**Yadayim, Chapter Four, Mishnah Three**

**Introduction**

In today's extraordinarily long mishnah there is a dispute concerning what tithes are given from produce grown in the land of Ammon and Moab on the sabbatical year. Inside the land of Israel seventh year produce is ownerless and no tithes are separated. Ammon and Moab are borderline lands. The sabbatical year is not operative in them but the rabbis did decree that one has to separate tithes from produce grown there. This creates the question of what type of tithes must be separated in the sabbatical year.

As further background, we should remember that there are two tithes. First tithes are given to the Levites. This tithe would be separated in Ammon and Moab during the sabbatical year. The other tithe alternates between second tithe, which is taken to Jerusalem and eaten there by its owners and the poor tithe which is given to the poor. Second tithe is taken out in the 1, 2, 4 and 5 years of the seven year cycle and poor tithe on the 3 and 6 year. This is the tithe that is debated in our mishnah.

Along with the particular content discussion, the argument in this mishnah reveals an unusual amount concerning rabbinic discourse. It offers us a fascinating glimpse into the inner workings of the early rabbinic academy.

**Mishnah Three**

1. On that day they said: what is the law applying to Ammon and Moab in the seventh year?
   1. Rabbi Tarfon decreed tithe for the poor.
   2. And Rabbi Elazar ben Azariah decreed second tithe.
2. Rabbi Ishmael said: Elazar ben Azariah, you must produce your proof because you are expressing the stricter view and whoever expresses a stricter view has the burden to produce the proof.
3. Rabbi Elazar ben Azariah said to him: Ishmael, my brother, I have not deviated from the sequence of years, Tarfon, my brother, has deviated from it and the burden is upon him to produce the proof.
4. Rabbi Tarfon answered: Egypt is outside the land of Israel, Ammon and Moab are outside the land of Israel: just as Egypt must give tithe for the poor in the seventh year, so must Ammon and Moab give tithe for the poor in the seventh year.
5. Rabbi Elazar ben Azariah answered: Babylon is outside the land of Israel, Ammon and Moab are outside the land of Israel: just as Babylon must give second tithe in the seventh year, so must Ammon and Moab give second tithe in the seventh year.
6. Rabbi Tarfon said: on Egypt which is near, they imposed tithe for the poor so that the poor of Israel might be supported by it during the seventh year; so on Ammon and Moab which are near, we should impose tithe for the poor so that the poor of Israel may be supported by it during the seventh year.
7. Rabbi Elazar ben Azariah said to him: Behold, you are like one who would benefit them with gain, yet you are really as one who causes them to perish. Would you rob the heavens so that dew or rain should not descend? As it is said, "Will a man rob God? Yet you rob me. But you: How have we robbed You? In tithes and heave-offerings" (Malakhi 3:8).
8. Rabbi Joshua said: Behold, I shall be as one who replies on behalf of Tarfon, my brother, but not in accordance with the substance of his arguments.
   1. The law regarding Egypt is a new act and the law regarding Babylon is an old act, and the law which is being argued before us is a new act. A new act should be argued from [another] new act, but a new act should not be argued from an old act.
   2. The law regarding Egypt is the act of the elders and the law regarding Babylon is the act of the prophets, and the law which is being argued before us is the act of the elders. Let one act of the elders be argued from [another] act of the elders, but let not an act of the elders be argued from an act of the prophets.
9. The votes were counted and they decided that Ammon and Moab should give tithe for the poor in the seventh year.
10. And when Rabbi Yose ben Durmaskit visited Rabbi Eliezer in Lod he said to him: what new thing did you have in the house of study today? He said to him: their votes were counted and they decided that Ammon and Moab must give tithe for the poor in the seventh year.
    1. Rabbi Eliezer wept and said: "The counsel of the Lord is with them that fear him: and his covenant, to make them know it" (Psalms 25:14). Go and tell them: Don't worry about your voting. I received a tradition from Rabbi Yohanan ben Zakkai who heard it from his teacher, and his teacher from his teacher, and so back to a halachah given to Moses from Sinai, that Ammon and Moab must give tithe for the poor in the seventh year.

***Explanation***

**Section one**: Rabbi Tarfon rules that in these two lands they should separate poor tithes on the sabbatical year, whereas Rabbi Elazar ben Azaryah rules that they should separate second tithe.

**Section two**: Rabbi Yishmael seems to act as a sort of moderator for the dispute. He tells Rabbi Elazar ben Azaryah that the burden of proof is upon him, for he rules strictly. The reason that his opinion is considered "strict" is that second tithe is treated as holy, whereas poor tithe is not holy. As far as how much is given, there is no difference—both are tithes.

**Section three**: Rabbi Elazar ben Azaryah responds that the burden of proof should be upon Rabbi Tarfon, and not upon him. In the third and sixth years one gives poor tithes. The year that immediately follows is second tithe (at least in the fourth year). Therefore, Rabbi Elazar ben Azaryah has not deviated from the normal order of second tithe always following after a year of poor tithe. So Rabbi Tarfon must first give proof for why we should deviate from the normal order. [This section kind of reminds me of the coin flip at the beginning of a football game—arguing over who starts.]

**Section four**: Having lost the coin flip, Rabbi Tarfon kicks off. He compares Ammon and Moab with Egypt. Just as Egypt gives poor tithes in the seventh year, so should Ammon and Moab. Later in the Mishnah we shall see that everyone agrees that the earlier sages decreed that Egypt should give poor tithe.

**Section five**: Rabbi Elazar ben Azaryah responds by saying that the laws outside of Israel are not all the same. Babylon is also outside of Israel and there they separate second tithe during the seventh year, not poor tithe. So if you're going to compare Ammon and Moab to something, compare them to Babylon!

**Section six**: The fight is truly getting brutal my friends! Rabbi Tarfon now explains why he compared Ammon and Moab to Egypt and not Babylon. Ammon, Moab and Egypt are both close to the land of Israel. Therefore the sages declared that they should give poor tithes so that the poor of Israel could benefit. In other words, Rabbi Tarfon feels that the sages adjusted the halakhah so that it would most benefit the poor.

**Section seven**: Rabbi Elazar ben Azaryah counterattacks. Giving tithes to the poor might provide them with some temporary relief. But if people should really be giving second tithe then they in the end will be causing destruction and death. For the verses from Malakhi state that people have cheated God by not bringing tithes. As a punishment, God will stop the rains and dew (this is made even more explicit in v. 10, not quoted in the Mishnah). Thus, perverting tithe laws in order to give to the poor ultimately will cause drought.

**Section eight**: Rabbi Joshua now jumps into the debate. He defends Rabbi Tarfon but using different reasoning. That Egypt should give poor tithe is a "new act," decreed by the sages of the Second Temple period, when Egypt again flourished as a center for Judaism. That Babylon should give second tithe is an "old act," decreed by the prophets. Since Ammon and Moab are both new acts, they should be like the other "new act" and give poor tithe.

A related factor is that Egypt is a "decree of the sages," whereas Babylon is a "decree of the prophets." Since Ammon and Moab will obviously be a decree of the sages, they should be like the other decree of the sages and give poor tithe.

**Section nine**: After all of the arguments have been made, the sages take a vote and Rabbi Joshua and Rabbi Tarfon win.

**Section ten**: There is a fascinating epitaph to this story. Rabbi Eliezer was evidently not there when this vote was taken. According to later legends he was excommunicated. Rabbi Yose ben Durmaskit, an otherwise unknown sage, goes to Rabbi Eliezer to report to him about what happened in the academy. Rabbi Eliezer agrees with the content of the vote, but vehemently seems to disagree with the process. Rabbi Eliezer is saying—I don't need your vote because I have a tradition that goes all the way back to Sinai that Ammon and Moab give poor tithe on the sabbatical year. The argument here is between Rabbi Eliezer's way of determining halakhah and that of the other rabbis. The other rabbis, at whose forefront stands Rabbi Joshua, hold that whenever a new situation arises sages must argue about it, present opposing points of view, and then bring the matter up for a vote. There are indeed innovations in halakhah and they are arrived upon through a process of dispute and voting. Rabbi Eliezer is the arch-conservative. Even obviously new situations such as this, Jews living in the lands of Ammon and Moab, were addressed at Sinai. There is no need for a vote and no need for argumentation. Everything that ever will be was already there in the original revelation.