

# HALOCHOSCOPE

This week's question:

May the *maaser* tithe of an inheritance be used to dedicate a *sefer Torah* in memory of the *niftar*, the deceased, and donate it to a *shul*, rather than donating it to the poor?

The issues, last week:

A) *Maaser kesafim*, tithing income, including inheritance

B) *Dvar mitzvah*, using the money for *mitzvos* other than *tzedakah*; *liftor chovo*, discharging a personal obligation using this money

C) The *mitzvah* to write a *sefer Torah*

A) *Maaser Kesafim* Partially based on Volume XI:26

*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. It is forbidden to refuse a plea for alms by the poor. Communal authorities may force individuals to donate, assess an amount graduated by means and seize collateral. There are four basic 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, such as to gain merit for the souls of the deceased; 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 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 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. Income includes earnings, gifts, inheritance and interest on investments, where the capital was tithed at the time it was earned.

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 suggest that if one has not yet begun the practice, he should announce that he is doing it *bli ned-er*, 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 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. Halochose X:28.]

**B) Using this money for a Devar Mitzvah; Liftor chovo** Based on Halochose XIII:18

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*. Crop 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.

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. 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 parts burnt on the *mizbaiach* and parts eaten by *kohanim*). One is 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 obligations in their own right. 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. 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. Paying for this *mitzvah* with *maaser* is like paying off a debt with other people's money.

The ideal memorial for the deceased is *tzedakah*. A common way to combine the merit of *tzedakah* and public Torah study is to pledge and provide *sefarim* for public use. Thus, each time they are used to merit is compounded. If one pledged *tzedakah* in memory of a *niftar* during *yizkor*, he may not pay his pledge with *maaser*. It was undertaken as a prior obligation. However, he may stipulate before the actual pledge that he wishes to use *maaser* money for it. [See See Chagiga 7b-8a, Gitin 30a-b, Tosefta Peah 4:16, Poskim. Tur Sh. Ar. YD 245:4, 249:1, 331:146, commentaries. Halochose X:45.]

**C) Ksivas sefer Torah** Partially based on Halochose XIII:21

The Talmud cites a verse, *vetzidkaso omedess la'ad*, his righteousness will endure

forever, to refer to one who writes *sefarim* and loans them to others. The usage of the word *tzedakah* in this context is cited by poskim as a basis for using *maaser* funds for this *dvar mitzvah*. However, there is indeed an outstanding obligation to write a *sefer Torah*, and by extension, to buy *sefarim* for personal use. It appears that this *mitzvah* can be fulfilled in two ways. One could write the *sefarim* for personal usage. Or one could do so with the public usage in mind. The second manner of performance may be paid for with *maaser* funds, while still counting as a merit for the writer. Since he uses his discretion for this usage, he is credited with the *mitzvah*. Since he does not keep the *sefarim* for himself, it is not considered a personal usage. If one does not write it himself, but hires a needy *sofer*, scribe, he might be fulfilling *tzedakah* in another way. The highest form of *tzedakah* is providing the needy with employment. Nonetheless, if one receives full benefit from it, *maaser* money could not be used. Thus, we still need to rely on the quasi-voluntary nature of this *dvar mitzvah*.

The *mitzvah* to write a *sefer torah* is Scriptural. “Write for yourselves this song ..” (*Vayelech* 31:19). This is interpreted as “write the *sefer* that has this song written as part of it.” Reasons include having a personal *sefer torah* available to study from. The *mitzvah* is more than simply to possess a *sefer torah*, but to actually write it. Some commentaries add, the object of the *mitzvah* is to provide as many copies of the Torah so that more people are able to learn. One Talmudic sage wrote four hundred *sifrei torah*.

This final *mitzvah* of the 613 is in many ways the most difficult to fulfill personally. It requires investments of time and money for materials and intensive training, apart from the skill and concentration. Therefore, many people leave it until last, relying on this interpretation of the placing of the *mitzvah*, and on the words “and now ..” prefacing this *mitzvah*. They seem to imply, “now that you have been given the rest of the Torah and fulfilled it ..” Some say on the contrary, fulfill this *mitzvah* now, without delay.

As is the case with many *mitzvos*, one may delegate a *shliach*, agent, to fulfill this *mitzvah*. It is not considered a *mitzvah shebegufo*, fulfilled by the person only, like the *mitzvah* of *sukah*. The payment for the *sofer* attributes the fulfillment to the hirer. Of course it is more admirable to fulfill a *mitzvah* in person than to appoint a *shliach* to do it.

Having fulfilled the *mitzvah* to write it, the poskim debate whether one must always keep the *sefer torah* in his possession. Some compare it to a *mezuzah*. Once affixed to the door-post, it must remain. Others maintain that if it was lost, one need not write a new *sefer torah*. If it is sold, the money acquires the sanctity of the *sefer torah*. It may only be used for *mitzvos* considered on a higher level, or more urgent than this *mitzvah*. They are: marrying, studying Torah and redeeming captives. The poskim debate whether one may sell one *sefer torah* to buy another, even if it is more beautiful. The concern is that one might neglect to purchase the new one immediately. They also debate whether these restrictions apply to a personal *sefer torah*, or only to a communally owned *sefer torah*.

When the Torah was given, the Oral Law was given with it. Initially, the Oral Law was not permitted to be written, but had to be transmitted orally. At various points in history, it was determined that parts of it had to be written to preserve them. Eventually, it became apparent that the *Torah Sheb'al Peh* would be forgotten unless it was permitted to write it down. Nowadays, most of our Torah study is from written and printed *sefarim*

of *Torah Sheb'al Peh*. Many consider the purpose of the *mitzvah* to write *sifrei torah* to make them available for study. Since it is no longer customary to study from *sifrei torah*, the consensus is that these poskim would apply the *mitzvah* to writing or procuring other *sefarim* to study from. In fact, the poskim debate whether one may even take out a *sefer torah* and move it from its location to study. However, it is considered preferable to review the *parsha* (*shnayim mikra*) from a *sefer torah*.

There are three basic views on how to apply this in practice, with a fourth variation. In one view, there is no longer a Scriptural obligation to write a *sefer torah*. The Scriptural obligation applies to procuring other *sefarim*. In a second view, the main Scriptural *mitzvah* applies to printed texts for general use. There remains a Scriptural *mitzvah* to write *sifrei torah*, but one should avoid writing extra *sifrei torah*. This could lead to *bizayon*, demeaning them, when they are left unused, neglected or abandoned. In the third view, the Scriptural *mitzvah* certainly applies today, in full force. One cannot say that a Scriptural *mitzvah* changes from the way it is stated in the Torah. Nonetheless, priority should be given to purchasing personal *sefarim*, before procuring a *sefer torah* for a *shul*. The variation on this view maintains that the main *mitzvah* applies to writing a *sefer torah* even nowadays. However, one does not complete it by writing a *sefer torah*. One must also procure other *sefarim* to fully comply with this *mitzvah*.

Another reason is offered on why our form of the *mitzvah* has changed. In earlier times, the method of study was different. The wording and lettering of the *sefer torah* was analyzed to derive lessons from it. We can no longer rely on our imperfect knowledge to analyze nuances this way. Others maintain, we have a *mesora*, tradition. In summary, all agree that there remains some form of *mitzvah* nowadays, though no *brocha* is recited before writing a *sefer torah*. Many recite *shehecheyanu* on its completion. [See Vayelech 31:19. Megillah 27a Kidushin 41a Baba Basra 14a Sanhedrin 21b Menachos 30a, Poskim. Ramabam Sefer Torah 6:1, S Hamitz. 18. Chinuch 613. Tur Sh Ar OC 150:1 153:10 YD 270, commentaries. Nitei Gavriel, Hachn. ST 25note 1.]

In conclusion, since many do not consider this a personal *mitzvah* nowadays, the heir may consider it quasi-voluntary. Furthermore, since it is being written to memorialize the *niftar* and donated to a *shul*, *tzedakah* may be used for it. However, if he wishes to use *maaser* for it, he must stipulate to do so before pledging.

**On the Parsha ...** *Make for yourself two silver trumpets. They shall be for you to call the congregation .. [10:2] Lecha, of your own [silver]. You make them and you use them and no-one else. [Rashi]* Why does the Torah require Moshe to make them of his own silver? Perhaps part of the answer is that this was to be Moshe's own *mitzvah*. No-one else was qualified to perform this *mitzvah*. Since he would be gaining all the credit of this *mitzvah*, he could not use communal silver for it. In addition, perhaps the Torah also hints that Moshe could not use silver from his *maaser kesafim*. This was no voluntary choice of his own.

**Sponsored by the Silver family in memory of Baila Malka bas R. Boruch Goldman a"h, whose**  
**yahrzeit is on the 19<sup>th</sup> of Sivan. ☞**

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