishneh Torah called Yeshuot Malko (Hilchot Terumot 2:11). The Rash, as explained by Yeshuot Malko, proposes various possible conditions for the case when the produce that used to be ownerless and then was acquired by someone is exempt from Maaserot. His main explanation is that if the field itself was ownerless while the harvest took place then the harvested produce would be exempt from Maaserot. Unfortunately this explanation does not fit into the case of our Tosefta, because the Tosefta implies that this detached produce was harvested by the convert while he was still alive and therefore at the time of the harvest the field was not yet ownerless. The other possible explanation is that the convert left the harvested produce lying in the field and did not pile it yet when he died. Therefore when the new owner acquires it, it comes from an ownerless field, but it did not become obligated in Maaserot yet, because it has not been piled up. Since it was acquired from an ownerless field it never becomes obligated in Maaserot. The Rash proposes various reasons why produce acquired from an ownerless field is exempt from Maaserot according to various opinions of understanding of the nature of ownerless property. Some of them are based on logic and some are derivations from verses in the Torah. It should be noted that not all of these reasons can be applied to the opinion of this Tosefta, since some of them are not only applicable to non-ownerless produce from an ownerless field, but also to ownerless produce from a non-ownerless field. Since the Tosefta clearly says in its third case that if the person
only acquired the standing crops which are still attached, but did not acquire the field itself he is still obligated in Maaserot, it is clear that the Tosefta holds that the fact that the field itself is ownerless does not exempt the produce from Maaserot as long as the produce was harvested after the field became ownerless. Our Tosefta holds that the only time the produce is exempt from Maaserot is when it was harvested before the field became ownerless, but did not become obligated yet in Maaserot because it has not been piled. In other words, it appears that the Tosefta requires two conditions to be true in order for produce to be exempt from Maaserot: 1) it came from an ownerless field, and 2) it became ownerless after it was already harvested. The Rash himself quotes our Tosefta and writes that he does not have an explanation for it, because no matter how you learn it one of its conditions gets contradicted as I already illustrated. He concludes that the text of the Tosefta must be incorrect and the correct version is in Talmud Yerushalmi (Kiddushin 1:5, Daf 12a), which I already mentioned in note 4, where the 3rd case is reversed and it says that the person who just acquires standing crops is obligated in gifts to the poor, but is exempt from Maaserot. The Rash concludes that that Beraita is consistent with the logic that any produce that was acquired from an ownerless field, regardless if it was still attached to the ground and needs to be harvested or was already harvested, but not yet piled, it is exempt from Maaserot since it comes from an ownerless field.

Despite all of the above problems I would like to propose an explanation for the law of Maaserot in our Tosefta without changing it. Mishna Chala 1:3 explicitly says that ownerless produce is exempt from Maaserot, but it does not explain exactly when that happens or why. Mishna Maaserot 1:1 also implies that Hefker produce is exempt from Maaserot because it says that only produce that is “watched” by someone (i.e. someone cares about it) is obligated in Maaserot, meaning that it has to belong to someone. Our Tosefta obviously agrees with that law, but it has a very specific set of conditions of when that exemption can occur. The Tosefta does not require the field to be ownerless at all, as the Rash assumed. After all it never says that. In fact according to the Tosefta it makes no difference what the status
of the field itself is. It could be owned by someone or be ownerless. All the Tosefta cares about is when the new owner acquired the produce. As long as the owner acquired the new produce before it was harvested it is obligated in Maaserot as is the situation in the first case and in the third case of the Tosefta. However if the produce became ownerless after it was harvested, but before it became obligated in Maaserot (i.e. it was cut off from the ground, but not yet piled) then it becomes exempt from Maaserot due to becoming ownerless after the harvest. According to the Tosefta, ownerless produce is exempt from Maaserot only if it was ownerless right after the harvest, but before the obligation of the Maaserot took place. You may wonder why the Tosefta holds that only in this case. The explanation is as follows. The Tosefta holds that the produce cannot be ownerless during the harvest itself because as soon as someone harvests it it belongs to that person. The act of cutting the produce off constitutes a Kinyan (act of acquisition) and there it does not matter if the produce was ownerless while it was attached to the ground. As soon as it is harvested it is not ownerless anymore. If the produce was already piled and became ownerless after that then it is still obligated in Maaserot, because once it becomes obligated in Maaserot it remains so forever until the tithes are removed. That leaves only one possible case when ownerless produce can become exempt from Maaserot, and that is the produce became ownerless while it was is lying untouched after it has been harvested, but before it was piled. Since it did not become obligated in Maaserot yet, it is exempt from them due to being ownerless. The reason why ownerless produce is exempt from Maaserot is derived from the verse in the Torah by Rav Yochanan in the name of Rebbi Yanai in Talmud Yerushalmi (Maaserot 1:1, Daf 1b). The Torah says with regard to Maaserot (Devarim 14:29):

תַּעֲשֶׂה מַעֲשֶׂה אֶל הַלֵּוִי, וְאָכְלוּ אֵין לוֹ יָדְךָ, לְמַעַן לְמַעַן מַעֲשֵׂה אֱלֹהֶיךָ אֲשֶׁר יְבָרֶכֶךָ עִמָּךְ לְכָלָּי.

And the Levite would come, because he does not have any share or inheritance with you, and the convert, and the orphan, and the widow who are in your gates, and they will eat and be satisfied, so that
Hashem, your God may bless you in all of the deeds of your hand that you may do.”

Rav Yochanan explains that the verse teaches us that the farmer has to give the Levi (Levite) the tithe from something that he otherwise cannot have. However, ownerless produce as well as gifts to the poor the Levi can just come and take them and it is not something that he is not able to get without the farmer specially giving it to him. Therefore all of the gifts to the poor as well Hefker are exempt from Maaserot. Obviously this reason is universal regardless of how we limit the exemption of ownerless produce from tithes. Therefore the Tosefta would agree with this reason as well as the Yerushalmi itself even though they have opposite views regarding what type of ownerless produce is exempt and what type is obligated in tithes.

7. According to the Tosefta, produce that was acquired by the new owner while it was still standing either by pulling it or by harvesting it is obligated in Maaserot, since during the moment of harvest it was already owned by that person, as I already explained in the previous note. However it is exempt from all of the gifts to the poor, because by gifts to the poor the Torah says (Vayikra 19:9 and 23:22), “your field”, which requires the field to be owned by someone, as I already explained earlier in Tosefta 2:8, note 3. However, in this case the Tosefta is specifically talking about where the field still remains ownerless and only the standing crops were acquired by the person, which makes them still exempt from the gifts to the poor.

Tractate Peah, Chapter 2

משכת פאה פרק ב

תוספטא לא

לכטת והשכחה והפאה של נכרי חביר בתשעורת. אייתני בוקש שוהי ממחה, במקימן הפקר. והפייה חביר ממחה ממוחה, במקימן הפקר. הפקר ממקימן.

Leket (fallen stalks), Shikcha (forgotten sheaves) and Peah (corners of the field) of a Non-Jew (i.e. that he left in his field out of his own free will) are obligated in Maaserot (tithes). When [do we say that these gifts to the poor are obligated in Maaserot]? At the
time when the Non-Jew protests [regarding people who are not poor taking this produce]. But if the Non-Jew does not protest [non-poor people taking the produce] then [we apply the rule of] “[property that is declared] ownerless by a Non-Jew is [considered to be] ownerless”, and [since it is truly ownerless] it is exempt from Maaserot.

Notes:

1. Mishna Peah 4:9 states that Leket, Shikcha and Peah of a Non-Jew is obligated in Maaserot unless he declared it ownerless. This Tosefta clarifies that law.

2. In all previous Toseftot the word used for a Non-Jew was גּוּי (Goy). However, in this particular spot the Tosefta does not use the word Goy, but rather the word נָכְרִי (Nachri). This reading is the same in all manuscripts and printed editions. The literal meaning of the word Goy is “nation”, whereas the literal meaning of the word Nachri is “foreigner”. However, both words mean exactly the same thing and are used interchangeably throughout Talmudic literature to refer to a Non-Jew. I would assume that the reason the word Nachri is used in this case is because the copyist of one of the early manuscripts which served as the source for the manuscripts that we have simply was not careful and used a synonym instead of copying the original word, which was Goy. It is also possible that the reason the copyist used the word Nachri here is to match the expression used in the Mishna (Peah 4:9), in the statement of this law.

3. It is clear that the Tosefta refers to a case where the Non-Jew who is living in the Land of Israel left the three gifts to the poor in his own field from his own produce, because it already discussed the case of a Non-Jew partnered together with a Jew back in Tosefta Peah 2:9. Such a case was probably common during the Talmudic times, because Non-Jews that lived in Israel wanted to comply with Jewish laws and
traditions, especially the ones that were of social nature, even if they were not required to do so, in order to preserve good relations with the Jews.

4. As I already mentioned previously (see above Tosefta Peah 2:9, note 8), the Non-Jew is not obligated in the Mitzvah (commandment) of leaving gifts to the poor. Since he is not obligated in them, the produce that he leaves for that purpose is not officially considered to be Leket, Shikcha or Peah. Since it is not considered to be one of the three gifts to the poor, it does not qualify for an exemption from tithes like those from a Jew do. See Mishna Chala 1:3. So any Jew who takes this produce is obligated to remove the Maaserot from it. You should not assume that the status of this produce is automatically Hefker (ownerless), because as the Tosefta explains in the next line that depends on who the Non-Jew left it for. Ownerless produce, just like gifts to the poor, is also exempt from Maaserot. See Mishna Chala 1:3. However, in this particular case it obtains a special status, which makes it neither completely the owner’s, nor completely ownerless. It is essentially the owner’s property that he gives permission for others to take, but not ownerless.

It should be noted that the ruling of the Tosefta that the Non-Jew’s produce can be obligated in Maaserot in general is not universally accepted. Talmud Yerushalmi (Peah 4:6, Daf 23a-b) brings an argument between Amoraim (Sages of the Era of the Talmud), Rav Chizkiyah and Rav Yossi, both quoting a statement in the name of Rav Yochanan, that the general law of a Non-Jew’s produce being obligated in Maaserot depends on another argument between Tannaim (Sages of the Era of the Mishna) regarding the possibility of canceling the holiness of the Land of Israel over Non-Jewish property. Talmud Yerushalmi (Demai 5:8, Daf 23a) quotes an argument between Rebbi Meir on one side and Rebbi Yehuda and Rebbi Shimon on the other side, whether if land owned by a Non-Jew in the Land of Israel loses its holiness and therefore is not obligated in Maaserot just like land outside of the Land of Israel. Rebbi Meir holds that Non-Jew’s land in Israel does not lose its holiness and therefore all produce that comes from it is still obligated in Maaserot. However Rebbi Yehuda and Rebbi Shimon hold that it loses its holiness and therefore it is
always exempt from Maaserot, just like all produce that comes from
the outside of the Land of Israel. These concepts in the language of the
Talmud are known as follows:

Rebbi Meir’s opinion:

אין חפין לועכים באאר בישראל הפקעית מדת משה.

Literal translation: A Non-Jew does not have a right of possession in
the Land of Israel in order to exempt [his produce] from Maaserot.

Rebbi Yehuda’s and Rebbi Shimon’s opinion:

יש חפין לועכים באאר בישראל הפקעית מדת משה.

Literal translation: A Non-Jew has a right of possession in the Land of
Israel in order to exempt [his produce] from Maaserot.

As can be seen from the way they are worded they are somewhat
obscure and are up to interpretation, which leads us to the
explanation of the argument between the Amoraim.

Rav Chizkiyah and Rav Yossi propose that our Tosefta can only satisfy
one of these opinions, but not both. They argue as follows: Rav
Chizkiyah says that the Mishna (Peah 4:9) and also our Tosefta are
dealing with a case where the field belongs to the Non-Jew. They go
only like the opinion of Rebbi Yehuda and Rebbi Shimon because they
hold that even though normally produce from Non-Jew’s field is
always exempt from Maaserot, in this particular case where the Non-
Jew did not make it Hefker properly, it would still be obligated in
Maaserot. This is because it became obligated in Maaserot at the
moment that the Jew acquired it, so it is not impacted by the Non-
Jew’s ownership of the land. However according to Rebbi Meir, who
holds that the produce from Non-Jew’s land is still obligated in
Maaserot, because the Non-Jew does not have true ownership of land
in Israel, the produce would be obligated in Maaserot even if the Non-
Jew made it Hefker. This is because he does not really have the right
to make something Hefker that does not totally belong to him.
According to Rebbi Chizkiyah, Rebbi Meir holds that not only the Non-
Jew cannot remove the holiness from the land to exempt it from
Maaserot, but also he cannot fully acquire it at all to give him enough rights over it to make something that comes from it Hefker. I have to admit that this opinion is very farfetched, especially that the argument between Rebbi Meir and the other Tannaim is not only regarding the holiness of the land, but also about the Non-Jew’s ability to acquire property in Israel, and it is nearly impossible to read it into the text of the Tosefta without completely convoluting its literal meaning.

Rav Yossi says exactly the opposite of Rebbi Chizkiyah. Rav Yossi says that the Mishna and the Tosefta go like the opinion of Rebbi Meir, that the produce from Non-Jew’s field is still generally obligated in Maaserot, which is why in this case as long as the Non-Jew did not make it proper Hefker it is obligated in Maaserot, but in the case where he made it proper Hefker it is exempt just like anyone’s Hefker is exempt from Maaserot. Rav Yossi holds that the argument between Rebbi Meir and Rebbi Yehuda and Rebbi Shimon is only regarding whether the Non-Jew’s ownership of the land cancels the holiness of the land or not, as the language of their statements implies. However, all of them agree that the Non-Jew can fully acquire land in Israel and therefore he can declare it or anything that comes from it Hefker since it completely belongs to him. However, according to Rebbi Yehuda and Rebbi Shimon, this produce should always be exempt from Maaserot regardless if the owner made it Hefker or not, which is why the Mishna and the Tosefta cannot be like their opinion. Rav Yossi’s opinion makes a lot more sense and is much easier to read into the text of the Tosefta. For further research into this argument and another possible explanation of the opinions of the Tannaim see Talmud Bavli (Gittin 47a).

5. There is an argument between Bet Shammai and Bet Hillel in Mishna Peah 6:1, whether ownerless produce becomes ownerless only if it was declared to be so for all people equally, both rich and poor, or if it is considered to be ownerless even if it was declared so only for the poor, but not for the rich, which makes the rich forbidden from taking it. Bet Shammai hold that Hefker produce can be declared as such even only for the poor, but not for the rich, and it will obtain the official status of Hefker with all of its repercussions such as an exemption from Maaserot. However, Bet Hillel hold that in order for
something to obtain the status of Hefker, it has to be truly declared ownerless, equally obtainable by all people, both rich and poor, and therefore produce that is declared Hefker only for the poor, but not for the rich, is not considered to be Hefker. This Tosefta is going like the opinion of Bet Hillel, which is the universally accepted opinion in Talmudic literature, and therefore if the owner does not allow rich people to take it, because he intended to leave it only for the poor, then it is not considered to be Hefker and is therefore obligated in Maaserot.

I would like to digress and discuss the legal concept of property which is declared ownerless only for some people, but not for others. Talmud Yerushalmi (Peah 6:1, Daf 28a-b) discusses various cases of such partial declaration of non-ownership. The Gemara mentions an argument between Rebbi Meir and Rebbi Yossi about how the concept of Hefker works. Rebbi Meir says that a declaration of non-ownership (Hefker) of property by the owner is a transfer of property from the owner’s possession into someone else’s possession based on the desire of the owner. And therefore it is up to the owner to decide who should be able to get this property in the end. He can either allow anyone to take it or he can restrict it only to a specific group of people. However Rebbi Yossi explains that Hefker is not a transfer of property from the owner’s to someone else’s possession, but rather it is an act of repossession, זכיות (Zechiyah), by the new owner. In other words, the property is not considered to be ownerless until someone else comes and repossesses it for themselves. See Talmud Yerushalmi (Pesachim 2:2, Daf 14b) for this clarification. The owner merely gives permission to someone to take it, but it does not actually become ownerless until that person takes it. Since it is a concept of repossession, it has to be able to be repossessed by anyone and not just by a restricted group of people. The opinion of Bet Hillel follows the logic of Rebbi Yossi.

6. The Tosefta seems to be the primary source of this rule, as it does not appear anywhere else in Talmudic literature. However it seems from the language of the Tosefta that this rule is not trivial and that the idea of a Non-Jew declaring something ownerless and it actually getting the official status of Hefker is questionable and is not universally accepted.
It seems to me that the reason the Tosefta emphasizes this rule is to exclude the opinion of Rebbi Chizkiyah that I discussed in the previous note that a Non-Jew does not have full ownership of his land in the Land of Israel and therefore cannot make something fully Hefker. Therefore the Tosefta explicitly states that it is not true and a Non-Jew who owns property regardless of what kind of property it is and its location he has full ownership of it and can do whatever he wants with it, including making it Hefker.

7. Since the produce was left for anyone to take and is not limited to a specific group of people then it is considered to be truly Hefker and it is exempt from Maaserot.

Tractate Peah, Chapter 2

Tosefta 12

The owner [of the field] who gave Peah (corners of the field) to the poor is not allowed to say to them, “Take the seeds and give [me back] the flax. Take [the] dates and give [me back] the broom-shaped palm branches.” [If the seeds or fruit] fell off [the branches by themselves] and after that he (i.e. the owner of the field) separated them [for the poor to be given as Peah] he is only obligated to give the seeds as Peah, [but not the branches].

Notes:

1. The Tosefta states a new law regarding Peah. It is not related to any Mishna.

2. Literally: the owner of the house.

3. The Tosefta teaches that the obligation of leaving Peah includes in itself not only the edible part of the plant, but the whole stalk or
branch. So in the example of the Tosefta, if the crop that is being given as Peah is flax, the owner cannot say to the poor people that they should just take the kernels of the flaxseed, because that is the only edible part of the plant and they should give him back the flax stalks themselves, so he can extract fibers from it and make linen, but rather everything belongs to the poor, both the seed kernels and the stalks. In the case of fruit growing on a tree, not only the fruit belongs to the poor, but also the branches of the tree on which the fruit grows. This law is learned out in the Sifra (Kedoshim, Parshitta 1, Perek 3) from the verse in the Torah (Vayikra 19:9-10 and 23:22) that says תַּעֲזֹב (Taazov), “leave” it to the poor people, implying that it should be left in the exact way that it grows, attached to the stalk or to the branch, with the branches included in the gift.
Flax growing in a field. Photo: Henfaes Research Centre, University of Wales, Bangor, Flax and Hemp Project. [www.flaxandhemp.bangor.ac.uk](http://www.flaxandhemp.bangor.ac.uk)
Common Flax (Linum usitatissimum). Notice the box with seeds that forms underneath the flowers. The fibers that are used to make linen are extracted from the long stem of the plant.
4. The Hebrew word מְכַבֶּדֶת (Mechabedet) (plural: מְכַבְדֹּת, Mechabdot) literally means a “broom”. A palm branch that is fully open was called a Mechabedet, because it was commonly used as a broom to sweep the house.

5. It does not matter why the fruit fell off the branch. It could be due to wind blowing it off or the fruit got simply too ripe and fell off by itself.

6. The Tosefta teaches that the branches only belong to the poor as a part of the gift Peah if the fruit was separated while it was still attached to the branch. However, if it was separated after it was
already detached from the branch, then the branches do not need to be separated for Peah and still belong to the owner. The Sifra learns this law from the same verses in the Torah (Vayikra 19:9-10 and 23:22) as the previous law, from the word אֹתָם (Otam), “them”, meaning that the farmer only needs to leave “them” (i.e. the seeds or the fruit), but not the branches, in the case where they already got separated. The Sifra clarifies, as our Tosefta implies, that if the owner cut off the branches with the fruit on it from the tree for Peah, and then before the poor people took them, the fruit got detached from these branches, the branches still belong to the poor people and not to the owner. This is because since they were already separated from the tree with the intent to be given as Peah, they belong to the poor from that moment on, regardless of the fruit that is attached to them.

Tractate Peah, Chapter 2

Tosefta 13

[There are] four gifts [to the poor that apply] in a vineyard: Peret (individual fallen grapes),2 Shikcha (forgotten sheaves),3 Peah (corners of the field),4 and Olelot (incompletely formed grape clusters).5 And [there are] three [gifts to the poor that apply] by grain: Leket (fallen stalks),6 Shikcha,7 and Peah.8 And [there are] two [gifts to the poor that apply to fruit] on a tree: Shikcha and Peah.9 Favoritism is not applicable to all of these [gifts to the poor, and therefore] even the poorest person among the Jews10 may confiscate11 what is [rightfully] his from his (i.e. the owner’s) hand [despite the fact that the owner may have set these gifts aside for someone else].12 Favoritism is not applicable to Maaser Ani (tithe of the poor),13 [and therefore] even
the poorest person among the Jews may confiscate what is [rightfully] his from underneath[^14] his (i.e. the owner’s) hand [despite the fact that the owner may have set the Maaser Ani aside for someone else].[^15]

Favoritism is applicable to the gifts of the Kohanim (priests)[^16] and the Leviim (Levites),[^17] such as the foreleg [of every slaughtered animal],[^18] the cheeks [of every slaughtered animal],[^19] and the stomach [of every slaughtered animal],[^20] as well as Maaser Rishon (first tithe),[^21] and [the owner] can give them to whichever [Kohen or Levi] he wants to [without another Kohen or Levi being able to ask for them first].[^22]

Notes:

1. The first part of the Tosefta outlines all of the different gifts to the poor as they apply to different types of crops. It is not related to any Mishna. The second part of the Tosefta regarding favoritism is related to Mishna Peah 4:9 which quotes an argument between Rebbi Eliezer and the Chachamim (Sages) regarding if the owner of the field is able to set aside Peah for a particular poor person or if he must give it to the first poor person who comes to him. This Tosefta expands on that case and follows the opinion of the Chachamim who hold that Peah must be given to the first poor person who comes to collect it.

2. For the definition and explanation of Peret see above Tosefta Peah 1:13, note 5. The Torah explicitly states that Peret applies only in a vineyard. See Vayikra 19:10.

3. For the definition and explanation of Shikcha see above Tosefta Peah 1:13, note 6. Since a grapevine is a tree Shikcha applies to it in the same way as it applies to all fruit trees. For the details of how Shikcha
is defined by trees see note 9 below. Talmud Bavli (Chulin 131a) states that Shikcha by a grapevine is learned out from an extra word אַחֲרֶיךָ, “after yourself”, in the verse in the Torah by Olelot (Devarim 24:21), however that seems to be a superfluous derivation, since Peah equally applies to all trees, as the Tosefta states.

4. Since a grapevine is a tree Peah applies to it in the same way as it applies to all fruit trees. For the details of how Peah is defined by trees see note 10 below. Talmud Bavli (Chulin 131a) states that Peah by a grapevine is learned out from a Gezeira Shavah (Derivation by Equal Decree) from the word אַחֲרֶיךָ, “after yourself”, between the verses of olives (Devarim 24:20) and grapes (Devarim 24:21). However, that seems to be a superfluous derivation, since Peah equally applies to all trees, as the Tosefta states. See Tosafot (Chulin 131a, Gamar) who points out that this particular Gezeira Shavah seems to be very problematic for various reasons. For a description of how a Gezeira Shavah works in general see Tosefta Berachot 6:2, note 5.

5. For the definition and explanation of Olelot see above Tosefta Peah 1:13, note 7. The Torah explicitly states that Olelot apply only in a vineyard. See Vayikra 19:10 and Devarim 24:21.

6. To an untrained eye, or someone reading the translation of the Torah and not the original, it does not seem to explicitly state that Leket applies only to grain. See Vayikra 19:9 and 23:22. All the Torah there says is וְלֶקֶט קְצִירְךָ לֹא תְלַקֵּט, “and you should not pick up the fallen [stalks] of your harvest”. However, the Hebrew word קציר, (Ketzir) does not just mean the harvest of anything, but specifically refers to grain. Hence the verse explicitly says that Leket applies only to grain and not to anything else.

7. The Torah explicitly states that Shikcha applies to grain as implied by the word קְצִירְךָ, “your harvest”, as I already explained in the previous note. See Devarim 24:19. There are two possible ways how Shikcha can occur by grain. Either the owner can forget actual bundles of already cut grain lying in the field, which is the classic case of Shikcha, or the owner can forget to harvest some of his crops leaving them still standing in the field after the harvest. In the latter case the way it is
noticeable that these standing stalks are Shikcha and not Peah is because Peah would generally be left at the end of the field where the farmer finished harvesting the whole field, as was already explained above in Tosefta Peah 1:5, whereas Shikcha would be left in the middle of the field where the farmer simply forgot to harvest particular stalks of grain. The law of Shikcha applying to standing stalks is not mentioned explicitly in the Torah. There are a few possible sources for it. The Sifri (Ki Teitze 283) learns it out from a Kal Vechomer (derivation from minor to major) from the Torah law of Shikcha with regard to forgotten sheaves. The Kal Vechomer goes as follows. Since Shikcha applies to sheaves, which are heavy and difficult to carry, as explicitly stated by the Torah (Devarim 24:19‐21), then for sure it should apply to individual standing stalks which are much lighter and easier for the poor person to carry away than big heavy sheaves. A second possible source is implied by Talmud Yerushalmi (Peah 4:4, Daf 22a), as explained by Rash Sirillio (ibid, Veshachachta Omer). The Torah says by Shikcha (Devarim 24:19) as follows:

כִּי תִקְצֹר קְצִירְךָ בְשָׂדֶךָ וְשָׁכַחְתָּ עֹמֶר בַּשָּׂדֶה ... 

When you will harvest your harvest in your field and you will forget a sheaf in the field ...

The verse repeats the word “field” twice, even though the second time seems to be superfluous. The Torah could have easily written “When you will harvest your harvest in your field and you will forget a sheaf …” without saying again “in the field”. From this extra wording the Yerushalmi implies that the law of Shikcha applies not only to sheaves, but also to standing crops. In other words, whatever is forgotten in the field is considered to be Shikcha, whether it is sheaves or just standing crops.

Since by forgotten sheaves there is a clearly defined upper limit of three sheaves that the owner is allowed to go back and take for himself, it makes sense that there should be an upper limit for the amount of forgotten standing stalks above which the owner should be allowed to go back and cut them off for himself. However, there is no clear definition of what that maximum amount is. Mishna Peah 6:7
seems to imply that the upper limit for Shikcha of standing stalks is two Sears. Seah is a measure of volume, equal to 6 Kavs. Since one Kav is equal to roughly 0.5 gallons, 6 Kavs roughly equal to 3 gallons. Therefore 2 Sears is approximately 6 gallons (22.7 liters). The reason for this upper limit is explained in the Sifri (ibid.) and Talmud Yerushalmi (Peah 6:5, Daf 30a). The Torah says by Shikcha (Devarim 24:19), לֹא תָשׁוּב לְקַחְתּ וֹ, “you should not go back to take it”, implying that Shikcha needs to be able to be carried away by one person and the amount of 2 Sears is simply too big for that. Although this reason is stated by the upper limit of the size of an individual sheaf to which Shikcha applies, it seems to be the same for the standing crops, the idea being that if the poor person would cut them off he needs to be able to carry them away in one shot. It is not clear from the Mishna how to measure this volume of standing stalks. Should it be measured before the grain is cut, which would be a much smaller amount or should it be measured after the grain is cut and bundled, which would results in a much larger amount since the in a sheaf the stalks are pressed together? This issue is up for discussion. The Rambam (Commentary on Mishna Peah 6:7) seems to imply that this measurement of two Sears applies to stalks after they are cut off and piled and not while they are standing. However, this is a difficult opinion to accept, because the owner needs to decide whether to leave these stalks standing as Shikcha or cut them off for himself and he needs to measure them while they are still attached to the ground and not after they are cut off and piled.

8. The Torah explicitly states that Peah applies to grain as implied by the word קְצִיר, “harvest”, as I already explained in note 6. See Vayikra 19:9 and 23:22.

9. Talmud Bavli (Chulin 131b) says that the source for this law, that Peah and Shikcha apply to all fruit trees, is the following verse. The Torah says (Devarim 24:20):

כִּי תְּחַבְּטַשׁ יִתְוָה, לֹא תְפַאֵר אַחֲרֶיךָ, לַגֵּר לַיָּתוֹם וְלָאַלְמָנָה, יִהְיֶה.

When you beat your olive tree, do not remove all of its beauty after yourself; it should remain for the convert, the orphan, and the widow.
It is obvious from the verse that it is referring to the fact that the farmer should not beat the olive tree down to the last olive, but rather should leave some olives on the tree for the poor people to take. However, the expression “do not remove all of its beauty after yourself” is vague and it is not clear to which type of a gift to the poor it is referring to, Peah, Shikcha or something else. Talmud Bavli (Chulin 131b) states that the word אַחֲרֶיךָ (Acharecha), “after yourself”, is referring specifically to Shikcha, but it does not explain why. This is difficult to understand, because the expression “after yourself” does not imply to be something that the farmer forgot by accident, but rather that the farmer should leave some olives on the tree for the poor on purpose which sounds more like Peah than Shikcha. A possible resolution to this question is proposed by the Malbim in his commentary on the Torah (Devarim 24:20) that the Gemara feels that the word Acharecha is extra and was not needed to be said. The preceding expression of the verse, לֹא תֶפַאֵר (Lo Tefaer), “do not remove all of its beauty” refers to something that the farmer should leave on purpose, namely Peah, and the following expression, אַחֲרֶיךָ (Acharecha), “after yourself”, is coming to add that the farmer should also leave something that he forgot by accident, namely Shikcha. This derivation is so farfetched that even not all of the Tannaim agreed to it. Mishna Peah 7:1 quotes the opinion of Rebbi Yossi who says that the law of Peah does not apply to olives at all. Talmud Yerushalmi (Peah 7:1, Daf 31b) concludes that Rebbi Yossi does not hold of this derivation from the word Acharecha. Our Tosefta however, as well as the opinion of the Tanna Kama in Mishna Peah 7:1, follow the view of Rebbi Akiva who holds of the derivation from the word Acharecha. It is not clear where this derivation is quoted in the name of Rebbi Akiva. To confuse the matter further the Sifri (Devarim 284) states that both laws of Shikcha and Peah by olives are derived from the word Acharecha and not from the two separate parts of the verse as was suggested by the Malbim. Talmud Yerushalmi (Peah 1:4, Daf 7b) provides an alternative source that all fruit trees are obligated in Peah. It derives it from the word שָׂדְךָ (Sadcha), “your field”, in the main verse regarding Peah (Vayikra 19:9 and 23:22). It is not clear how this word implies a reference to trees. It is possible that it generally includes everything that can possibly grow in a field including trees.
The other obvious issue with this derivation is that the verse is specifically talking about olives and not any other kind of fruit. However, the Gemara uses it to refer to Shikcha and Peah of all fruit trees. How it arrives at that conclusion is not clear. Due to this problem the Rash Mishantz in his commentary on the Mishna (Mishna Peah 1:4, Vehatvua) writes that by Torah law Peah applies only to grain, grapes and olives, all of which have explicit verses to back it up, however, other fruit trees are only obligated in Peah by a Rabbinical decree. According to that explanation this Tosefta is stating both Torah and Rabbinical obligations in Peah and Shikcha. The Rash rejects all of the derivations from verses quoted in various sources that I already mentioned as mere Asmachtot (references from verses in Tanach for Rabbinical decrees) and not true Derashot (derivations). On the other hand, the Rambam implies in his Mishneh Torah (Hilchot Matnot Aniyim 1:6, 1:7 and 1:14) that trees are obligated in Shikcha and Peah by Torah law and all of the above mentioned Derashot are real and not just Asmachtot, since the Rambam quotes verses as the source for the stated laws and then concludes that all of them are of Torah origin. For a discussion of this argument between the Rash and Rambam see the commentary on Talmud Yerushalmi, Mareh Hapanim (Peah 1:4, Daf 8a, Yomar Zayit).

10. The Tosefta uses the term “the poorest of the Jews” in order to emphasize that even a person who may not be respected in society and does not wield much power, still has his rights upheld and can demand the gifts to the poor to be given to him.

11. I have quoted the text as it appears in the Erfurt manuscript, which has the word מצלבים (Motzi), “he confiscates”, referring to the poor person who can take the produce away from the owner. However, in the Vienna manuscript the reading is מצלבים (Motziin), “we confiscate”, referring to the big we, meaning the Bet Din (court). According to that reading the explanation of the Tosefta would be different than the way I explained it in the main text. It would be referring to a poor person who is the owner of the field himself and he wants to keep the gifts to the poor for himself. This is the way Saul Lieberman explains this reading in the Tosefta in Tosefta Kifshuta
based on the explanation of a similar Beraita in Talmud Bavli (Chulin 131b). I have chosen the reading of the Erfurt manuscript, because it does not require this explanation, since it is really farfetched to say that there is a poor person who would want the gifts for himself who at the same time owns a whole field, or even some produce. If he has his own produce he should not need the gifts to the poor.

12. The farmer is not allowed to set aside the produce from any of the gifts to the poor for a specific poor person, because that would be favoritism. He must give these gifts to the first poor person who asks for them. Obviously, when the Tosefta says that the poor person can come and take what is rightfully his it does not mean that the poor person can come and take Peah without the permission of the owner of the field, because it was already mentioned earlier in Tosefta Peah 2:7 that the poor person is not allowed to take it until he verifies that the owner set it aside for Peah. All the Tosefta means is that the owner is not allowed to deny the poor person the set aside gifts, because the owner wants to give them to someone else, but rather he must give them to the first poor person who asks for them. However, if the poor person asks the owner if this produce is set aside for Peah and the owner says yes, but he is holding it for a specific poor person, then the poor person who showed up first is allowed to take it anyway despite the owner protesting.

There two potential sources for this law. One source for this law is derived in the Sifra (Kedoshim, Parshitta 1, Perek 2) from the verse in the Torah (Vayikra 19:9-10 and 23:22) by reading that verse out of context. The verse says:


הָרַבִּים כַּרְמָךְ וְלָכְלָכִים לֶעָנִי וְלֹא לָכְלָכִים תָּלָקֵט אֲחָת

... and you should not pick the single grapes of your vineyard; you should leave them for the poor person and the convert ...

The Sifra takes the following words out of this verse and reads them a single flowing text without a comma in between: לֶעָנִי וְלָכְלָכִים, which if translated as a stand-alone text would mean “do not rip off the poor person”. The Sifra interprets this to mean that the owner should not help one poor person at the expense of other poor people.
I would like to suggest that this Derasha (derivation) is merely an Asmachta (a reference from the Tanach for a Rabbinical law) and not a true derivation of a Torah law, because the verse is completely read out of context. According to the Sifra the law itself was a Rabbinical enactment in order to make sure that all poor people will have equal rights to get the gifts to the poor without the owners of fields holding the set aside produce for their friends. Talmud Bavli (Chulin 131b) states that the reason for this law is because the Torah says (Vayikra 19:9-10 and 23:22) by all gifts to the poor the expression of האָזִי (Aziva), “forsaking” or “leaving”. This implies that the owner should leave the produce for the poor and not have any say in what happens to it after he set it aside for them. Therefore the owner should not be able to somehow put a hold on the gifts and reserve them for a specific poor person. This explanation is a direct derivation of the Torah verses and not an Asmachta, and therefore according to the Talmud Bavli this law is a Torah law, and not a Rabbinical law. As I will explain below in note 15 it seems to me that the Tosefta holds that this law is a Rabbinical enactment and not a Torah law.

13. For an explanation of what Maaser Ani was, see above Tosefta Peah 1:6, note 7.

14. It is not clear why the Tosefta adds the word “underneath” in this case. It does not seem to have any significance.

15. The reason why favoritism does not apply to Maaser Ani just like it does not apply to Leket, Shikcha and Peah depends on the source of this law, as I explained above in note 12. If this is a Rabbinical enactment then we can easily understand that the Rabbis enacted it as a protection against favoritism in the same way as they did by the other gifts to the poor, so that all poor people will have equal rights in accessing these gifts. However, if it is a Torah law then it becomes much more difficult to understand why it is so. By Maaser Ani the Torah does not use the expression of האָזִי (Aziva), “forsaking” or “leaving”. Rather the Torah uses two different expressions, one of הִנָּה (Hannacha)“putting down” (see Devarim 14:28-29), meaning the owner should put it down so that the poor can come and take it themselves, and also the expression of הָיַלֵּה (Netina), “giving” (see...
Devarim 26:12), meaning that the owner should give this tithe to the poor. Neither expression implies that once the owner puts it down he does not have any say anymore to whom it should go. In fact, Talmud Bavli (Chulin 131b) quotes a Beraita that says the exact opposite of the law of our Tosefta, that favoritism applies to Maaser Ani and the owner can hold it for a poor person of his choice, due to this precise reason that the Torah uses the expression of “giving” by Maaser Ani, meaning that he can give it to whomever he wants to. Due to this I am further inclined to say that our Tosefta holds that the law of non-applicability of favoritism to all gifts to the poor is a Rabbinical enactment. The question of applicability of favoritism to Maaserot (tithes) in general, and to Maaser Ani in particular, is discussed in Talmud Yerushalmi (Nedarim 11:3, Daf 37b). There two Amoraim argue about it and bring various proofs to their opinions from verses in the Torah. It is clear from their argument that this law has not been settled for a while after the Tosefta has been completed.

16. Tosefta Chala 2:8 lists 24 gifts to the Kohanim given to them by the Torah. Out of these 24 gifts, 14 of them are parts of sacrifices and are therefore not given by the public to the Kohanim as a part of their daily lives. Our Tosefta is only referring to the remaining 10 gifts which are given to the Kohanim by the public, and even then to not all of them, because some of them are not given to the Kohanim voluntarily by the owner, but rather they revert to the Kohanim without the owner’s consent as I will explain. These 10 gifts are:

1) Terumah (heave offering). For an explanation of what Terumah is, see above Tosefta Peah 1:6, note 7.

2) Terumat Maaser (heave offering of the tithe). For an explanation of what Terumat Maaser is, see above Tosefta Peah 1:6, note 7.

3) Challah (dough offering). The Torah commands that every time a person bakes bread he has to separate a portion of his dough to give to the Kohen. See Bemidbar 15:17-21.

4) Reishit Hagez (first sheared wool). The Torah commands that the first portion of wool sheared of every sheep by the herder has to be given to the Kohen. See Devarim 18:4.
5) Zeroah (foreleg), Lechayayim (cheeks), and Hakevah (stomach), known together as the Matanot (gifts). The Torah commands that every time a person slaughters an animal for food he has to give the foreleg (front leg), the cheeks, and the stomach, in particular the last of four stomachs of a ruminating animal, such as a cow, a sheep or a goat, known as the abomasum, to the Kohen. See Devarim 18:3. I will explain each of these gifts in more details below.

6) Pidyon Haben (redemption of the firstborn son). The Torah commands that the father has to redeem his firstborn son from the Kohen, by giving the Kohen five silver shekels. See Shemot 13:13 and Bemidbar 15:18.

7) Pidyon Peter Chamor (redemption of the firstborn donkey). The Torah commands that the owner of a firstborn donkey has to redeem this donkey from the Kohen by giving the Kohen a sheep in order to be able to use the donkey. See Shemot 13:13 and Bemidbar 15:18.

8) Charamim (taboo properties). The Torah commands that anything that a person declares to be a Cherem (taboo property) without specifying that it should belong to the Temple (Bedek Habait) then it automatically belongs to the Kohanim. See Bemidbar 18:14 and Mishna Arachin 8:6. Talmud Bavli (Arachin 28b) states that the owner has to give it to any Kohen who is on duty in the Temple that week, but not to any other Kohen. It is not clear if this Tosefta agrees to that or not.

9) Sadeh Achuzah (inherited field). The Torah commands that a person who inherited a field from his relatives and then consecrated it to the Temple and did not redeem it before Yovel (Jubilee year), and then the field got redeemed from consecrated property by one of his relatives and remained in their possession when the Yovel began then on the Yovel this field automatically goes out from the possession of the relative who owns it and becomes the property of the Kohanim. See Vayikra 27:16-21. This specific gift is not given to the Kohanim by the owner, but rather
reverts to them automatically. Since the owner cannot chose which Kohen to give it to it automatically belongs to all of the Kohanim who are on duty in the Bet Hamikdash (Temple) during the first week of the Yovel and they can divide it equally between themselves or can keep it as partners. See Talmud Bavli (Arachin 28b).

10) Gezel Hager (property stolen from a convert). The Torah commands that if property was stolen from a convert who does not have any Jewish relatives at all and the convert died before the thief was able to return him his stolen object, then the thief has to return the stolen property to the Kohanim. See Bemidbar 5:8 and Tosefta Bava Kama 10:9. Since the owner of the property is already dead this gift is given to the Kohen by the thief. Talmud Bavli (Arachin 28b) states that the owner has to give it to any Kohen who is on duty in the Temple that week, but not to any other Kohen. It is not clear if this Tosefta agrees to that or not.

Our Tosefta is referring to all gifts mentioned on this list except for number 9, Sadeh Achuzah, and also possibly except for number 8, Charamim, and number 10, Gezel Hager, as I already explained.

17. The Torah gave the Leviim only one gift and that is Maaser Rishon (first tithe). See Bemidbar 18:21-24. For an explanation of what Maaser Rishon is, see above Tosefta Peah 1:6, note 7.

18. See above, note 16, gift number 5. The Torah says (Devarim 18:3) that one leg should be given to a Kohen, but it does not specify which of the two front legs of an animal should be given to a Kohen. Tosefta Chulin 9:3 learns out from a Meh Matzinu (comparative derivation) that specifically the right front leg is given to the Kohen and not the left front leg. Talmud Bavli (Chulin 134b)

19. See above, note 16, gift number 5. The Torah says (Devarim 18:3) that the לחיים (Lechayayim), literally “cheeks”, of each slaughtered animal have to be given to the Kohen. Since the Torah says “cheeks” in plural, both cheeks have to be given to the Kohen. Mishna Chulin 10:4 and Tosefta Chulin 9:3 explain that it does not just include the cheeks but rather both lower jaws and even a part of the neck of the animal. The
exact boundaries of these “jaws” are disputed between the Mishna and the Tosefta. The Hebrew word for “jaw” is לֹסֵת (Leset), which is a contraction of its original spelling לָסֵת, which is in turn derived from the root לָלָס, which means “chew”. So the word Leset literally means a part of the body with which one chews. Since both the jaws and the cheeks move during chewing it would make sense that the word Leset could refer to either one of them. Unfortunately that word is not mentioned in the Tanach, so we do not really have any reference for its early usage. In the language of the Talmudic literature the precise difference between the words Lechi and Leset was not clearly defined and the words were used interchangeably, sometimes referring to the cheek and sometimes referring to the jaw. For various uses of these words throughout the Talmudic literature see Marcus Jastrow, “Dictionary of the Targumim, Talmud Bavli, Yerushalmi and Midrashic Literature”, 2\textsuperscript{nd} Edition, 1926, p. 702, entry לָסֵת and p. 713, entry לֹסֵת.

20. See above, note 16, gift number 5. The Torah says (Devarim 18:3) that the קִזְרָה (Keiva), literally “stomach”, of each slaughtered animal have to be given to the Kohen. However, ruminants (animals that chew their cud) have a very complex stomach, which is divided into 4 different chambers: rumen, reticulum, omasum, and abomasum. In the first two chambers, the rumen and the reticulum, the food is mixed with saliva and separates into layers of solid and liquid material. Solids clump together to form the cud. The cud is then regurgitated, chewed slowly to completely mix it with saliva and to break down the particle size. Even though the rumen and reticulum have different names they represent the same functional space as digesta can move back and forth between them. Together these chambers are called the reticulorumen. The degraded digesta, which is now in the lower liquid part of the reticulorumen, then passes into the next chamber, the omasum, where water and many of the inorganic mineral elements are absorbed into the blood stream. After this the digesta is moved to the abomasum. The abomasum is the direct equivalent of the monogastric stomach, such as a human stomach, and digesta is digested here in much the same way. Digesta is finally moved out of the stomach and into the small intestine, where the digestion and absorption of nutrients occurs. The Hebrew word Keiva, although
when used in reference to humans refers to the stomach, in ruminants it refers to the abomasum, which is the last chamber of the ruminant’s stomach and is equivalent to the human stomach. This usage of the word was apparently very well defined, because when the Tosefta (Chulin 9:3) explains what it is all it says is that “Keiva is meant literally”.

Ruminant digestive system.

The four stomachs of a suckling kid (goat). Photo: Dr. David B. Fankhauser of University of Cincinnati Clermont College.

The Hebrew names of the four stomachs correspond to either the way they look or the function that they perform. In Talmudic Hebrew the
four chambers of the stomach are known as follows (see Mishna Chulin 3:2 with Rashi’s commentary on it (Chulin 42a, Ubet Hakosot)):

a. Rumen – כֶּסרֶ (Keres). The word כֶּסרֶ was originally spelled כֶּרֶ (see Yirmiyahu 51:34). It seems to have the connotation of not just a stomach, but a place which gets stuffed with food. The word Keres was used to refer to the rumen which is the stomach in which the animals stuffs its food right after swallowing.

b. Reticulum – בֵּהַיתֶכּוֹסָ (Beit Hakosot). Beit Hakosot literally means “the house of cups”. The reticulum is called so because its inner lining looks like cups.

c. Omasum – מָסָסָ (Masas). The omasum is called Masos from the root מָסָס הֹ (Mas) or מָסָס (Masas), which means “to melt”. I would like to suggest that the reason it is called that is because that is where the water is absorbed from the cud into the blood stream. Since melting of ice looks like water is leaking away from it, it is as if the cud melts away in the omasum by losing its water content. The way that the ancients knew that is probably by inspection of the food that was found inside a slaughtered animal. They noticed that the food that was inside the abomasum was completely dry, whereas the food inside the omasum still had some wetness to it.

d. Abomasum – קֵייבָה (Keiva). This word is spelled in the Torah קֵיֶבָה (Devarim 18:3) and seems to come from the root קֵיֶב (Kav) or קֵיֶבָ (Kavav) both of which mean “hollow”. The abomasum is probably called Keiva because it was commonly inflated like a balloon and then dried in order to be eaten or turned into rennet in order to make cheese. Since people used it in a way that it had a large hollow space inside it was called Keiva (i.e. an object with hollow space inside). It should be noted that the rumen can be inflated as well, but it probably was not as common to do so and therefore this name was not applied to the rumen.
Inner lining of the rumen. Photo: Dr. Mohammed Khalil of Purdue University's College of Veterinary Medicine.

Inner lining of the reticulum. Note it looks like cups. Photo: Dr. Mohammed Khalil of Purdue University's College of Veterinary Medicine.
Inner lining of the omasum. Photo: Dr. Mohammed Khalil of Purdue University's College of Veterinary Medicine.

Inner lining of the abomasum. Note the folds (plica) in its inner wall. Photo: Dr. David B. Fankhauser of University of Cincinnati Clermont College.
21. The Tosefta mentioned a gift to the Levi, but did not list what it is in its list of examples, so therefore I have added it (Maaser Rishon) to the list for clarity. As was already implied earlier in note 16 this list of examples that the Tosefta mentions is not exhaustive and there are other gifts to the Kohanim to which favoritism applies, allowing the owner to select the Kohen to whom to give the gifts to.

22. The reason that favoritism applies to the gifts to the Kohanim and the Leviim is the same as was mentioned in note 15. The Torah always uses the expression of נְתִי (Netina), “giving” in various verses that discuss these gifts. The expression of giving implies that the owner can give the gifts to whichever Kohen or Levi he chooses and does not have to give it to anyone who comes to demand them.

Tractate Peah, Chapter 2

Tosefta 14

We do not confiscate [priestly gifts] from a Kohen (priest) that belong to [another] Kohen and [we do] not confiscate Levite gifts from a Levi (Levite) that belong to [another] Levi.

Notes:

1. Since the previous Tosefta mentioned the concept of confiscation of gifts to the poor and also mentioned gifts given to Kohanim and Leviim, it states a new law regarding the confiscation of these gifts. It is not related to any Mishna. For an explanation of various types of gifts that are discussed in this Tosefta see notes 16 and 17 on the previous Tosefta.

2. “We” is meant here as the big we referring to the Bet Din (court) who would enforce this law.

3. A Kohen is obligated to give all of the priestly gifts just like a regular Jew, meaning that he must separate them from the regular produce and treat them in the same manner as all of the gifts are normally
treated, such as that Terumah becomes holy and has to be eaten in a state of purity. However, in some cases the Kohen is allowed to keep these priestly gifts for himself instead of giving them to another Kohen. For example, if the Kohen buys produce from a farmer before the produce has been piled, meaning that it did not become obligated yet in Terumot and Maaserot, he is allowed to keep the Terumah for himself and not give it to another Kohen. See Mishna Peah 1:6. He still has to give Maaser Rishon to the Levi, since that gift was not meant for the Kohanim at all. However, if the produce was already piled by the farmer and then the Kohen bought it, since the produce already became obligated in Terumot and Maaserot the Kohen is not allowed to keep the Terumah for himself, but rather has to give it to another Kohen. Talmud Yerushalmi (Peah 1:5, Daf 9b) explains that really this law is a special Rabbinical enactment and not a Torah law. By Torah law the Kohen is allowed to keep the Terumah for himself after he separates it and the Levi is allowed to keep Maaser Rishon after he separates it. However, the Rabbis enacted a special fine for the Kohanim and Leviim and prohibited them from keeping the Terumah and Maaser Rishon, respectively, after the produce has become obligated in them. The reason they enacted such a fine is because they did not want the Kohanim and the Leviim buying all of the produce directly from farmers as Tevel (untithed produce), which obviously had the same price as tithed produce (i.e. the farmer did not charge for the percentage that had to be given away as a tithe) and then keeping the Terumah and Maaser Rishon for themselves, thus making on it a huge profit in comparison to regular Jews who paid the same amount of money for this produce, but had to give a significant portion of it away to Kohanim and Leviim.

Our Tosefta discusses a case where the Kohen or the Levi decided to pocket the Terumah or Maaser Rishon for themselves, respectively, despite this Rabbinical enactment which required them to give it away. The Tosefta says that since by Torah law they are allowed to keep it for themselves, in the case where they did not follow the Rabbinical enactment the court does not force them to give it to another Kohen or Levi, but rather allows them to keep it. The reason for this would be that the Rabbis did not want to enforce their
enactment to such an extreme that would require confrontation between the Kohanim, Leviim and the courts. They reasoned that since most Kohanim and Leviim would comply with the new law it would be sufficient to provide a fair market for the Israelite (Yisraelim) farmers who had to give away these gifts to the Kohanim and Leviim.

From the statement in Talmud Yerushalmi which specifically refers to produce it can be implied that this Rabbinical enactment was only enacted for the gifts that apply to produce such as Terumah and Maaser Rishon, but not to other gifts, which come from animals, such as Reishit Hagez (first sheared wool) and the three Matanot (gifts), the foreleg, the cheeks and the forth stomach, all of which the Kohen would be allowed to keep for himself even by Rabbinical law. I do admit that it is not clear and therefore it is possible that this Rabbinical enactment applies to all gifts and not just the ones from produce.

Talmud Bavli (Chulin 131b) has a different spin on this law based on a Beraita that it quotes similar to our Tosefta, which combines the text from the previous Tosefta and this Tosefta into a single statement, and specifically says that this law is talking about the three animal Matanot, that if they are kept by the Kohen for himself we do not confiscate them from him to give to another Kohen. Obviously according to that Beraita it is implied that the Torah somehow demands that these gifts need to be given to another person and not just kept by the owner, even if he is entitled to getting them himself, since there is no Rabbinical decree regarding the animal priestly gifts. However I do not think that our Tosefta is of the same opinion and therefore I have explained it based on the Yerushalmi that I quoted.

4. Obviously if the Levi decided to also pocket one of the priestly gifts that have to be given to a Kohen, such as Terumah or Terumat Maaser the court forces the Levi to give them away, since even by Torah law he is not allowed to keep them, but rather has to give them to a Kohen.

It should be noted that Ezra passed a decree in which he punished the Leviim for not returning to the Land of Israel with him and instead staying in Babylon, by taking away their gift of Maaser Rishon and
giving it to the Kohanim instead. See Talmud Bavli (Yevamot 86b) and Rashi (Chulin 131b, Dekansinhu Ezra) for historical sources of this enactment. It is not clear if the law of this Tosefta would also apply to a Levi who decided to keep the Maaser Rishon for himself according to Torah law instead of giving it to a Kohen in violation of Ezra’s decree. Talmud Bavli (Chulin 131b) discusses this issue, however the discussion is based on a lot of different material and it is not really possible to tell from it what would be the opinion of this Tosefta. I would like to suggest that since Ezra’s decree is obviously Rabbinical and our Tosefta already voiced that we do not force a Kohen or a Levi to give up their gift due to a Rabbinical decree it would agree that we do not force a Levi to give up his Maaser Rishon to the Kohen, but rather let him keep it in accordance with the Torah law.

Finally, there is an argument in two Beraitot between three Tannaim, Rebbi Akiva, Rebbi Meir and Rebbi Elazar Ben Azaryah, whether the Levi gift, Maaser Rishon, can also be given to a Kohen by Torah law, since the Torah calls Kohanim, “Leviim”, on many occasions. See Talmud Bavli (Yevamot 86a-b). Rebbi Akiva and Rebbi Meir hold that Maaser Rishon can only be given to a Levi and not a Kohen, but Rebbi Elazar Ben Azaryah holds that it can be even given to a Kohen. These Beraitot are only quoted by Talmud Bavli and do not appear in the Tosefta or Talmud Yerushalmi, which may suggest that they were taught only in Babylonian schools. We do not know which opinion our Tosefta holds like although it is most probable that it holds that Maaser Rishon can only be given to a Levi and not a Kohen, since that is the prevalent opinion throughout Talmudic literature and the Tosefta was not even aware of the argument on this subject, since it was not taught in schools of the Land of Israel. Either way, the rule of the Tosefta whether Maaser Rishon can be taken away from a Kohen would depend on this argument, since it can only be taken away if it belongs exclusively to the Levi by Torah law.

5. I would like to point out that some commentators on the Tosefta explain this Tosefta in the same way that the Talmud Bavli (Chulin 131b) explains a set of similar Beraitot that it quotes. For example, see Chasdei David and Minchat Bikkurim on this Tosefta. According to that explanation the Tosefta is specifically talking about the gift of Reishit
Hagez and not other gifts as the Gemara (ibid.) concludes. Without going into too much detail I do not think that that explanation in the Tosefta is correct, because the Gemara (ibid.) is not quoting our Tosefta but rather a different Beraita. Also the Gemara forces all kinds of cases on that Beraita in order to avoid various questions on it. This Tosefta does not have to conform to the Gemara’s interpretation and can be explained in a much more generic fashion, as I have done above.

Tractate Peah, Chapter 2

What is Leket (fallen stalks)? It is what is left over [in the field] as a result of reaping [with a tool] and as a result of detachment [of produce by hand] (i.e. handpicking). Rebbi Yossi says, “Leket is only what is left [in the field] as a result of reaping [with a tool and not what is left from handpicking], as it says, ‘... and you should not pick up the fallen [stalks] of your reaping.’” (Vayikra 19:9 and 23:22)

Notes:

1. Mishna Peah 4:10 defines in an anonymous statement that Leket is something that is left over in the field as a result of harvesting. Our Tosefta clarifies that the statement in the Mishna is really the opinion of Rebbi Yossi, but there is another opinion which includes also the produce that was left in the field is a result of handpicking.

It was already mentioned above in Tosefta Peah 1:14 that the obligation of all of the gifts to the poor depends on the manner of harvesting the produce and if the farmer harvested them in an abnormal manner then the produce is exempt from all of the gifts to the poor. In the case of grain in order for it to be obligated in the gifts to the poor it has to be reaped with a tool and not plucked out of the
ground by hand. Our Tosefta does not mention whether it is specifically talking about grain that is normally reaped or if it is also talking about other types of produce, such as beans, which are also obligated in Leket (see note 6 below), but are normally picked by hand. If we would assume that our Tosefta is only talking about grain then the opinion of the Tanna Kama would be in contradiction with Tosefta Peah 1:14, which said that grain which was plucked by hand is exempt from Leket, because that is not the normal manner in which it should be harvested. Only the opinion of Rebbi Yossi would be in agreement with that Tosefta. However if we were to assume that this Tosefta is not specifically referring to grain, but to all produce which is obligated in Leket, including things that are normally picked by hand, then it is possible to explain it in a way that both the Tanna Kama and Rebbi Yossi agree with the Tosefta Peah 1:14 and their argument has nothing to do with the normal manner of harvesting, but rather with the derivation from the verse mentioned in this Tosefta and if it should be taken literally or not. According to this explanation, both of them agree that if produce was not harvested in the normal manner, such as if grain was plucked out of the ground by hand, then it is exempt from all of the gifts to the poor. However they argue whether produce that is normally picked by hand is obligated in Leket or not. The Tanna Kama holds that it is, but Rebbi Yossi holds that only produce that is harvested with a tool, such as grain, is obligated in Leket, but not produce that is normally picked by hand, such as fruit or beans. Since the verse which Rebbi Yossi mentions and learns literally is only talking about Leket then their argument is only applicable to Leket and not to other gifts to the poor.

I have chosen to explain this Tosefta according to the last explanation in order to prevent the possible contradiction. I would like to immediately point out that it is not the way it is explained by many commentators, such as Minchat Yitzchak and Chazon Yechezkel, who explain it based on the way Talmud Bavli (Chulin 137a) explains a similar Beraita. Talmud Bavli’s explanation of that Beraita cannot be applied to this Tosefta, because that Beraita is radically different in its wording and opinions from this Tosefta as was already pointed out by Higayon Aryeh and Tosefta Kifshuta.
2. For a description of what Leket is see above Tosefta Peah 1:13, note 5.

3. Although generally the Hebrew word קְצִירָה (Ketzira) is translated as “harvesting”, it literally means “reaping”. Reaping is the step of the actual harvesting where the stocks of grain are cutoff using a tool, such as scythe or a sickle. The normal process of reaping grain is only done using such a tool. The Tosefta at this point is specifically referring to reaping with a tool.

4. Detachment refers to harvesting any produce by hand by ripping it off the stalk. As I already explained above in note 1, the Tanna Kama holds that when the Torah says וְלֶקֶט קְצִירְךָ (literally: the fallen [stalks] of your reaping), it means “the fallen stalks of your harvest”. The word קְצִירְךָ (Ketzircha) here means “your harvest” in a general sense without a specific reference to the reaping of grain, and therefore it includes in the commandment of Leket produce that is normally picked by hand, as well.

Sickle.
5. Rebbi Yossi chooses to translate the word קְצִירְךָ (Ketzircha) as “your reaping”, as opposed to “your harvest”, and therefore the verse is only referring to produce which reaped, such as grain. According to him any produce that is not normally reaped would be exempt from Leket.
6. My whole explanation of this Tosefta was built on the assumption that other produce, besides grain is obligated in Leket. The problem with this assumption is that there is no explicit source for it from Talmudic literature. It was already mentioned above in Tosefta Peah 2:13 that Leket applies to grain, but does not apply to fruit. However the Tosefta left open the question whether Leket applies to other things, which are not fruit and are not grain, such as legumes and vegetables. From the Rishonim (medieval authorities) it is implied that Leket applies to legumes as well. For example, see Sefer Hachinuch 218, Smag (Lo Taaseh 284), and the Mishneh Torah of the Rambam (Hilchot Matnot Aniyim 4:2) where he explicitly says that Leket applies to other types of produce besides grain which are normally picked by hand. Aruch Hashulchan Haatid (Hilchot Peah 1:7) discusses this issue and concludes that it is basically an assumption of all of the early and late authorities based on scriptural references, but there is no explicit Talmudic source that clearly states that Leket applies to anything else besides grain. He mentions that Sifra (Kedoshim, Parshitta 1, Perek 1) states that legumes are compared to grain and therefore should have the same law apply to them with regard to all gifts to the poor, however a careful analysis of the Sifra shows that it is only talking about Peah and not about Leket. Some commentators (see Ohr Pnei Melech on the Mishneh Torah of the Rambam (Hilchot Matnot Aniyim 4:2) and Smag (Lo Taaseh 284)) suggest that the source for this law is Mishna Peah 4:10, which is talking about Leket and says that if a person “picked by hand”, which they say is not referring to grain, but rather to another type of produce which is normally picked by hand. This suggestions is however very difficult to accept, because the Mishna itself says that if a person picked it by hand then it is not Leket and still belongs to the owner, implying that it is talking about grain and the reason that it is not Leket, because it was not harvested in the normal manner of harvesting grain. Unfortunately, I was not able to come up with a solid source for this law and therefore I admit that my whole explanation of this Tosefta hangs by a thread and could be easily refuted.

Tractate Peah, Chapter 2
A [single] stalk [of grain] that is [lying on the ground] among the standing crops [that have not been harvested yet] belongs to the owner [of the field, and is not considered to be Leket (fallen stalks)]. A single stalk of grain that is still standing [in the harvested area] belongs to the poor people, [because it is considered to be Leket. However, if] a single stalk of grain is lying [half way among standing crops and half way in the harvested area, then] he [i.e. the farmer] should take it and throw it behind him [so that it will land in the harvested area and it will be obvious to the poor people that it is Leket], because [something that is in reality] doubtfully Leket is [officially considered to be] Leket.

Notes:

1. Due to the vague language of this Tosefta it can possibly be related to one of two different Mishnayot, Mishna Peah 4:10 and 5:2. Based on the order of the Toseftot it should be related to Mishna Peah 4:10, because the next Tosefta is clearly related to Mishna Peah 4:11. However based on the wording of this Tosefta it does not really match the language of Mishna Peah 4:10 and instead more fits with the Mishna Peah 5:2. Since the language of our Tosefta is really vague it can be interpreted in a number of ways and can be made to fit with either of the Mishnayot. I have decided to explain this Tosefta in a way that fits its language best without trying to work it out with the expressions of the Mishna on which it comments.
Mishna Peah 4:10 states that classification of stalks as Leket depends on the way the stalks were harvested. The Mishna is very vague in its classification and there are multiple of ways of understanding it, but in general the classification of stalks as Leket depends on whether they were harvested in a normal fashion which indicates that the owner intended to harvest them in that way as they accidentally were dropped. However, if the stalks were harvested in an abnormal fashion, such as with the back of a sickle instead of with its cutting part then the dropped stalks are not considered to be Leket, because we assume that the owner did not mean to cut them that way and therefore they were not considered to be properly harvested, which makes them still belong to the owner and they are not Leket. This Mishna does not say anything about where the stalks have landed physically in the field after they were cut off.

Mishna Peah 5:2 states that if there is a single standing stalk in the harvested area then its designation as Leket depends on how close it is to the remaining standing crops that have not been harvested yet. If it is close enough to the unharvested standing crops that it can be cut off with a sickle in one swing together with some of the standing crops then it belongs to the owner and is not considered to be Leket. However, if it is further away from the unharvested standing crops that it can only be cut off by itself without any other crops then it belongs to the poor people and is considered to be Leket. Although see Talmud Yerushalmi (Peah 5:2, Daf 25b), where it implies that this stalk can also be considered Shikcha and not Leket. Either way it belongs to the poor.

According to my explanation of this Tosefta, the Tosefta states the rules for the classification of fallen stalks as Leket based on the location of the stalk in the field after the harvest relative to the areas which have been harvested already and have not been harvested yet. All three cases in the Tosefta are talking about a stalk which has been accidentally bypassed by the farmer during the harvest, either as a stalk dropped on the ground during the harvest or a stalk that was simply left standing by itself, because the farmer missed it with his sickle as he was cutting the crops.
Partially harvested wheat. Photo: Lars Plougmann. Notice the still standing unharvested crops in the left upper corner of the image and a harvested area on the bottom and the right sides if the image. The three cases of the Tosefta discuss stalks in these two areas.

2. If this stalk is located among the still standing crops that have not been harvested yet then the only way for it to be identifiable is Leket is if it is detached and lying on the ground among the standing stalks. If this stalk is still attached to the ground then it is simply a part of the unharvested standing stalks and obviously belongs to the owner.

3. The reason that a fallen stalk in the unharvested area is not considered to be Leket is because we assume that it did not fall there due to the farmer harvesting the crops in a neighboring area, but rather for some other reason. Fallen stalks can be classified as Leket only if they fell as a result of the farmer harvesting the crops, however if they fell for any other reason they are not Leket and still belong to the owner.

4. It is possible to explain this particular case in two ways, either that it is referring to a fallen stalk lying on the ground or to a standing stalk still attached to the ground which was accidentally skipped over by the farmer. The first possibility is that the stalk was cut off by the farmer, fell on the ground and is now lying in the harvested area where there are no more crops. This by definition is the classic case of Leket to which the Torah refers, and therefore it is my humble opinion that there is no need for the Tosefta to state this case since it is directly
meant by the Torah in its definition of Leket and is obvious to everyone. Therefore it seems to me that the Tosefta is referring to the other possibility where the stalk was accidentally missed by the farmer and it is still standing attached to the ground. Since the stalk was technically never cut off we might think that it still belongs to the owner and is not Leket. Therefore the Tosefta is coming to teach us that since this stalk ended up in the harvested area as a result of the harvesting process it is considered to be Leket and therefore belongs to the poor people.

If we follow this explanation then the Tosefta is arguing on Mishna Peah 5:2. The Mishna says that such a stalk would be considered Leket only if it is far away from the still standing crops that it cannot be cut off together with them, but if it is close then it is not considered to be Leket. However the Tosefta does not make such a differentiation and implies that regardless of this stalks location relative to the unharvested area it is still considered to be Leket. To me this seems to be even a greater proof why the Tosefta specifically had to mention this case. Obviously it wanted to emphasize its different position on this law from the Mishna. Saul Lieberman in Tosefta Kifshuta points out a problem with this explanation. Most commentators on the Mishna consider this particular case to be a case of Shikcha (forgotten sheaves) and not of Leket, because the stalk was literally forgotten standing in the field as opposed to being dropped. However our Tosefta in its last statement implies that it is talking about Leket and not Shikcha. However, I am not sure that this is a real issue, because the Tosefta states three different cases and it specifically does not say what the first two cases are cases of Shikcha or Leket. Only the last case is clearly a case of Leket. It is possible that the Tosefta included a case of Shikcha among two cases of Leket, because of the similar situation in which they occurred. It is also possible that the Tosefta does not agree with this explanation that this particular case is a case of Shikcha and instead it holds that this is a case of Leket since it was a stalk that was bypassed accidentally as a result of the harvesting process, as opposed to Shikcha which generally refers to crops that already have been harvested, but not yet brought into the silo from the field and were forgotten by the farmer in the field.
If these problems presented by Lieberman bother you then you can always fall back on the basic explanation that the Tosefta is merely talking about the classic case of Leket where the fallen stalk simply fell in the harvested area and is therefore Leket. In this case the Tosefta would be in agreement with the Mishna regarding the case of a single standing stalk, since it is not talking about that case at all. However, to me that explanation is inadequate for the reasons that I already mentioned.

5. The Tosefta uses the expression “behind him” to emphasize that such a stalk can be noticed by the farmer as he cuts his last batch of crops and then stops for the day leaving the rest of the crops still standing in the field, thus unharvested crops being in front of him and harvested area being behind him. The Tosefta emphasizes that the farmer should take notice and should make sure that the poor people would not be confused by such a stalk thinking that maybe it still belongs to the owner, but rather the farmer should pick the stalk up and throw it in the harvested area so that it would be clear to the poor people collecting Leket that this stalk is left there for them as Leket.

6. Since a stalk in the unharvested area belongs to the owner and a stalk in the harvested area belongs to the poor people, a stalk which lying half way in each zone is technically in a doubtful situation and has a special status of doubtfully Leket.

7. The Tosefta states a rule that any case in which a stalk has the special status of being doubtfully Leket, we always consider it as if it is really Leket and therefore it has to be left for the poor. Talmud Yerushalmi (Peah 4:7, Daf 24b) lists three possible reasons for this rule, all of which are based on derivations from verses from the Tanach, which are obviously not real derivations, but rather Asmachtot (references from the Tanach for a Rabbinical law). The Rabbis had enacted such a rule in order to make sure that the farmers respect the poor and properly treat them, especially since the amount of crops in question is really miniscule.

In Mishna Peah 4:11 this rule that what is doubtfully Leket is considered to be actual Leket is stated in the name of Rebbi Meir.
Talmud Yerushalmi (Peah 4:7, Daf 24a-b) in its discussion of Rebbi Meir’s opinion implies that the Chachamim (Sages) argue on him and do not hold of this rule, leaving crops in this doubtful status as such. However, the Tosefta by quoting this rule anonymously implies that this is a universal opinion accepted by everyone and therefore not being disputed.

Tractate Peah, Chapter 2

Tosefta 17

[Grain seeds that were brought in by the ants inside] ant holes are forbidden [to be taken by the poor people as Leket (fallen stalks)] due to [the prohibition of] theft [from the owner]. But if the owner proclaimed them (i.e. the grain kernels and stalks inside the ant holes) to be ownerless they are permitted [to be taken by the poor people] because [then the prohibition of theft does not apply to them, since they are ownerless and do not belong to anyone]. Rebbi Shimon Ben Elazar says, “If they (i.e. ant holes) were damaged [when the poor people came to them, then all of the seeds that are still left inside them] are forbidden because of [the prohibition of] theft [since we assume that the owner damaged the holes himself in order to get out the produce stored inside it and he still wants to come back and take what remains in there].”

Notes:
1. Mishna Peah 4:11 states that grain that was collected by ants and brought by them inside their holes is sometimes considered to be Leket and sometimes not. The Mishna clarifies that it depends on whether these holes are located in the area where above ground the grain is still standing or if it has been already harvested. If the holes are in the area where the grain is still standing then everything inside those holes belongs to the owner just like the standing grain around those holes, but if the holes are in the harvested area then the grain inside the ant holes is considered to be Leket just like the grain that is left lying in that area of the field above ground. Our Tosefta argues on the Mishna in terms of the conditions of the locations of these holes. The Tosefta argues that it does not matter in which area of the field the holes are located, and by default we always assume that the owner wants to keep the grain inside ant holes for himself, unless he specifically said that he does not care about it and anyone who wants can take it.

It may seem really strange to a person from a developed country in the 21\textsuperscript{st} century why it would be important to discuss the legality of grain inside ant holes. Why would anyone care about grain that was taken by ants? It is probably a small and insignificant amount. In order to dispel this question I would like explain right away the living conditions of the 3\textsuperscript{rd} century CE when the Tosefta was written. In the 3\textsuperscript{rd} century CE the financial situation of the Jews of the Land of Israel was very dire. There have been a few very harsh famines and at the same time very heavy taxation by the Roman authorities. It was so bad that many farmers were forced to abandon their fields and move to other areas of the country or even outside it where the taxation was not as heavy, because they simply could not produce enough grain to pay the taxes, not even mentioning making a profit from the grain sales. Many farmers abandoned their fields and farming completely and took on other jobs. In such an environment every farmer was very meticulous about keeping every small bit of his harvest, even if that meant that he had to dig up ant holes and take grain from there. Also it needs to be pointed out that the amount of grain inside ant holes is not that little as I will explain in note 3 below. For a detailed analysis of the living and financial conditions of the 3\textsuperscript{rd} century CE Land of Israel
and proofs and sources for my summary see Daniel Sperber, “Roman Palestine, 200-400, The Land.”, Bar-Ilan University, 1978, where he discusses all of the details of life that I have mentioned.

2. As I already mentioned above in Tosefta Peah 1:10, note 17, ants that are mentioned in the Tosefta are harvester ants of the genus Messor, which are the most common ants in Israel. These ants’ main food source is grain of which they can collect vast amounts.

3. A single Messor harvester ants’ colony can take up a very large area of the field and may contain many entrances above ground spaced several meters apart from each other. Within such a colony there could be any number of ant trails but research (Claire Detrain, Olivier Tasse, "Seed drops and caches by the harvester ant Messor barbarus: do they contribute to seed dispersal in Mediterranean grasslands?", Naturwissenschaften, 2000, 87:373–376) has shown there could be even 75 such trails within one colony. Each trail, up to 30 meters in length, can last for an average of 5 days after which the ants stop going on it and make a new trail. While the trail exists it has been estimated that ants carry on it about 50,000 seeds. Based on this research we can extrapolate a rough estimate of how much grain can the farmer retrieve by digging up a Messor harvester ant nest that was collecting grain for 1 month from a field assuming that the ants did not eat any of the grain while they were collecting it.

\[
\text{50,000 seeds per trail} \div 5 \text{ days} = 10,000 \text{ seeds per day per trail} \\
75 \text{ trails} \times 10,000 \text{ seeds per day per trail} = 750,000 \text{ seeds per day per nest} \\
750,000 \text{ seeds per day per nest} \times 30 \text{ days} = 22,500,000 \text{ seeds} \\
\]

One seed of wheat weighs approximately 50 mg (0.00005 kg)

\[
22,500,000 \text{ seeds} \times 0.00005 \text{ kg} = 1125 \text{ kg} \\
\]

That is over 1 ton of wheat seeds, which is a huge number. Obviously the farmer would not be able to retrieve all of it, but even if he succeeds in retrieving 10% (roughly 100 kg in our example) of the grain collected by the ants he can gain a very significant amount of grain
that would be otherwise lost. You may wonder how significant a 100 kg of wheat is. According to Food and Agriculture Organization of the United Nations (FAO) the supply quantity of wheat in Israel in 2007 was 113.84 kg/capita/year.

(https://faostat.fao.org/site/609/DesktopDefault.aspx?PageID=609#ancor, accessed on 06/10/2010) In other words, 100 kg of wheat can feed one person for a whole year. In poor conditions of the 3rd century CE Land of Israel such an amount of grain could mean the difference between eating well and starving.

Harvester ants’ hole.

4. In other words, according to the Tosefta the farmer is entitled to keep all of the grain collected by ants, unless he specifically says otherwise as will be stated in the next statement of the Tosefta. It seems to me that this was a special Rabbinical enactment that was made to protect the farmers from starving. As I already mentioned in note 1 the Mishna argues on the Tosefta and says that this would depend on where the ant holes which the farmer wants to dig up are located. I would like to suggest that there is a very specific reason why the Tosefta argues on the Mishna. The Mishna was written about 50 years
earlier than the Tosefta, roughly in the year 220 CE. At that time the living conditions in the Land of Israel were better than in the second half of the 3rd century CE. Sometimes in the middle of the 3rd century CE the Rabbis changed the law from that of the Mishna to that of the Tosefta. The reason they passed this new enactment is clearly to protect the struggling farmers. This indicates that ants’ seeds were originally considered to be Leket only by a Rabbinical decree and not by Torah law. Clearly the Torah only obligated the stalks dropped by the farmers as Leket and not something that was taken by ants. A further proof that the law of the Tosefta was passed after that of the Mishna is that in the Mishna the law is disputed by Rebbi Meir, whereas in the Tosefta it is disputed by Rebbi Meir’s student, Rebbi Shimon Ben Elazar. Rebbi Meir flourished during the first half of 2nd century CE, whereas Rebbi Shimon Ben Elazar was active during the second half of the 2nd century CE when the conditions started to rapidly deteriorate. This shows that the discussion of this law took place sometimes during the end of the 2nd century CE, but it was not cemented into law by the Tosefta until the end of the 3rd century when this law was critical to protect the farmers. For a detailed analysis of how the living conditions of the Land of Israel deteriorated as the 2nd and 3rd centuries CE went on, see Daniel Sperber, “Roman Palestine, 200-400, The Land.”, Bar-Ilan University, 1978.

5. It seems to me that the reason the Tosefta says that the poor people do not violate the prohibition of theft in the case when the farmer declared the ants’ seeds ownerless, as opposed to saying it belongs to the poor people, was because it wants to emphasize that no matter what these seeds are not considered to be Leket. They either belong to the owner, or the owner made them ownerless and now they can be claimed by anyone. But they do not belong specifically to the poor people as a gift to the poor, because ants’ seeds are not considered by the Tosefta to be the same as a gift to the poor, forgotten or dropped by the owner, as was held originally, as recorded in the Mishna.

6. There is a great deal of controversy in the commentators on the Tosefta as to what the correct reading here should be. There are at least four possible readings in Rebbi Shimon Ben Elazar’s statement. I have quoted in the main text the reading from the Vienna manuscript
which says נְזִיקִין (Nezikin), “damaged”. In the Erfurt manuscript the reading is נִקְרָן גֶּזְזָזִין (Nikraran Gezuzin), which is not clear what the words mean here exactly. In the printed editions of the Tosefta the reading is פִּיקָדֵן (Pikkadon) “deposit”. And finally the Nuschaot Ktav Yad in the Vilna Talmud Bavli edition of the Tosefta quotes a forth reading which says נִקְבָּרִין גֶּזְזָזִין (Nikbarin Gezuzin), “buried and sheared”, which is also not clear in its meaning. Due to the obscurity of Rebbi Shimon Ben Elazar’s statement every commentator on the Tosefta provided his own interpretation of what he thinks it means and tried to force various words into it. Minchat Bikkurim went as far as to say that Rebbi Shimon Ben Elazar’s whole statement does not make any sense and should be deleted. However none of the commentators prefer the reading of the Vienna manuscript for unspecified reasons and do not discuss it. I have chosen that reading, because it makes most sense to me in the Tosefta and it also does not require forceful conjugation and interpretation of the actual words in this statement. The text flows freely with the word Nezikin in it, as long as it is placed in proper context.

7. I believe that the context of Rebbi Shimon Ben Elazar’s statement is as follows. He agrees with the ruling of the Tanna Kama, but provides an additional clarification. He clarifies that in the case where the owner dug up the ant holes and took out some of the seeds in them before the poor people came. When the poor people arrived some of the seeds were still left in the damaged ant nest. So the question is do we assume that the owner is done and he is not going to take any more seeds which would mean that what remains in the nest is Hefker (ownerless) and can be taken by the poor, or anyone else for that matter. Or do we assume that the owner might still come back and take what remains. Rebbi Shimon Ben Elazar clarifies that we assume that the owner may still come back and take what remains and therefore the poor people are not allowed to take it, because it still belongs to the owner. Such an extreme case further indicates the severity of the conditions of the farmers during that time and how the Rabbis tried to protect them.
Tosefta 18

[If] the owner [of the field] gave a container with produce to a poor person [in order that the poor person will go] to fill it up with water for him (i.e. the owner) [and in return for this favor the poor person gets to keep the produce that was in the container], then this produce is not assumed to be taken by the owner from the produce that was already left in the field to be] Leket (fallen stalks), Shikcha (forgotten sheaves) and Peah (corners of the field), [and therefore] it is obligated in Maaserot (tithes).

Notes:

1. The Tosefta states a new law regarding gifts to the poor. It is not related to any Mishna.

2. Literally: the owner of the house.

3. The word כְּלִיבָה (Kliva), “box” or “container”, is an original Hebrew word which is a feminine form of the word כְּלוּב (Kluv), meaning “cage” or “coop”. It seems that both of these words come from the root כָּלָב (Kalav), which means “to stitch” or “twist together”. The reason that both of these words come from this root is because in ancient times most cages or containers were made by stitching or weaving branches together, usually reeds, into basket like containers. If the vessel had to be made waterproof, as in our case, then it would be covered with pitch or tree resin. It is also possible to weave a basket so tightly that it will be waterproof without a pitch or resin coating. There are variant spellings of the word Kliva, such as כְּלִיבָא (Kliva) and כְּלִיבָא (Klicha), however it seems to me that the spelling from the Vienna manuscript which I have quoted in the main text is
the most correct spelling since it properly reflects the Hebrew origin of the word by having the letter ה (Heh) in the end and reflecting the root from which it comes from.

Water Basket from the 19th century made by Paiute Indians from Oregon. Oregon Historical Society Museum. Catalog Number: OHS Mus 73-126.9. Similar baskets were probably made in ancient Middle East as well.
4. It is obvious that the container has to have some produce in it which the owner gave the poor person as a gift in return for fetching him water, because if the container would be empty then the whole Tosefta would not make any sense. However, see below in the middle of note 5 where I propose a different explanation according to the Erfurt manuscript reading where the container would be indeed empty.

5. In the Erfurt manuscript the word “water” is missing. Due to this reading Cheshek Shlomo explains the Tosefta in a different fashion. He says that the owner gave the poor person a basket of produce as a gift, not as a reward for doing him a favor of fetching water, but rather because he felt bad for him that that particular poor person did not get to collect as much of the produce left as Leket, Shikcha and Peah, as other poor people did that day. According to this explanation the Tosefta is teaching us that even though the owner intended to give this produce to the poor person as a part of the official gifts to the poor that he was not able to collect himself it is still not considered to be a gift to the poor, which is exempt from tithes, but rather regular produce, which is obligated in tithes. The reason that this produce is not considered to be a gift to the poor is because all gifts to the poor have to be left in the field by the farmer to be collected by the poor themselves and not proactively collected by him and given to the poor, as I already explained earlier on a few occasions. This concept is implied in the Torah (see Vayikra 19:9 and 23:22) where the Torah uses the expression טַעֲזֹב אֹתָם (Taazov Otam), “leave them”, meaning that the gifts to the poor should be left in the field for the poor to collect themselves. See above Tosefta Peah 2:13, note 12. However, Cheshek Shlomo’s explanation still has a linguistic problem, because if it is not talking about water, but rather simply a basket of produce, it would be much better to skip the words “to fill it up for him”, because it implies that the poor person had to go and fill up the basket with something for the owner.

I would like to propose another explanation according to the Erfurt manuscript reading which skips the word “water” that would resolve this linguistic problem. The phrase לְמַלּוֹת לָו (Lemalot Lo) could also be
translated as “to fill it up for himself”, meaning for the poor person, and not “for him” meaning the owner. Then the case is that the owner gave the poor person an empty basket and told him that he is allowed to go into the field and fill up the basket from the regular crops, which belong to the owner, since there were no official Leket, Shikcha and Peah crops left in the field, because all of them were already taken by other poor people. Since these crops are regular crops that belong to the owner this particular present that the owner gave him is considered to be regular produce and is therefore obligated in tithes.

According to the reading of the Vienna manuscript which has the word “water” in it the Tosefta’s point would be different. The Tosefta is teaching us that we do not suspect the owner to have taken this produce from produce which was already designated in the field as Leket, Shikcha, or Peah and belongs to the poor people, but rather the owner took it from his personal produce and therefore the poor person is obligated to separate tithes from it as from any regular produce. Another possible interpretation would be that since in this case the owner literally made a gift to the poor person as a thanks for fetching him water, the poor person might think that this gift qualifies to be an official “gift to the poor”, such as Leket, Shikcha or Peah, and therefore the Tosefta has to teach us that it is not so. Since both explanations are plausible I have decided to keep the word “water” in the main text as it appears in the Vienna manuscript.

6. As was already explained many times, all gifts to the poor are exempt from all tithes. See Mishna Chala 1:3. Since this produce is not considered to be in the special category of “gifts to the poor” the poor person would have to separate all tithes from it. For an explanation of what the different tithes are see above Tosefta Peah 1:6, note 7.

Tractate Peah, Chapter 2

Tosefta 19

[If] poor people were going around [and collecting charity] among the silos,² [then first] they (i.e. owners of the silos) should take off Maaserot

லேகெட், சிக்சா மற்றும் போய் பூநீர் வைத்து, கூர்களில் அதை பெறலாம். மூன்று யாரானேயும் விளக்கம் மீண்டும் ஹைबிய நேராட்டும் நோக்கிலிருந்து கேட்டு போய் வேல் புராணத்தில் குறிப்பிட்டுள்ளன.
(tithes)\(^3\) [from the food that is piled in the silos]\(^4\) and [then] they should give them (i.e. poor people) [some of that food as charity].\(^5\) However, tartuffes\(^6\) would put in their (i.e. poor people’s) hands money [instead of food], and eatable things, but they would [only] give him (i.e. poor person) a small amount [of food from the food that was not yet piled in silos] in order that he would finish eating it before he reaches the city [thus making it exempt from Maaserot].\(^7\) And all other gifts to the poor that [remain lying] in the field [after the poor people have finished collecting them] that the poor person does not care about belong to the owner [and other people are not allowed to take them].\(^8\)

Notes:

1. The Tosefta states a new law about food given as charity from which the owner is required to separate Maaserot before giving it to the poor. It is not related to any Mishna.

2. The Tosefta discusses a case where the poor people have gone to collect food directly from the private storage silos and not from the gifts to the poor that were left in the field. Obviously, this was a more lucrative opportunity to get charity, because each donation was much easier to obtain since it did not require collecting one stalk at a time as in the case of Leket (fallen stalks) and it was probably less involved since the poor person did not have to fight with other poor people over the remaining crops, but rather he could ask the owner to just give him some crops in a civilized manner.

3. For a detailed description of what tithes are see above Tosefta Peah 1:6, note 7.
4. Once the produce has been brought into silos it was obligated in all tithes and could not be eaten by anyone until all of the tithes were removed. See Mishna Maaserot 1:5.

5. The reason that the owner could not simply give the food to the poor without taking off the tithes first is because most of the poor did not understand the difference between the official gifts to the poor, such as Leket, Shikcha (forgotten sheaves) and Peah (corners of the field), and all other charity. The official gifts to the poor are exempt from Maaserot. See Mishna Chala 1:3. However any other food given to the poor is obligated in Maaserot. The poor thought that this food given to them as regular charity is also exempt from tithes, and therefore the owner was not allowed to give them untithed produce, because that would cause them to violate the Torah prohibition of eating Tevel (untithed produce). Therefore the owner had to first separate all of the tithes and only then give from this food to the poor.

6. It is generally assumed that the word צlèveין (Tznuin, singular: Tzanua) means “pious people”, who are scrupulous in performing commandments. However, I would like to demonstrate that this is not the meaning of this term, at least not in this case. The term used in Talmudic literature to refer to truly pious people is חסדים (Chasidim). See Mishna Berachot 5:1, Sukkah 5:2, Chagigah 2:7, Sotah 9:16, Keritut 6:3, and Tosefta Bava Kama 2:6, Sukkah 4:2, Keritut 4:2. Tznuin, on the other hand, is a term used for people who believe that they are pious, but in reality their actions only cause problems in society. They are religious hypocrites. I have chosen to translate the word Tznuin as “tartuffes”. Tartuffe is a person who is a hypocritical pretender to piety, appearing truly pious on the outside, but in reality being sanctimonious and self-righteous. This translation especially fits well in this case, because it comes from the exact same root as the original Hebrew word. The word צlèveין (Tzanua) comes from the verb להצלין (Lehatzniya), which means “to hide” or “to conceal”. The English word “tartuffe” comes from the name of the main character in Tartuffe, a 17th century play by Molière, where the protagonist is a religious hypocrite. This name comes from an Old French word “tartuffe”, meaning "truffle," chosen for suggestion of concealment.
The word Tznuin, referring to a group of particular individuals, appears in Talmudic literature in a few cases, all of which share the same theme in common. The cases discuss a group of people who go out of their way to perform what seems on the surface to be a Mitzvah (good deed), but in reality causes some kind of harm to society. For example, in Tosefta Yoma 2:7 there is a story where Rebbi Yochanan Ben Nuri tells over how he once met an old person who was a member of the Bet Avtinas, a family of Kohanim (priests) who were looked down upon by the Rabbis for refusing to share with the public their secret formula for preparing the Ketoret (incense) in the Bet Hamikdash (Temple). See Mishna Yoma 3:11. The old person told him that in his father’s house there used to gather Tznuin and share with each other scrolls with the secret recipes of the Ketoret, implying that they would only pass it on between themselves, but would not share the information with anyone else. Ashamed of their behavior and full of remorse, the old man gave Rebbi Yochanan Ben Nuri his scroll with the recipe of the spices for the Ketoret and asked him to carefully keep it, implying that it is the only copy left. It is obvious that the Tosefta uses the title Tznuin in a pejorative fashion, since the members of Bet Avtinas were not held in high esteem by the Rabbis due to their behavior. Obviously the Tosefta uses this term to describe these people is because they were trying to hide something from everyone else, thinking that they are performing a great deed by carefully preserving an ancient tradition of how to prepare the Ketoret.

Another example of such usage of the word Tznuin is Mishna Kilayim 9:5 and Kilayim 9:6. Both Mishnayot discuss cases which involve clothing that are made out of Shatnez, a mixture of wool and linen, which is forbidden to be worn by the Torah. See Vayikra 19:19 and Devarim 22:11. It is clear from the verses in the Torah that Shatnez is only forbidden to be worn as a garment, but it is permitted to make and sell such garment to a Non-Jew or even a Jew who has some kind of use for it besides wearing it himself. Mishna Kilayim 9:5 states that sellers of clothing made out of Shatnez are allowed to wear the clothing that they are selling in order to properly display them to customers. Such usage of the clothes is not considered to be an act of wearing a garment, as long as the seller does not intend to actually
protect himself from heat or cold while he is displaying it on his body. However the Tznuin would not display the clothes that they were selling by putting them on, but would rather hang them up on a stick. The Mishna says that the normal way of selling clothes in its day would be for the seller to wear the clothes and the way the Tznuin were selling it on a stick or on a rack was unusual. The second case, in Mishna Kilayim 9:6 is where tailors who are making Shatnez clothing keep holding it in their lap while they are sewing it. The Mishna says that that is permitted as long as the tailor does not intend to protect himself from cold or heat by holding the garment in his lap. However, the Tznuin would instead keep the garment on the ground while they sewed it and would not hold it in their lap. It seems to me that in both of these cases the Tznuin by their behavior were doing a disfavor to their customers. In the case of the sellers they were misadvertising their merchandise because they were not selling it in the normal way to which the people were used to and therefore either causing themselves a financial loss due to less buyers or causing the customer to buy something that they were not sure would fit them properly or if they truly like it or not. In the case of tailors the Tznuin would dirty up the clothes that they were sewing by putting it on the ground thus eventually degrading its quality. So in both of these cases acts of superficial piety were causing damage to society. I have to admit that my explanation of these two Mishnayot is novel and may even be somewhat forced. It is not used by the Rishonim (medieval authorities) all of whom explain the Tznuin to be more pious, more stringent people than the rest of the masses.

There is one other occurrence of the word Tznuin referring to a particular group of people in which it really seems that the word is meant to mean truly pious people. See Mishna Maaser Sheni 5:1. However I do not think that it is really in contradiction to this Tosefta. It is possible that the word was used both in a straight and in a sarcastic manner depending on the context.

In our Tosefta it is clear that the Tznuin were really doing a disfavor to the poor by their behavior. The poor would definitely prefer to be given a significant amount of food which they can bring home and readily use as opposed to either a small amount of food which is only
enough to eat on the road or money which they in turn had to go and use to buy food thus causing an inconvenience to them. The Tznuin therefore either caused at least an inconvenience and at most a loss to the poor by their extra stringent behavior. There are a few possible reasons suggested by various commentators why the Tznuin acted in this way. They either were afraid that they would forget to take of Maaserot from the produce in the silos and give it to the poor as Tevel, or they were concerned that they did not have a safe place to put away the tithes themselves after they were taken off and the Terumah (heave-offering) portion of it would become Tameh (ritually impure) or all of the tithes would get mixed back into the main produce by accident and everything would become forbidden for consumption.

It should be noted that Saul Lieberman in Tosefta Kifshuta explains that the whole issue with the Tznuin had nothing to do with the tithes, but had rather to do with their preferences regarding Tumah and Tahara (ritual purity). I do not see how his explanation fits in the context of the subject being discussed.

7. As long as the owner of the produce intends to sell the produce and not eat it himself, the produce that is piled in silos becomes obligated in all tithes once piled and nothing after that would be able to exempt it from the tithes. Therefore it does not make any sense that the Tznuin who presumably were farmers who intended to sell their produce would give the poor food that was already piled in the silos since they would be required to separate the tithes from it. Therefore it seems to me that the Tznuin would give them food that was still not piled in silos, but perhaps was still sitting outside next to the silos in baskets or some other vessels in which it was transported from the field. Since they would give the poor only a small amount which was only enough to eat on the way back to the city the poor were exempt from taking off the tithes from it, because produce that is given as a gift to someone else and is being transported from somewhere to the receiver’s house is exempt from Maaserot and the person transporting it is allowed to eat it untithed. See Mishna Maaserot 1:5 and 2:2. He only has to take off Maaserot once he enters his house with the produce. Since the amount of food given was going to be eaten before
the poor returned home back in the city they could eat it without taking off the tithes.

8. The Tosefta summarizes what happens to all produce originally left in the fields for the poor as a part of Leket, Shikcha, Peah and Olelot (incompletely formed grape clusters), but was not collected by them. It was already mentioned on a few occasions that all gifts to the poor except for Peah automatically belong to the poor regardless if the owner designates them as such or not, and even Peah technically belongs to the poor as soon as it was left in the field, just they cannot take it until the owner explicitly proclaims it to be Peah. See above Tosefta Peah 1:13, note 7, and 2:6, note 4. Therefore we might think that if the poor chose not to take them they would become Hefker (ownerless) and as a result anyone can take them. Therefore the Tosefta teaches us that the gifts not collected by the poor do not become Hefker, but rather revert back to the owner of the field. This seems to me is the true meaning of the Tosefta as I will explain below.

However, this law poses a general difficulty. Mishna Peah 8:1 explicitly states that after the poor people leave the fields all gifts to the poor that they have left behind them become Hefker and can be taken by anyone. The reason for this law is explained in Talmud Bavli (Bava Metzia 21b) that since the poor gave up on collecting whatever they left in the fields it becomes Hefker just like a lost or a stolen object becomes Hefker after the owner gave up on receiving it back. Our Tosefta seems to be in direct contradiction to the law stated in the Mishna. Talmud Yerushalmi (Peah 8:1, Daf 35a) resolves this contradiction by explaining that what the Tosefta means is that really whatever the poor people do not collect becomes Hefker and can be taken by anyone, but if it is not taken by anyone the owner is allowed to take it for himself and he does not have to leave it for the animals. The reason that this is not obvious is because since the owner originally had to declare Peah as something that belongs to the poor and not to him we might think that once it becomes the property of the poor the owner can never take it back, and therefore the Tosefta teaches us that indeed he is allowed to take it back.
I would like to suggest that the Yerushalmi’s explanation deviates from the original intent of the author of the Tosefta and is only given in order to resolve the apparent contradiction between the Mishna and the Tosefta as was an accepted way of resolving contradictions in an Oral Tradition. The Yerushalmi’s logic is also problematic, because once an object becomes Hefker anyone can claim it including the original owner. The history of ownership of this object does not make any difference to this, and therefore the fact that the owner of the field once upon a time declared Peah to belong to the poor would in no way impact his ability to claim it for himself now.

It seems to me that the Tosefta clearly argues on the Mishna and holds that all of the gifts not taken by the poor do not become Hefker and instead revert to the owner of the field. I would like to suggest that the reason for the Tosefta’s law is a special Rabbinical decree that was enacted in order to protect the owners of the fields in difficult financial conditions. I already explained earlier, in Tosefta Peah 2:17, note 4, that the financial situation of the farmers during the time of the Tosefta was much more difficult than that of the time of the Mishna. And therefore it would make sense that the Rabbis have enacted this law as a special protection for the owner who himself might be very poor barely making ends meet. So in order to protect him they decreed that whatever produce was left by the poor belongs to the owner and cannot be collected by anyone else. However, the Mishna states the default law that was in effect before this special decree of the Tosefta where by pure logic all produce left by the poor became Hefker. For some reason, the enactment of the Tosefta did not take wide effect and by the time the law was again discussed in Talmud Yerushalmi the Yerushalmi simply assumed the original ruling of the Mishna as the effective law and reinterpreted the Tosefta in a way that would not conflict with the Mishna.

I would like to mention that there is an alternative way of resolving the contradiction between the Mishna and the Tosefta besides what is mentioned in the Yerushalmi and my suggestion. The Rambam in Mishneh Torah (Hilchot Matnot Aniyim 1:11 and 1:13) resolves it by stating that the Tosefta is talking about a case where the poor people still did not leave the fields, as the case of the Mishna, but they simply
decided that a particular part of the crops left in the field as the gifts to the poor does not interest them. At that point those crops that the poor do not want to take revert to the owner, since nothing at that point becomes Hefker yet. However, after the poor have finished collecting their gifts whatever is left in the field becomes Hefker and anyone can take it, as the Mishna says. The Radvaz, in his commentary on the Mishneh Torah (ibid.) clarifies how this case would take place in practice. How is the owner supposed to know that the poor are not interested in particular crops? May be the next group of poor people that will show up in his field later will be interested in them? The Radvaz resolves this problem by explaining this law that once the first group of the poor have said to the owner that they are not interested in this particular set of crops that was left for them as a gift the owner may immediately take it for himself and he does not have to wait to see if the next group of poor people who come will be interested in it or not. Although this explanation resolves well the contradiction I do not think that it was the original intent of the author of the Tosefta, because something that is so not obvious should have been stated explicitly.

Tractate Peah, Chapter 2

From when can we burn stubble\(^2\) [that is left] in the fields [after the harvest, and it is not considered stealing from the poor]?\(^3\) In an orchard\(^4\) [the poor can collect stubble] until [the holiday of] Shavuot\(^5\) [and then it is permitted to burn it]. In a grass field\(^6\) [the poor can collect stubble] until [the holiday of] Rosh Hashanah\(^7\) [and then it is permitted to burn it].\(^8\) [And] in a field dependent on irrigation,\(^9\) [the stubble can be burned] right away. [These are] the words of Rebbi Yehuda. And the Chachamim (Sages) say, “In a grass

\[\text{Mas'ah Peha Parc B} \]

\[\text{Tosfata C} \]

\[\text{Mitsamit shoferim kash shaushravot basha} \]

\[\text{Alol de'elezha basha le'elez Rash Hashana} \]

\[\text{Bishode bishelashi mi'ye, dibri Rebbi Yehuda} \]

\[\text{Hakhimmers aniromi basha le'elez Rash Hashana} \]

\[\text{Uzemarata basha Alol de'elez Rash Hashana} \]

\[\text{Um commanded onanim bekeima, basha bim'ishelashi mi'ye} \]
field [the poor can collect stubble] until [the holiday of] Shavuot\(^{10}\) [and then it is permitted to burn it]. In an orchard [the poor can collect stubble] until [the holiday of] Rosh Hashanah [and then it is permitted to burn it], because of theft from people and animals.\(^{11}\) [And] in a field dependent on irrigation, [the stubble can be burned] right away.”\(^{12}\)

Notes:

1. The Tosefta states a new law regarding the cutoff dates of when the planting of the fields for the following year takes priority over the access of the poor to the crops of the previous year. This Tosefta is not related to any Mishna.

It should be noted that there is a lot of controversy among the commentators about how to interpret this Tosefta due to its obscure language. Some, like the Gra (Vilna Gaon), have chosen to significantly alter the wording of the Tosefta based on logic without any manuscript reference. Others, like Chasdei David, have stated that this Tosefta is completely out of place and it is really talking about burning of stubble during Shmitta (Sabbatical Year) and not during a regular year. As will be seen from my interpretation of this Tosefta, I have shown that in fact it is talking about gifts to the poor and fits very well into the context of this chapter. Textual emendations based on logic are not necessary to put this Tosefta in its proper context as long as it is understood against the background of agricultural practices of the ancient Land of Israel.

2. Stubble is dried-up stalks, mainly of grain, left standing in the fields. Sometimes it is used by camels to supplement their regular meals, but mostly it is used as fuel for burning something. It cannot be used as food for regular domestic animals, because it is too hard. The Hebrew word for stubble is שקַ, as opposed to straw, which is תֶּן. Stubble should not be confused with straw since straw is stalks that have been
cut into small pieces by the threshing process and is used as roughage for domestic animals. See The International Standard Bible Encyclopedia 1915 (entry Straw, Stubble).

Stubble gets naturally left in the fields since only the top part of the stalks gets harvested. The bottom portion of the stalk remains attached to the ground and becomes stubble.

Stubble left in the field after harvest. Photo: H. J. Sydow. Notice the spacing rows in between the rows of cutoff grain.

There are a few reasons why the owners of the field would want to burn stubble and not just let it wither away over the winter or simply plow it under. Stubble is considered to be residue of the previous harvest and it impedes seeding operations during the planting of the next year’s crop. Also, if the stubble is not removed it aids in the growth of weeds causing damage to the new crop. See William Schillinger, “Direct Seeding into Heavy Irrigated Stubble Instead of Burning Proposal”, Washington State Department of Ecology, 2003, http://www.ecy.wa.gov/programs/air/aginfo/research_pdf_files/schillingerproposal.pdf, accessed on August 18, 2010. Also, some research have shown that stubble that is just plowed under and not burned
causes disease in the new crops. See Roy Dell Wilcoxson, Eugene Eino Saari, Barbara Ballantyne, “Bunt and smut diseases of wheat: concepts and methods of disease management”, CIMMYT, 1996, p. 56. Although, nowadays farmers look for alternative methods to burning stubble mainly, because the smoke from the fires causes a lot of pollution, stubble burning has been a traditional method of getting rid of stubble for thousands of years.

Indian farmers burning rice stubble after the harvest in November 2003. Photo: USDA.

3. Since stubble is only fit to be burned, the poor would collect it from the fields in order to use it as fuel in their homes. Although stubble does not fall into any official category of gifts for the poor based on Torah law, it appears from this Tosefta that it was something that was considered to be of value to the poor and was officially left for them to collect up to the time of the planting process for the following year. The Rabbis were very careful in making sure that the poor get their fuel and forbade the owners of the fields from getting rid of it too early. Hence this law is of rabbinic origin.

4. You may wonder why there would be stubble in an orchard since only trees grow there and not grass. The answer to this question is that cover crops are necessary to be planted in between the rows of trees
in order to keep the fertility of the soil and reduce soil erosion. This even remains a common practice today. For examples of how and which cover crops are used in olive orchards see Paul M. Vossen, “Organic Olive Production Manual”, ANR Publications, 2007, pp. 41-43.

A vineyard in Sonoma County, California with cover crops planted in between rows of grapevines. Photo: Lore Sjoberg.

5. Shavuot occurs in the beginning of the summer, exactly 7 weeks after Pesach, and signifies the beginning of the fruit harvest, as was celebrated during the Temple times by the ceremony of the bringing of the Bikkurim (First Fruits) to the Bet Hamikdash (Temple). See Devarim 26:1-11.

The reason Rebbi Yehuda holds that the owner may begin burning the stubble of the cover crops starting on Shavuot is because Shavuot was the end of the harvesting season of the cover crops themselves, which usually were either some kind of grain or legumes. The cover crops are either cultivated and harvested for the sake of the crop itself or
mowed and then dumped around the trees as fertilizer to prevent growth of weeds. See Paul M. Vossen, “Organic Olive Production Manual”, ANR Publications, 2007, p. 42. Even though the harvest of the fruit in the orchard just began, since the harvest of the cover crops was over, Rebbi Yehuda permitted burning of the stubble that remained after the cover crops were mowed.

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6. Literally: white field. Since grass fields did not have any trees that would create shadows they were called “white fields” referring to their brightness in the sun and them being shadelessness. See Marcus Jastrow, “Dictionary of the Targumim, Talmud Bavli, Yerushalmi and Midrashic Literature”, 2nd Edition, 1926, p. 690, entry לָןבָּן.

7. Rosh Hashanah occurs in the beginning of the fall, on the first of the month of Tishrei, towards the end of the fruit harvesting season. See Vayikra 23:24 and Bemidbar 29:1. However, it does not signify the end of the fruit harvest. The end of the fruit harvest is celebrated during the holiday of Sukkot, as explicitly stated in the Torah (Vayikra 23:39), which begins on the 15th of Tishrei, two weeks after Rosh Hashanah. It
is not clear why Rebbi Yehuda chose Rosh Hashanah and not Sukkot as the cutoff date for burning the stubble. I would like to suggest that since the rainy season in the Land of Israel officially began on the 15th of Tishrei (see Talmud Bavli Taanit 2b), on the first day of Sukkot, Rebbi Yehuda wanted to give two weeks to the owners of the fields to be able to burn their stubble while the weather was still nice. It should be noted that during most years Sukkot falls out during the end of September or the beginning of October, which is when the rain just begins to fall. For the description of Israel’s rainy season see Efraim Orni, Elisha Efrat, “Geography of Israel”, JPS, 1973, pp. 146-147.

A more difficult question to answer is why Rebbi Yehuda chose to prohibit burning of the stubble until the end of the fruit harvesting season and not just until the end of the grain and legumes harvesting season which occurs on Shavuot. It seems to me that since grain fields were the main source of stubble, which was an important source of fuel, Rebbi Yehuda wanted to leave ample time for the poor to collect it. Since it was not critical for the owner to burn the stubble immediately after the grain harvest, because the planting of next year’s crops does not begin until the fall, Rebbi Yehuda felt that it was proper to leave the stubble for the poor at a minor inconvenience for the land owner.
Sowing season, based on modern agricultural practices in Israel

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From Oded Borowsky, “Agriculture in Iron Age Israel”, Eisenbrauns, 2009, p. 34.

8. I have chosen the reading of the statement of Rebbi Yehuda from the Erfurt manuscript, since it makes sense agriculturally. In the Vienna manuscript the reading is as follows:

בְּשָׂדֶה לֶבֶן עַד הַפֶּסַח בָּשָׂדֶה אִילָן עַד רֹאשׁ הַשָּׁנָה מִפְּנֵי גֶזֶל אָדָם וּבְהֵמָה

In a grass field [the poor can collect stubble] until [the holiday of] Pesach [and then it is permitted to burn it]. In an orchard [the poor can collect stubble] until [the holiday of] Rosh Hashanah, because of theft from people and animals, [and then it is permitted to burn it].

Besides the fact that this reading does not flow with the statement of the Chachamim in terms of the order of the fields and the fact that he is not arguing on them regarding the orchard, it also does not make any sense agriculturally. In the Land of Israel the grain harvest would begin on the 2nd day of Pesach with the Omer sacrifice and would conclude on the holiday of Shavuot. This grain harvesting season is emphasized in the Torah. See Vayikra 23:10-22. It would not make any sense to begin burning the stubble on Pesach since that is when the harvest just started. The farmers could only start burning the stubble
after Shavuot when the grain harvest was over and they could begin planting the crops for the following year.

9. In ancient Israel most farmers relied on rain. They did not have the means to irrigate their fields by bringing water from some kind of a reservoir. The few exceptions to this were fields on the shores of Lake Kinneret (Sea of Galilee) and on the banks of the River Jordan where the farmers were able to divert the water into a canal that passed through the field. In rare cases the fields were irrigated from a water reservoir where rain water was collected. Another common place where rain water was directed into a field was the Judean and the Negev deserts. This technique is known as Runoff Farming and has existed since early Biblical times. It was developed by the Israelites when they entered the Land of Israel and were forced to cultivate the desert since all good farming land was heavily protected by the Canaanites. For details about Runoff Farming see Oded Borowsky, “Agriculture in Iron Age Israel”, Eisenbrauns, 2009, pp. 18-20.

Vineyard on the Carmey Avdat farm in the Negev desert, Israel irrigated by flash floods using ancient Nabatean methods from the Talmudic era. Photo: carmey-avdat.co.il
A field that needed irrigation besides regular rainfall was considered to be a lot more sensitive and doing anything to prevent irrigation of that field would pose high risk to the success of the crops. Therefore the Rabbis allowed the owner to burn the stubble immediately so that he can begin the irrigation of the field for next year’s crops.

10. The Chachamim are of the opinion that the farmer is allowed to burn the stubble as soon as the harvesting season is over, regardless if he is going to start planting next year’s crops right away or not. In a grass field, where the produce is either grain or legumes, the harvest is over on Shavuot and therefore he can burn the stubble right after Shavuot. This allows the owner to start working on preparing the field for next year’s crop immediately after the harvest is over.

11. The Chachamim explain their opinion regarding orchards, because it is inconsistent with their logic in their previous opinion. Since they hold that the owner is allowed to burn stubble as soon as the harvest of the crop is over they should agree to Rebbi Yehuda that since the cover crops in an orchard are harvested until Shavuot the owner should be allowed to burn stubble from Shavuot on. However, the Chachamim disagreed with Rebbi Yehuda in this particular case, because they felt it would be a waste of stubble at that point in time since the farmer did not need to plant next year’s cover crops until he harvested the whole orchard. This is what they meant by saying that it would be “theft from animals and people”. Since the stubble could be used by people for fuel and animals, such as camels, for food, it would be a waste to burn it early. Since the fruit harvest ended on Sukkot, the Chachamim really should have only allowed burning the stubble after Sukkot. The reason that they allowed it from Rosh Hashanah was so that the farmer would have enough time to burn his stubble before the rains began, as I already explained in note 7.

12. The Chachamim agree with Rebbi Yehuda in the case of an irrigated field for the same reasons as I already explained above in note 9.
[A farmer] who sprinkles his field [with water for the purpose of irrigation], to the point that the poor people will not enter it, [because it is too wet], is permitted [to do so], if the damage that is caused to him [by not sprinkling that much water] is greater than [the damage] caused to the poor people [by them not being able to collect the gifts to the poor from his field that day]. But if the damage caused to the poor people [by them not being able to collect the gifts to the poor from his field that day] is greater than [the damage] caused to him, [then] it is forbidden [for the farmer to water his field to that extent.] Rebbi Yehuda says, either this way or that (i.e. does not matter whose damage is greater) [since the poor people cannot enter the field, the farmer] has to collect [the gifts to the poor from his field himself] and put them on top of the fence [around the field], and the poor person will come and will take what is [rightfully] his.

Notes:

1. Since the previous Tosefta mentioned irrigated fields, this Tosefta states a new law regarding irrigated fields and gifts to the poor. It seems to me that this Tosefta is not commenting directly on any particular Mishna. In Talmud Yerushalmi (Peah 5:3, Daf 26b) this
Tosefta is quoted on a Mishna (Peah 5:3) that discusses the argument between Rabbi Meir and the Chachamim (Sages) regarding the permissibility of the watering the field with an irrigation device called in Hebrew, טופיח (Tofeach), which is known in English as a Persian water-wheel. The name Tofeach is referring to a clay pitcher, or a set of pitchers, that is attached to the rope pulled by the wheel, which is automatically refilled with water from a water source over which the wheel spins.
Persian water-wheel, used for irrigation in Nubia. Lithograph by Louis Haghe from a painting by David Roberts from 1838 in Egypt. Notice that the wheel itself is spun by oxen.

The Yerushalmi connects this Tosefta with that Mishna, because the reasoning behind the Mishna’s argument seems to be that the water wheel puts so much water on the field that it prevents the poor people from entering to collect the gifts to the poor. The comparison between the rulings of the Mishna and the Tosefta is logical, however it does not seem to that this Tosefta was written as a direct comment on that Mishna, but rather as a separated, unrelated statement, which is why they look completely dissimilar in the way that they are phrased.

2. In the Erfurt manuscript the word חַמְרַבּ (Hamerabetz) is spelled חַמַרַבּ (Hamarbitz). According to Marcus Jastrow both spellings are correct and may reflect different pronunciations due to variations in the spoken Hebrew dialect at the time of the Tosefta, which is what implied from different sources throughout the Talmudic literature where this word appears. Regardless of the spelling and pronunciation the meaning of this word remains the same, which is “irrigation by sprinkling” or just “sprinkling”, as opposed to the word חַשָּׁקה (Hashaka), which literally means “contact”, but more specifically “making water in one vessel connect with the water in another vessel by direct contact of the water contained in both vessels”. The key subtlety being that during sprinkling a droplet of water flies through the air before it lands and therefore there is no direct contact between water in the vessel from which it is sprinkled and the water in the vessel into which the droplet lands. See Marcus Jastrow, “Dictionary of the Targumim, Talmud Bavli, Yerushalmi and Midrashic Literature”, 2nd Edition, 1926, p. 1445, entry рабּ.

3. The Tosefta does not explain how such damage can be assessed, which would seem to be an almost impossible job.

4. The Tosefta states that the farmer is forbidden from watering his field that much, but it implies that if he violated the law and did it anyway,
he would not need to compensate the poor for the produce which they could not collect, as implied from the following statement of Rebbi Yehuda.

5. It does not literally mean that the farmer has to put the produce on top of the fence. But rather he has to put it in a way that it is accessible without entering inside the field.

6. It seems to me that Rebbi Yehuda argues on the opinion of the Tanna Kama due to the non-practical resolution of the case. As I mentioned in the previous note it is not really possible to determine who will suffer a bigger loss. Also it will cause animosity between the farmer and the poor, because regardless of who in reality shares the bigger loss and has the law on his side, the farmer will always feel that his field is being ruined due to lack of irrigation and the poor will always feel that they are not getting their share of the gifts. Rebbi Yehuda says that in the end all we are concerned with is that the poor get the produce to which they are entitled. Since the matter can be solved by letting the farmer use which ever irrigation methods he wants, that is the best compromise. Rebbi Yehuda provides a solution from which both the farmer and the poor gain from. Since the farmer is responsible to collect all of the gifts to the poor from the field and put them on the outside of the field for the poor to take he would be allowed to water his field however he wants.

Tractate Peah, Chapter 2

Tosefta 22

[Standing single] stalks [of grain] that are [located] among the stubble or in the [spacing] rows (i.e. paths) [that are in between the rows of stubble] belong to the owner. Rebbi Akiva said, “Regarding this the owners [of the fields] practiced a good measure.” (i.e. The owners let the poor take these
Notes:

1. The Tosefta states a new law regarding gifts to the poor. It is not clear if this Tosefta is related to any Mishna or not. It could be related to Mishna Peah 5:2, which discusses a single stalk of grain that was missed during the harvest. The reason this Tosefta is here is because it is related in its context to the two previous Toseftot, since they mentioned stubble and produce that is given away by the owner to the poor. It should be noted right away that due to the very vague language of the Tosefta there is a very wide variety of opinions regarding its explanation and the background of its case. I have explained this Tosefta according to what seemed to me was the most logical explanation based on agricultural practices and linguistic analysis of the text.

   It appears that this Tosefta argues on Mishna Peah 5:2 and concludes that a single standing stalk of grain belongs to the owner of the field, where as the Mishna says that it depends on the proximity of the lone stalk to the unharvested crops. The Mishna implies that if there are no crops left to harvest then obviously all lone standing stalks would belong to the poor. For a discussion of this Mishna see the commentary above on Tosefta Peah 2:16. It seems to me that the key difference between this Tosefta and the Tosefta Peah 2:16 is that there the stalk in discussion is detached and lying on the ground, which qualifies it for Leket, where as in this Tosefta the stalk is still attached to the ground and therefore does not qualify for Leket according to the Tosefta. Therefore there is no contradiction between the two Toseftot, although there is a contradiction with the Mishna Peah 5:2, since the Mishna is clearly talking about a standing stalk which is still attached to the ground.

2. The word שובל (Shubal) is a variation used in Palestinian Aramaic dialect of the Hebrew word שובל (Shibolet) meaning “a stalk of grain”. See Marcus Jastrow, “Dictionary of the Targumim, Talmud Bavli, Yerushalmi and Midrashic Literature”, 2nd Edition, 1926, p. 1529,
It is rather obvious that the Tosefta is referring to standing stalks which are still attached to the ground and not to fallen stalks that are detached, because if the stalks were fallen then they would qualify as standard Leket (fallen stalks) and would belong to the poor by Torah law. Also, since the word Shubal in its singular form is referring to a single stalk of grain, in its plural form, Shubalin, it is referring to many lone stalks of grain. It cannot mean a sheaf (i.e. a bundle of many stalks) of grain, as explained by Cheshek Shlomo, because the Hebrew word for a sheaf is אֲלוּמָה (Aluma) and would have been used here if that is what the Tosefta was referring to. Also, the Tosefta cannot be referring to anything that qualifies to be Shikcha (forgotten sheaves) by Torah law, since Shikcha only refers to sheaves that have been bundled in order to be carried away from the field to a storage silo, and since in this case it cannot be referring to sheaves it also cannot be talking about Shikcha. Therefore it is only natural to conclude that since these lone free standing stalks do not qualify to be neither Leket nor Shikcha, they do not belong to the poor, but rather to the owner of the field. For other peculiar explanations of this Tosefta see Minchat Yitzchak and the commentary of the Raavad on Mishna Eduyot 2:4.

3. The paths in a wheat field or any other crop field are not just there for convenience so that a person can walk through the field. They are necessary for increasing the yield of the crops. The technique of spacing out the crops is called Row Spacing. Often it is done together with another technique for clearing out the weeds from the crops called Inter Row Hoeing.

It should be noted that the correct reading here is שֻּרוֹת (Shurot), rows, as it is in the Erfurt manuscript. The reading in the Vienna manuscript is שָׂדֹת (Sadot), fields, which does not make any sense, since everything we are talking about is located inside a field.

4. The Tosefta needs to clarify that it makes no difference where these stalks are located in the field, because otherwise the poor may think that if these stalks are located among the stubble they might be considered Leket since it is something that the owner forgot to cutoff
while he was harvesting, not realizing that Leket only applies to stalks that fell down from the farmer’s hands after they have been cutoff and not to stalks that have never been cutoff in the first place. If these lone standing stalks are located in the paths between the rows of cutoff grain then the poor might think that the owner did not even intend to plant them there and therefore they naturally can take them since it is something that grew by a fluke. Therefore the Tosefta teaches us that even stalks that grew out of their normal place still belong to the owner and cannot be taken by the poor.

![A dog running through a spacing path in a wheat field. Notice another spacing path in the left upper corner of the picture. Photo: crystaljigsaw.blogspot.com.](image)

5. Rebbi Akiva is not arguing on the statement of the Tanna Kama, but rather he is just pointing out that although these stalks rightfully belong to the owners, they allowed the poor to take them. I would assume that the amount of such stalks was relatively small, since the farmers were careful to harvest the crops without leaving too many standing stalks. This is in contrast to the wheat taken by ants mentioned earlier in Tosefta Peah 2:17 which amounted to a very substantial amount and therefore was kept by the owners of the fields.
A wheat field harvested by hand with sickles in Rajasthan, India, in March 2010. Photo: www.yolike.com/india/ Notice that it does not seem like there are a lot of upright standing stalks of wheat left.