

HALOCHOSCOPE

This week's question:

A pledge of installments was made to a *tzedaka*. This pledger would use *maaser* money for such pledges, presuming so without specifying. At the time the pledge was made, the pledger was not separating *maaser kesafim*, due to hardship. Now he is able to separate *maaser kesafim*. May he or she use the *maaser* money to pay for this prior commitment?

The issues:

- A) *Maaser kesafim*, tithing income
- B) *Liftoir chovo*, using the money for outstanding commitments
- C) Are installment plans considered outstanding commitments?
- D) Specifying or presuming to use *maaser*

A) Ma'aser Kesafim

Maaser means a tenth or tithe. The Torah obliges the farmer to tithe his crops and new livestock. It is given to the *Kohain*, the *Levi*, the poor. *Maaser sheini* is kept by the tither, and 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, 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*.

The basis for the obligation is found in the Talmud, based on 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 simple interpretation of the 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 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 suggest that one who has not yet begun the practice, 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 (*vehechezakta bo*).

Generally, the poor are also obliged to perform *mitzvos* related to donating their money or possessions. *Tzedaka* is multi-faceted. The absolute minimum is the half *shekel* given on *Taanis Ester*. This represents the donation to the Temple in which every Jew had to participate, including the poor. In some instances, such as *maaser ani*, the tithe given to the poor, if they qualify as recipients, but grow their own crops, they may exchange their own *maaser* with other poor farmers. Their participation in other forms of *tzedaka* is determined according to their means. For a fixed proportion such as *maaser kesafim*, one must have the means for his personal livelihood first. Once he knows that he earns more than his personal livelihood, he is obliged to separate *maaser*. This can be determined on a day to day basis, according to how much money they own. As soon as they make too much to be eligible, they become obliged to give. Thus, sometimes, even if he is qualified to receive *tzedaka*, such as one who is not actively working but owns some possessions, he is obliged. Some say that everyone is really obliged, but that only those who have more than enough for their livelihood may be compelled by *Bais Din* to give.

Some say that if one finds that he sometimes needs to deprive himself of a basic need, he is not required to separate *maaser*. Others say that even if one can just about manage his needs, he should be able to provide for a little more before being required to give. Livelihood means being able to have a little extra!

One may not, under normal circumstances, spend more than a fifth of his money on *tzedaka*. [Some allow the extraordinarily wealthy to give more than a fifth.] A debtor's responsibility is to his creditors before his donations to *tzedaka*. Based on the previous discussion, one may stipulate when undertaking the practice, that he will be able to reassess his status as needed. [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. Tzedaka Umishpat 1:6-8, notes.]

B) Liftor Chovo

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 *ma'aser 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 totally his personal fund, the one separating it may not use it for *mitzvos* that are outstanding personal obligations. This is based on the laws of festival offerings and *ma'aser sheini*. In Temple times one had to separate *ma'aser sheini* most years. This tithe was taken to Yerushalayim and eaten there, or redeemed and transferred to money that was then 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*). There is also an obligation to offer 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 *ma'aser 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 *ma'aser sheini* money. Based on this, one may not spend *ma'aser kesafim* on outstanding obligations. One common case of this would be payment for one's children's Torah teachers. This is a *mitzvah*, but an obligation that one usually pays for. Paying for it with *ma'aser* would be like paying off a debt with other people's money.

Accordingly, the poskim discuss using *maaser* money for a voluntary commitment that one made to *tzedaka*. At the time of the commitment, the contribution was not obligatory. One may stipulate that it should be paid for with *maaser* money. Having made the pledge, it has become an obligation. May he still use *maaser* money, or has it become a personal debt? If the donor undertook the commitment as a proper debt, collectible by law, it has certainly become a personal expense. However, if it was always intended as *tzedaka*, some suggest that it could be taken from *maaser* money. Furthermore, one may also deduct money that he gave to *tzedaka* from his *maaser* account. However, others maintain that one must stipulate beforehand, if he wishes to use *maaser* money. [See Chagiga 7b-8a, Gitin 30a-b, Tosefta Peah 4:16, Poskim. Tur Sh. Ar. YD 245:4, 249:1, 331:146, commentaries. Tzedaka Umishpat 6:2 n5 7. Shut Chasam Sofer YD 131.]

C) Installment commitments

Assuming that one must stipulate at the time of a commitment, what if the commitment was to pay installments? May one treat each installment as a new commitment? If so, may he stipulate each time whether he wishes to use *maaser*? It would appear that if the commitment was for an extended commitment, the entire commitment is seen as one. If, however, at each installment one has the choice whether to continue, each installment can be viewed as a separate undertaking.

One can commit in two ways. Either one commits himself to pay an amount to *tzedaka*, or he commits to donate some of his money. In the first instance, he has undertaken a vow. In the second, he has committed property. The first way obligates the potential donor like a debtor. If he does not have the money, his property may be taken, like that of a debtor. If he has insufficient property, when he gets it, he must pay. The second way only really works if he actually owns the property at the time of his commitment. Otherwise, he has 'given away something that he does not own'. Therefore, the commitment does not take effect. However, some say that he is still held to his promise, as though he made a personal undertaking, like he did in the first instance.

One who made a commitment to pay installments would appear to be undertaking a personal obligation. Presumably, he does not have all the funds right away. The same

should apply to any vow to donate to *tzedaka* at a later date. Such an undertaking was made by *Yaakov Avinu*, that Hashem later called a binding vow. Some commitments are made dependent on the person's ability at the time each installment is due. It is common for a *tzedaka* organization to suggest that a donor agree to a large pledge, in installments and *bli neder*. By saying *bli neder*, a donor is stipulating that he will not be held liable for this as a debt. In this case, the donor has stipulated that he will be able to rethink it each time. In this case, the later installment is a new commitment. [See Rosh Hashana 5a 6a, Baba Basra 8a etc., Poskim. Tur Sh Ar YD 248:1 257:3 4 258:5 7 8, commentaries. Tzedaka Umishpat 1:10 4:11-24, notes. Igros Moshe YD I:150.]

D) Presumed intent

If a pledge was made with one thing in mind, and it turns out to have been a mistake, the pledge is voided. Furthermore, if an exaggerated pledge is made based on a belief that a stipulation will never be fulfilled, yet it turns out to be true, the vow is also voided. Basically, to be binding, a commitment must be made with intent and full knowledge of the facts. In our case, the donor appears to have had in mind to use *maaser* money, if and when it should be available. This donor tries to separate *maaser* when he is able to and to use it for his commitments. At the time of this commitment, *maaser* was not available. Other money was available, but he did not mean to donate any money at that time. It appears to be a personal undertaking, that is indeed binding at the later date, but to be paid with *maaser* available then. Nonetheless, the donor did not stipulate using *maaser* specifically. Does the usual practice become the *umdana*, the presumed intent, for this donor?

Umdana is a Talmudic *halachic* concept that applies to transactions. The poskim debate whether it can apply to vows to *tzedaka*. The usual applications of this are to situations that turn out differently than anticipated. The question is whether the original commitment would have been made had the donor realized the circumstances. This could apply to our case if the donor maintains that had he known that he would not be allowed to use available *maaser*, he would never have made the commitment. The aforementioned case [section B] where one already made a commitment and may not use *maaser* for it later, dealt with a monetary commitment. At the time, there was no thought of using *tzedaka* funds, despite the poverty of the recipient. Thus, there is no *umdana*. Our case deals with *tzedaka*, and a donor who usually tries to separate *maaser* for this very purpose. Accordingly, it would appear that in this case, when *maaser* is available to this donor, he may use it for these kinds of commitment. [See Tzedaka Umishpat 4:7-8.]

On the Parsha ... Take a tenth, you shall take a tenth of all ... [14:22] 'Of all' is writtent o include tithing merchandise and profits. [Tos. Taanis 9a, citing Sifri] The Talmud derives from the double term that tithing leads to more tithing, that is, to wealth. Perhaps, in addition, this could refer to the choice between a tenth and a fifth, derived elsewhere from the same doubled term used by Yaakov. Why would this mitzvah be given as a choice? Why use the double term, rather than 'a fifth'? What about a sixth? Some give according to the letter of the law. Others give with kindness, generosity and feeling. Tzedaka is a mitzvah, and not a voluntary kindness. One can also fulfill the mitzvah and gain the kindness aspect as well, by doing it twice.

♣ In honor and in memory of my mother, Yitele bas R. Shimon a"b, Henriette Silver. ♣

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