

HALOCHOSCOPE

This week's question:

May one use his *maaser* money to purchase a ticket to visit *Eretz Yisroel*? May one use *maaser* money to purchase a dwelling in *Eretz Yisroel*?

The issues:

- A) *Maaser Kesafim*, tithing one's income
 - B) Using this money for a *mitzvah* other than *tzedaka*
 - C) *Yishuv Eretz Yisroel*, issues relating to settling and cultivating the Holy Land
- A) *Maaser Kesafim*

Maaser means a tenth. One is obliged to tithe crops and the new season's livestock. Some is given to the *Kohain*, the *Levi*, the poor. Some is kept by the tither. This is later taken to *Yerushalayim* and eaten there, mostly as an offering. *Maaser Kesafim*, tithing one's money, is modeled on crop tithes, but linked to the *mitzvah* of *tzedaka*, charity.

Tzedaka is a Scriptural obligation, positive when giving, and negative when refusing. It is forbidden to refuse a plea for alms by the poor. Communal authorities may force individuals to donate. They assess an amount, graduated by means, and seize collateral. There are basically four types of *tzedaka*: (i) When a poor person asks, one must provide his basic needs; (ii) Communal compulsory collections for the community poor, *kupah vetamchuy*; (iii) *Nidrei tzedaka*, a self-imposed vow, undertaking, to gain merit for the sick, the souls of the deceased, in repentance or thanksgiving; and (iv) *Maaser kesafim*.

The basis for this fourth category is found in the Talmud, in a vow undertaken by *Yaakov Avinu*. He promised to 'give back' a [double] tenth to Hashem, i.e., a fifth of all that Hashem would provide him with. The plain meaning of this Talmudic passage is a Rabbinically mandated maximum limit on the amount one should spend on *mitzvos* in order to avoid dependency on *tzedaka*. In the process, we also derive the praiseworthiness of 'giving back' a portion of one's earnings to Hashem. It is also supported by a Midrash linking tithing money income to crop tithing. The simple outcome of this would be a Rabbinic obligation to donate one tenth of one's income to *tzedaka*. For those who wish to perform the *mitzvah* in the best possible manner, one fifth would be best.

There is a view that it is a Scriptural obligation. A third view considers it neither Scriptural not Rabbinical, but a *minhag*, recommended positive practice. Some poskim suggest that if one has not yet begun the practice, he should announce that he is doing it *bli neder*, without undertaking a vow. He may also stipulate how he plans to use the tithed money. He could reserve the option to use it for *mitzvos* other than *tzedaka* for the poor, provided the *mitzvos* are not outstanding obligations. The most ideal would be to set aside a fifth, using one tenth for *tzedaka* and the second tenth for a free loan fund. [See Kesubos 50a, Sh. Mk. Taanis 9a, Tos. Pe'ah 1:1, Shnos Eliyahu. Sefer Hamitzvos A:195 L.S.:232. Tur, B.Y. Sh. Ar. Y.D. 249, 331, commentaries, Ar. Hash. Noda Biye-

huda I:YD:73. Tshuvos Chasam Sofer YD 229. Igeress Hagra. Ahavas Chesed 2:19, etc. Halochosepe X:28.]

B) Using this money for a Devar Mitzvah

As mentioned, there is a way to reserve the option to choose how to spend his *maaser*. Not all poskim consider it designated *tzedaka* money. Moreover, some maintain that it is not even a Rabbinical ordinance, but a *minhag*. Therefore, some permit using it for a *devar mitzvah*, to cover the expense of another *mitzvah*. We mentioned a suggestion that before undertaking this practice one stipulates that he only plans to do so if he has the right to use it for *devar mitzvah*. However, there are limitations to this usage.

Ma'aser money is considered *matnos aniyim*, gifts due to the poor, similar to the agricultural tithes for the poor. It is not considered one's personal fund, since it does not belong to him. He has discretion on how it should be distributed or spent in the same way that one can choose how to distribute his *tzedaka*. In fact, the regular tithes have the same quality. One may choose which *kohain* he wishes to give his *terumah* tithe, and to which *levi* he wishes to give his regular *maaser rishon*. There is even a debate on whether this discretion, known as *tovas hana'ah*, the benefit of cultivating favor by choosing a certain recipient, is considered a monetary asset. One might accept payment from a third party to give the tithe to a person of the third party's choice.

Since it is not his personal fund, the one separating it may not use it for *mitzvos* that are outstanding personal obligations. This is based on the festival offerings and *maaser sheini*. In Temple times one had to separate *maaser sheini* most years. This was taken to Yerushalayim and eaten there, or redeemed and transferred to money that was taken to Yerushalayim to be spent on food. It was not to be used on other expenses. The Talmud debates whether it is still considered one's personal fund, but limited to spending on food items. The ideal way to spend it was on animals that would be offered as *korbanos shlamim*, that are eaten by the owner (except certain parts burnt on the *mizbaiach* and parts eaten by *kohanim*). One is also obliged to make three offerings at the festival season: *re'iyah*, *chagiga* and *simcha*. *Re'iyah* is a burnt offering, and *chagiga* is eaten as a *shlamim*. Both are obligations in their own right, while for *simcha* one need only eat meat of an offering that was anyhow offered. Thus, one may use *maaser sheini* for *simcha*, but not for *chagiga*. *Chagiga* is an outstanding obligation. One could not use someone else's money to discharge this obligation. The Torah instructs one to use specifically *chulin*, unconsecrated money, for outstanding obligations. *Simcha* requires a *korban* of any kind be brought, which is done anyway with *maaser sheini* money.

Based on this, one may not spend *maaser kesafim* on outstanding obligations. A common case would be payment for one's children's Torah teachers. This is a *mitzvah* obligation that one usually pays for. Paying for it with *maaser* would be like paying off a debt with other people's money. [See See Chagiga 7b-8a, Gitin 30a-b, Tosefta Peah 4:16, Poskim. Tur Sh. Ar. YD 245:4, 249:1, 331:146, commentaries. Halochosepe X:45.]

C) Yishuv Eretz Yisroel

Settling *Eretz Yisroel* involves a few *mitzvos*. The main two *mitzvos* are *kibush*, conquering the land from the non-Jewish inhabitants, and *yishuv*, populating it with Jews and cultivating its produce. *Kibush* applies when the nation as a whole enters the land. There is some debate about its applicability nowadays. The extent of the application of *yishuv*

nowadays is also debated. On the festivals, all Jews were obliged to fulfill *aliyah leregel*, visit the temple and offer offerings [see section B]. It applies, at least, to those who live within the boundaries of *Eretz Yisroel*. There is some question about a modified application nowadays, when visiting the site of the temple. There is a *mitzvah*, *lo sechanaim*, do not give idolaters a place to settle in *Eretz Yisroel*. This applies at all times.

There are also advantages to living in *Eretz Yisroel*. The *mitzvos* that depend on the Land, such as the tithes or *shevi'is*, the idling of cultivation in the seventh year of the agricultural cycle, can be fulfilled only in *Eretz Yisroel*. The sanctity of the Land adds to the quality of fulfillment of other *mitzvos*. Torah study inside *Eretz Yisroel* has an added dimension. The produce of *Eretz Yisroel* is considered especially blessed. Supporting the poor of *Eretz Yisroel* is given higher priority than most other poor people.

The debate about *kibush* centers on how to define the *mitzvah*. Some say it applies to taking the Land by force. This could only apply when initially conquering it. Others maintain that this applies to maintaining the Jewish presence there. It means preventing gentiles from populating any part of the Land. This applies in all generations. *Kibush* would be considered an obligatory *mitzvah*, while *yishuv* is fulfillment of a *mitzvah*.

The Talmud relates *yishuv* to laws of marriage and *Shabbos*. Can one be compelled to follow a spouse to or from *Eretz Yisroel* to live there? *Eretz Yisroel* is given decidedly preferential treatment. Most poskim apply most of these rulings nowadays. However, this could be due to the advantages, rather than to the obligations to live there.

The *Shabbos* issue relates to *amira le'akum*, the Rabbinical prohibition forbidding asking a gentile to do *melacha* on behalf of a Jew. Under certain circumstances a gentile may be asked to do a Rabbinical *melacha*. It is extremely rare to be allowed to ask him to violate a Scriptural *melacha*, such as actual writing. If one has a chance to complete a transaction to purchase land in *Eretz Yisroel*, the Talmud permits having it written and documented by a gentile on *Shabbos*. The *mitzvah* of *yishuv Eretz Yisroel* is such that the initial prohibition was never made in this case. [This is clearly not due to advantages, but to a full *mitzvah*.] This ruling is cited by *Rambam*, indicating that he applies *yishuv Eretz Yisroel*. However, *Rambam's* rulings are meant for all time, and this ruling might be intended for the time when Jews are involved in *kibush* as well. *Tur* omits this ruling. This indicates that *Tur*, whose rulings are current, feels that this *mitzvah* does not apply nowadays. Some suggest that this is because the *Bais Hamikdash* is in ruins. A less reliable source maintains that it is due to the difficulty of properly fulfilling the *mitzvos* related to the Land. *Shulchan Aruch*, often considered the last word in *halacha*, permits documentation by a gentile. Evidently, there is a *mitzvah* to live in *Eretz Yisroel*, and to purchase land there. One who owns land there fulfills a *mitzvah* when he lives there. One also fulfills a *mitzvah* every time he cultivates the land. This includes planting trees, sowing crops, weeding, fertilizing watering, beautifying and the like.

Some say that if there is any danger involved in taking young children, due to changes in environment or climate, one should not move. Others contend that danger should be treated no differently here than with regard to any other *mitzvah*. One uses the usual caution, and makes the move accordingly. There is one condition that must be met before moving. One must have *parnasa berevach*, a means of decent livelihood, prepared for him before moving. Whether moving without this condition is fulfillment of a *mitz-*

vah is questionable. This is especially important if one has young children who will not learn the importance of the sacrifices of poverty for this ideal before they might, G-d forbid, give up on much more than this ideal.

Visiting *Eretz Yisroel* is not considered *yishuv*. One who settles there may not move away, except in extreme extenuating circumstances. A visitor may go home. Still, a visitor who walks four cubits in *Eretz Yisroel* is guaranteed a share in the World-to-come.

The poskim debate using *maaser* money to go to *Eretz Yisroel*. Some say that one may not use *maaser* money for the trip. Others maintain that one may use it for the expenses on the travel itself, but one must deduct the amount that he would have spent anyhow on food and lodging at home. This must come from personal funds. Perhaps the debate centers on whether the *mitzvah* is considered a prior personal obligation.

For a pleasure trip, to visit graves of the righteous, or for *aliya leregel*, one may not use *maaser* money. Clearly, one may not use *maaser* for personal expenses in *Eretz Yisroel*, despite the *mitzvah* to live there. This includes money for housing. One may not use *maaser* for a *mitzvah* that benefits him personally. Some would allow *maaser* to be used for the very basic minimum costs of a *mitzvah*, with the rest to be paid from personal funds. In our case, there is no minimum specifically for the *mitzvah*. Everyone needs to spend a minimum on living costs, wherever he lives. The use of *maaser* money to fulfill the condition of *parnasa berevach* would not be permitted. With no planned livelihood without these funds, there is no *mitzvah*. Thus it is not considered using the funds for an existing *mitzvah*. [See Kesubos 110b 111a, Gitin 8b, Baba Kama 80b, Poskim. Sefer Hamitzvos, additions of Ramban, Asei 4, commentaries. Tur Sh Ar OC 306:11, EH 75:4-5, commentaries. Hilchos Maaser Kesafim (Bronstein) 14:45-49. Halochoscope 1:30.]

On the Parsha ... Hashem said to Moshe and to Aharon in the land of Egypt ... "This month shall be for you the 'head of months'" ... [12:1-2] According to Rambam, this mitzvah of kid-dush hachodesh, consecrating the new month, may only be done by the Sanhedrin. Three members assemble to do this. This is indicated by the choice of Moshe and Aharon, and a Bais Din may not have an even number. Ramban adds, only a Bais Din in Eretz Yisroel, or their ordained Bais Din outside Eretz Yisroel, may do this. Nowadays, that we have no Sanhedrin and we use the calendar made by them fifteen hundred years ago, we rely on the presence of Jews in Eretz Yisroel. If there are Jews, they have a Bais Din, even though it is not the Sanhedrin. There is no danger of losing our calendar and our holidays. Jews will always be present there. [See Mitzvah 153, Ramban, Lev Sameach.] How do we learn this? Perhaps Ramban's opinion on kibush is, apart from conquering it one time, to establish Jewish scholarly presence – a Bais Din – in Eretz Yisroel. The uninterrupted Jewish presence there since then means that the Land is already 'conquered'. Whenever there are Jews there are scholars. Kibush is necessary so that the Jewish people anywhere in the world have a centralized authority. Thus, kibush is not a personal mitzvah per se, but part of the mitzvah of Sanhedrin. [See mitzvah 176.]



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