

HALOCHOSCOPE

Some notes on last issue:

- (i) It was pointed out that if the glass vial inside the tube is scored, the issue of *mechatech* arises. The scriptural case of this *melacha* forbids cutting parchment to size. Accordingly, one may not cut anything along its perforations. The vial need not be broken on the perforated line. When snapping it, one only wants to break it apart. Destructive *melacha* is known as *mekalkel*, and is forbidden when done with intent. Here it is a by-product of mixing the chemicals. Therefore, it does not involve a *melacha*.
- (ii) There is a product that can be used to warm food without fire. It is a chemical pack that is snapped to activate it. Assuming that it works in a similar way to the light stick, the issue is whether it could be used on *shabbos*. The poskim generally discuss the *bishul* aspect, maintaining that it is permissible. The food is already cooked and the manner of heating could not be confused with fire. However, in light of our discussion, could there be issues of *tikun kli*? At first glance, there is a distinction between the glow stick, which is used as a bona fide *kli*, and the pack which is used in place of fire, which is not a *kli*.
- (iii) There is a therapeutic heating pad that comes in a pack, which, when exposed to air, warms up. Assuming one may use this pad on *Shabbos*, does exposing it to the air constitute *tikun kli*? There is no real action here directly on the pad, but removal of a barrier to its activation. This certainly mitigates the possible problems.

This week's question:

Someone bought a home many years ago. He recently sold it at a very large profit. In the interim, the value of money decreased. In addition, over the years, he paid for many repairs, which raised the value of the house. Part of the increase is due to the appreciation of property values in the area. This was his primary home, and much of the money he made on the sale was used to buy another primary home. Does he pay *Maaser Kesafim*, and if so, how would it be calculated?

The issues:

- A) *Maaser Kesafim*, tithing one's earnings
- B) *Keren*, principal and inflation
- C) *Shvach* and *Hotza'ah*, permissible deductions
- D) Sale of personal property to be traded for other personal property

A) *Maaser Kesafim*

Maaser means a tenth or tithe. The Torah obliges the farmer to tithe his 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 refus-

ing, despite its appearance as a voluntary act of kindness and generosity. It is forbidden to refuse a plea for alms by the poor, and communal authorities may force individuals to donate. They can assess an amount, graduated by means, and seize goods or property as collateral. There are basically four types of *tzedaka*: (i) When a poor person asks for alms one must provide him with 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*.

It is with this fourth category that we are concerned. The basis for the obligation is found in the Talmud, based on a vow undertaken by *Yaakov Avimu*. He promised to 'give back' a [double] tenth to Hashem, i.e., a fifth of all that Hashem would provide him with. The most obvious interpretation 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*. However, 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 nor 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 Biyehuda I:YD:73. Tshuvos Chasam Sofer YD 229. Igeress Hagra. Ahavas Chesed 2:19, etc.]

B) Keren, Principal and Inflation

as a tithe, *maaser* must be separated formally. In fact, according to some, the separation is a distinct *mitzvah* in its own right, apart from the act of handing it to the poor. *Maaser* is tithed from all income, including earned income and inheritance. Capital is tithed when received, and earnings, when earned after deducting expenses. The principal of an investment is tithed only once and the interest is tithed as it comes into one's possession. Since it is difficult to separate the *maaser*, most people keep account of the *tzedaka* they give and a separate account of how much of their money is included in their *maaser* obligation. At a convenient interval they tally the amounts for the period.

Gifts of cash must be tithed, with certain exceptions. Material gifts are a matter of debate. Some poskim maintain that they need not be tithed at all. Others maintain that they should be tithed, but disagree on when. Some say that one need not sell some of them to cover the *maaser* on the total, but that if one has cash available to cover the *maaser*, he should pay it then. Otherwise, he may wait until he sells them to deduct the *maaser* from the money he earns. If he pays the *maaser* without selling them, there is further debate on how they should be evaluated. Some say that one need only donate a tenth

of what the items are worth to the recipient. Thus, if the recipient had been interested in purchasing an item like this, but would only have paid half the price, he need only tithe that value.

Inflation raises an interesting issue. The initial item was valued at a certain price. At that time, the person did not want to sell it, and did not separate *maaser* on it. However, at the time it is sold it fetches a much higher price. Normally, this would be considered profit. The same could be argued about an item that was purchased with money that had already been tithed. Later when it is sold, the item seems to have appreciated in value. In this situation, one would have to consider the new price to include some profit. The profit must be tithed. This would, therefore, be the ruling in the case of the appreciation of the value of the house due to improvements in the neighborhood. The value has increased due to demand. However, if the new price is simply a function of the drop in the value of money due to inflation, the seller did not make any profit.

Inflation is calculated in two ways. In the ideal setting, money is considered a constant and the commodities purchased are the variables. This is because the commodities are usually valued in currency according to their demand. However, not all money is considered pure currency. If an economy has more than one type of currency, only one would be considered pure currency. The others might be considered currency relative to fruit, but commodities relative to the standard. The Talmud debates whether the standard is gold or silver. In such economies different types of currency circulated according to their functions. Copper was used for small items and gold for large payments. All other payments were made in various denominations of silver coins, according to the size or amount of the items. In this pure system, there would be no inflation in the silver standard, but the commodities would be considered to have fluctuated in their prices, due to market conditions. The other coinages would also be considered fluctuating. The only way the standard currency could lose value would be when the coins are chipped.

In modern economies all currency is standard, and circulates in denominations of the same standard. However, this standard itself can fluctuate, because the supply of currency can be modified artificially. Thus, if more money is introduced into circulation, while the supply of commodities remains the same, the money will be worth less. This would be measured by showing that all commodities have gone up in price, across the board. Accordingly, the money is worth less than it was before. Then, the value is calculated using the most common necessities' prices. The other way to measure it is by comparing the currency in one economy to the currency of another. Thus, if the Israeli currency is valued in dollars and seems to be worth less, we have a measure for inflation.

Using the first method, it is clear that the person selling the item for more money now did not make a profit, (unless he earned more than the inflated value). Using the second method is more difficult. If the new price earned buys the same amount of goods that the old price earned, there is no gain. If the new price purchases more goods, but the same amount of foreign currency, could one claim that he has made no gain? Some poskim maintain that in a global market, one may take into account a stable foreign currency to measure inflation. If the other currency has lost value and this currency has maintained its value, so that the new price of the property buys more commodities in this economy, but less in another economy, one must determine whether there is a true gain

or loss. The way to measure this would be to decide whether the seller has a net gain in his total pool of wealth. If so, he has earned money and must tithe the gain. [See Baba Metzia 44a-b, Poskim. Igros Moshe YD:II:114. Bris Yehuda intro. ch. 18, 20:esp. 9-10. Tzedaka Umishpat 5:3-6, notes. Maaser kesafim (Bronstien) 3:6 63-65, notes.]

C) *Shvach and Hotza'ah*

Increase in value of an item has been discussed in the preceding section. Basically, before the item is sold there is no obligation of *maaser*. It is compared to a person's food going up in value before he gets to eat it. When the item is sold, provided the increase is real, he is obliged to tithe it. In the same way, if a person puts work into his property, increasing its value, he need not tithe it. But when he sells it, he will be earning money due to his work. In all earnings, one may deduct expenses that it is reasonable to assume that the profit does not include. Thus, anything needed to accrue the profit on the property, such as building supplies, may be deducted. One may also deduct any contractors costs. There is a view that one may deduct the value of his own time, as an expense, before tithing. However, other maintain that one must tithe his profits, regardless of whether he spent money, in which case he deducts the expense first, or he did it himself. [See Tzedaka Umishpat 5:6-7, notes 31-32. Teshuvos Dayan Weiss in Maaser Kesafim (Domb).]

D) *Trading Personal Property for New Personal Property*

There is reason to distinguish between property sold for income and that sold for personal use. If a person buys property and waits for its value to increase due to supply and demand in its market, he is investing in a business venture. If a person buys property to live there, then sells it and makes a profit, he has made an investment by the way. His primary objective was to move away, and to sell his home. It so happens that his personal property increased in value. This was not earned income. Furthermore, if he will now need to buy a similar property, and will need to spend more than he did when he bought the first property, he has really not gained anything substantial. Therefore, some say that one need not separate *maaser* on this. Others, however, seem to indicate that when it is sold at a profit one tithes it, no matter what. [See Tzedaka Umishpat 5: note 33. Maaser Kesafim (Domb) p. 45. (Bornstien) 3:63.]

On the Parsha ... *Please speak in the ears of the people. They shall request, each man from his fellow and each woman from her fellow gold vessels and silver vessels. [11:2] Bnei yisroel did as they were told by Moshe and requested from Egypt silver vessels, gold vessels and garments. [12:35.] Back in Shemos: Each woman shall request from her neighbor and those living in her house silver vessels, gold vessels and garments, and you shall put them on your sons and daughters. [3:22] Why are garments added in? Maharat explains, the garments had little value to the Jews. The Egyptians, however, valued them more than the gold and silver. Why? Possibly, the garments were indeed worth more money than the gold and silver vessels. The Jews kept themselves distinct by not dressing immodestly like Egyptians. The clothes would need to be altered and would be no use to the adults. Thus, we see that value of a commodity is truly relative. The gold and silver vessels retained their constant standard. *Lehavdil*, we must realize that our greatest value, Torah and Mitzvos, never change their value.*



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