

HALOCHOSCOPE

This week's question:

Is there a *mitzvah* to invest in an Israeli company? Does this take precedence over other investments? What if one buys shares that would otherwise not be bought by Jews? What if the owners of the company do not reside in Israel, but the company employs Israeli residents? Is it any different if the company purchases land or builds developments? What about investing in a non-Jewish or public company that has plants in various countries including Israel, or supporting it by purchasing its products?

The issues:

- A) *Yishuv Eretz Yisroel***
- B) *Mitzvos* involved in supporting others in business**
- C) Supporting those who live in *Eretz Yisroel***

A) *Yishuv Eretz Yisroel*

Settling *Eretz Yisroel* involves a few *mitzvos*. The main *mitzvos* are *kibush*, conquering the land from non-Jewish inhabitants, and *yishuv*, populating it with Jews and cultivating its produce. *Kibush* applies when the entire nation enters the land. Some debate its possible application nowadays. The extent of *yishuv* nowadays is also debated. On festivals, all Jews were obliged to fulfill *aliyah leregel*, visit the temple and offer offerings. It applies, at least, to those who live within the boundaries of *Eretz Yisroel*. Some suggest a modified application nowadays, when visiting the site of the temple. The *mitzvah, lo sechanaim*, do not give idolaters a place to settle in *Eretz Yisroel*, applies at all times.

There are *mitzvah* 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*. That is, while there might not be a specific obligation of *yishuv*, one who does settle there fulfills a *mitzvah*. Some say that *yishuv* is always an obligation, but that it is not possible when there is no *kibush*. *Kibush* is only possible when the Jewish people actually take the land under guidance of Hashem, followed by dividing it. *Yishuv* applies to maintaining ownership of one's allotted portion. In fact, the Torah condemns those who give up their

allotted portion, even to other Jews. Nowadays, since the beginning of the exiles of the first commonwealth by *Sancheriv*, there is no actual allotting of the portions in most of *Eretz Yisroel*. Nonetheless, *yishuv* in a broader sense can apply.

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. Th *Rambam* cites this ruling, it 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, or due to the difficulty of properly fulfilling EY-related *mitzvos*. *Shulchan Aruch* 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.

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 caution, and makes the move accordingly. One condition 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 *mitzvah* is questionable. Especially if one has young children who will not learn the importance of the sacrifices of poverty for this ideal, they might, G-d forbid, give up on much more than this ideal.

Some explain the controversy about the *mitzvah* as follows: There was always a general *mitzvah* to settle EY. However, this *mitzvah* manifests itself an many more specific other *mitzvos*, including those that apply to tithing, redeeming ancestral heritage, and others. Therefore, it is not counted as one of the 613. While the Talmud clearly states that there are 613 *mitzvos*, a count of the actual usages of the word for *mitzvah*, a command, in the Torah, yields many more. Some of these must be *mitzvos*, but are not included in the 613. Various methods are used to determine what is excluded. One of them is a *mitzvah* that is so general that many lesser *mitzvos* are subdivisions of it.

Some say there is both a communal *mitzvah* to conquer and settle the land and an individual *mitzvah* for each Jew to settle. Thus, after the land is conquered and is in Jewish hands, the individual is not exempt from his personal obligation. However, at a time when the nation cannot conquer, such as when Hahsem wishes us to suffer *galus*, there is still a personal *mitzvah* to settle. This is tempered by considerations such as danger and the hardships of livelihood. Some add that the individuals also have an obligation of

arvus, responsibility for fellow Jews, to help each other maintain their settlements. Some maintain that in the current situation where a large settlement exists with the additional advantage of being under Jewish administration, this is more applicable. Some say that the principal *mitzvah* applies to purchasing land and living of it. If one settles there but is supported by others outside, he does not fulfill the *mitzvah*. This could bear on our question. If the rationale for supporting residents is to share in their *mitzvah* or to show support, this is not accomplished with funds from the outside. However, if the object is to help them purchase land or other means of livelihood so that they can sustain themselves there, one is indeed helping them fulfill this *mitzvah*.

Nowadays, no-one knows the true ancestral ownership of the land. Accordingly, it should be unfeasible to fulfill *yishuv* by settling on someone else's property. One common resolution for this is to consider all transactions in the EY to have been made in the form of '*dekel lepairosav*' literally, a palm for its fruits. This mechanism allows one to sell the future produce of a property without selling the full title. The buyer takes possession of one aspect of the actual land. It also allows one to acquire the real estate enough to be considered having purchased land in EY. This right is all that could have been sold by the first seller, because the actual title always remained in possession of the original family. This is the right that is sold to the next 'user'. Nonetheless, the poskim point out that the current owner, even in times of Yovail, has the rights to dig, build or otherwise modify the landscape. [See Kesubos 110b 111a, Gitin 8b 47a Baba Kama 80b Baba Metziah 79a-b, Poskim. Sefer Hamitzvos, additions of Ramban, Asei 4, commentaries. Tur Sh Ar OC 306:11, EH 75:4-5, CM 209, commentaries. Avnei Nezer YD:454-457. Tzitz Eliezer IV:5:2 VII:48:12. Halochose I:30.]

B) *Vehechezakta Bo*

The Torah says: *If your brother shall [begin to] fall and his hand shall falter, you shall strengthen him ... and your brother shall live with you.* 'Strengthen' implies that it is important to help before he falls all the way and needs to be 'picked up'. One should provide ways to stop the poor man falling to the point that he needs to ask for charity. Though written in the style of an independent *mitzvah*, it is counted as the best form of *tzedaka*. Make him 'live with you' (*hachayaihu*) by sharing rather than giving.

The recommended ways to fulfill this are: giving him a gift; providing him with a free loan; forming a partnership with him; providing him with work. If the gift is given before he is impoverished, he will not be embarrassed to accept it. The latter two are the ideal, with utmost being the partnership.

Investing involves loans and partnerships. Loaning money to a fellow Jew is a *mitzvah* in its own right. There is an order of precedence, with the highest priority given to the poor. However, the *mitzvah* is also fulfilled when loaning to a wealthy person who needs the funds at that moment. Furthermore, there is a specific *mitzvah* to sell to and to purchase from a fellow Jew, rather than a non-Jew, if there is a choice. The poskim apply the same order of precedence, and add more. For example, one should always take into consideration the effort exerted by the other person. It is harder for an old or infirm person, and often for a woman, to go through the effort to sell or buy something. Therefore, one should give these people preference. [See Sifra Behar 25:14 35. Rambam, Matnos

Aniyim 10:7. Tur, Sh Ar OC 249:6, 251:6, commentaries. Ahavas Chesed I:1 3: 5:1-6 6:10-14 etc., (*nesiv hachesed*). II:21 (footnote *ke'ein*), Tzedaka Umishpat 1:3185]

C) Supporting residents of Eretz Yisroel

In the order of precedence of worthy recipients of *tzedakah*, residents of *Eretz Yisroel* come before the poor of another community. Thus, when choosing between residents of another community *Chutz La'aretz* and the poor of EY, one should give priority to EY residents. The poskim debate whether they are treated equally to those in one's home community, or only before the members of a different community, but after one's own community. Furthermore, the poskim debate whether the rule applies to those who were poor before settling in EY, or only to those who settled there with prospects of livelihood, who then fell on hard times.

Some poskim point out that one is not obliged to fund his fellow's *mitzvah* of *yishuv EY*. When funding the Torah study of a scholar, one receives a share in it. This is due to a special arrangement, unique to Torah study, and expressed in the Torah. When helping a fellow do another *mitzvah*, one still gets rewarded, albeit not as a personal fulfillment. Thus, helping a fellow Jew in EY, especially one who was born there and is not relying on a free gift, should be considered an advantage in the hierarchy of precedence. Nonetheless, it can not be considered an obligation and the fulfillment of *yishuv EY*. If preferential treatment of EY residents deprives other Jews of their livelihood, it should not be considered a factor. If one can patronize a company that will provide Jews with livelihood, it is always preferred to do business this way, regardless of where they live. [See Tur Sh Ar YD 251:3, commentaries. Refs to section B.]

In conclusion, one who purchases real estate in EY is partially fulfilling *yishuv EY*. Otherwise, all other things being equal, there is advantage to supporting and patronizing, directly or indirectly, EY residents. This is not personal fulfillment of the *mitzvah* to settle in EY. [It might be fulfillment of *araivus*, according to some poskim. It also increases the likelihood of showing preference for a Jewish counterpart.] It should also not be at the expense of other Jews who might already be reliant on one's business interactions.

On the Parsha ... [*Avraham said*]: *I sojourn and settle amongst you, "give" me a plot for a grave .. let him "give" me .. for the full cost .. to Avraham as a purchase .. [23:4 9 18]* Avraham had not purchased land for a dwelling. He had also never accepted land as a gift. Yet he insisted on the gift of a grave, and also purchased it! [*See Ramban, Or Hachaim*] Furthermore, after death one is not obligated in *mitzvos*! When commanded to move to EY, he was not told to purchase property there. He lived in tents, fulfilling *yishuv EY* personally, without *kibush*. By purchasing a burial plot, he fulfilled a different aspect of the *mitzvah*. He would no longer be able to perform *yishuv* personally, but his investment would provide support for the later generations who would be living there. Demanding it as a gift made it hard to retract. But the passive recipient might not count it as a *mitzvah*. [*See Ibn Ezra 19. This could answer Ramban's question. Also based in part on a conversation that Rav Shach zt"l had with the Chofetz Chaim.*]

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