

ter relatives. This refers to good friends, as would be the case with our questioner.

When deciding which learning-institution to support, *hakaras hatov*, showing gratitude arises. This is usually considered an ethical matter, but in this case, it applies *halachically*. The Talmud raises this with regard to whether a parent or a teacher takes precedence in terms of attending to their needs. *Hakaras hatov* applies on both the personal, communal and national levels. On the personal level, one should help support the institutions that benefited him in the past. Within a community, institutions serve the needs of the community in a number of direct and indirect ways, including their mere presence. These are institutions that are committed to the local community. [The obligation to support some institutions is compulsory [see above] and cannot be paid for from *maaser*. Here we refer to non-compulsory institutions.] On the national level, certain institutions provide leadership and scholarship for the entire *Klal Yisroel*. They draw students from all over. They can not be considered solely communal institutions for their areas. They are not committed to a specific community. All Jews participate in their support in gratitude. Therefore, they could move around, since they benefit from everyone.

It would appear that one should rather give his *maaser* to his old yeshiva. His teacher who taught him most of his knowledge would normally take precedence even over his parents. Nowadays, this would apply to one's yeshiva. His friends are lower on the scale than family members. Furthermore, our questioner has made a commitment to his old yeshiva. However, the *poskim* maintain that a teacher only comes before a father if he teaches free of charge [although in our case, the yeshiva reduced the fees, amounting to teaching some Torah free of charge.] Furthermore, another issue must be considered. If one is aware of one person in more immediate need than another, he should give his *tzedaka* to him. The reason for asking our question is based on information the questioner has about the situation of his friend. Accordingly, he should rather give the *maaser* to his friend. To satisfy his commitment, he could give some of the *maaser* to his yeshiva. [See Kesubos 90a Nedarim 65b Bava Basra 8a-11a, *Poskim*. Tur Sh Ar YD 242:34 248 251, commentaries. Chochmas Adam 145:1. Tzedakah Umishpat 1:6-8 6:2-6 11 14, notes.]

In conclusion, notwithstanding his commitment, the former yeshiva student may give some of his *maaser* to his close friend.

**On the parsha ... and you shall choose the life, so that you live ... [30:19]** Why does Hashem need to tell us to choose the life? Who would choose the death? Why are we commanded it as a *mitzvah*? And why does Hashem need to bring witnesses to this? Hashem actually helps us in the decision. Why? [See *Rashi*, *Ramban* etc.] The Torah refers to using our discretion even in cases where the distinction between right and wrong is vague. Indeed both choices might be virtuous, and it is difficult to decide which is more virtuous. Yet, if the wrong choice is made, it could make a major difference, as with the two possible recipients of the *tzedakah* in our case. Hashem says, if we try our hardest to do the right thing, He will help us in our choices. We need to investigate and study. He will ensure that we will choose life. **כתיבה וחתימה טובה**

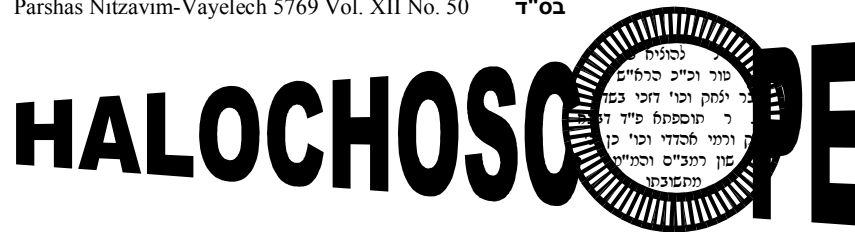


In honor of the completion of Volume XII of Halochoscope. In memory of Rochel Devorah bas R.

Moshe a'h, whose *yahrzeit* is on the 24<sup>th</sup> of Elul.

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**This week's question:**

Someone has a limited amount of *maaser* money. He undertook to repay his yeshiva the money that they reduced his tuition from *maaser* money, although the yeshiva never asked for it. He also has friends who need *tzedaka* money. Which cause takes precedence?

**The issues:**

- A) *Maaser Kesafim*
- B) Paying tuition to a yeshiva
- C) Priorities in distributing *maaser* money

**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 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 *maaser kesafim* 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 obvious interpretation of this Talmudic passage is a Rabbinically mandated maximum 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 *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) Paying tuition to a yeshiva**

As mentioned, one may reserve the option to choose how to spend his *ma'aser*. The basis for this is that not everyone considers it designated *tzedaka* money. 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* is not 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*, or tithes. 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 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.

One may also 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 a personal fund, but limited to spending on food items. The ideal way to spend it was on animals offered as *korbanos shlamim*, that are mostly eaten by the owner. 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, including 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* that one pays for. Paying for it with *ma'aser* is like paying off a debt with other people's money. [See Chagiga 7b-8a, Gitin 30a-b, Tosefta Peah 4:16, Poskim. Tur Sh. Ar. YD 245:4, 249:1, 331:146, commentaries.]

The obligation to pay tuition is a form of *sechirus*, payment for labor or services. A parent has a personal obligation to teach his children. If he chooses not to, he must hire a *melamed*, teacher, and pay him. The *melamed* is thus performing the *mitzvah* on behalf of the parent. The *melamed* is really independently required to teach any Jewish child. Therefore, he should be doing it for nothing. The Talmud derives this from the Torah, where Hashem asks of us to emulate Him. Just as He does it free, so should we. However, this applies mainly to teaching adults, and specific subjects. Even so, one may charge

for his time, as opposed to a service charge for the job. To the extent that it applies to the *melamed* of children, he too may charge for his time. From the perspective of a parent, the obligation of any other Jew does not relieve him of his own obligation. Therefore, he has an obligation to engage a *melamed*, for pay. Any Jew is obliged to study Torah himself. If he needs to be taught, he may not expect it of any other Jew to teach him. If necessary, he must hire a teacher or even a study partner.

When authorities have the power, they should compel a father to pay for his son's tuition. If he is out of town, they may collect the tuition from his assets in his absence. The Rabbis instituted that every Jewish community must have a hired *melamed*, supported by its members, primarily to teach the children of the poor. This was enforced with harsh penalties. This applies to a child who has not completed his studies of the Written Torah.

An adult has a personal obligation to study. The common practice is to pay to be taught any subject, and to consider it payment for time. This is the basis for paying for a yeshiva, where the students are considered adults. However, due, in part, to the concept of teaching free of charge, it is common for a yeshiva to reduce the charge for poor students. In many cases, the yeshiva will carry other costs of keeping the students, such as board and lodging. This is the yeshiva's *tzedaka* for the poor student. If an adult is unable to devote enough time to his personal studies, he may pay toward the studies of other students. He may stipulate that he get some of the merit, and that it should count towards his own study. [This applies to the *mitzvah* to study, independent of the *mitzvah* to know the Torah. One cannot hire someone else to know the Torah for him.] Contributing to a yeshiva counts towards this. However, it is a separate obligation, rather than a form of *tzedaka*. Nonetheless, if the yeshiva covers the living costs of students, the money donated could be broken down. Part could go toward the donor's *mitzvah* of Torah study, with the remainder going towards supporting poor students, and their teachers, as *tzedaka*.

One should pay his debts before giving *tzedakah*. If he owes money to an institution, he may not use *ma'aser* to repay it. Our former yeshiva student has no debt to his yeshiva. They reduced the charges or excused them. The student personally committed to pay for his tuition from *ma'aser* money. He stipulated this before undertaking the obligation. He may use *ma'aser* to pay it up. He could use it for his *devar mitzvah* of Talmud Torah, if he does not have the time or ability to study himself. If he will fulfill Torah study himself, he may use the *ma'aser* as *tzedaka*, to support the living costs of poor teachers and students. [See Nedarim 36b-37b Kidushin 29a-30b Bava Basra 21a Bechoros 29a, Poskim. Tur Sh Ar YD 245:1-7 246:1-5 CM 163:3, commentaries. Tzedakah Umishpat 1:n85.]

### **C) Priorities in distribution of ma'aser**

We have discussed the right of a donor to decide where to give his *ma'aser*, including the use for a *mitzvah*. Assuming it will be used for *tzedakah*, there is an order of precedence for giving and receiving *tzedakah*. The first in line should be poor relatives who will be enabled to study Torah and observe *mitzvos* if they are given the *tzedakah*. Next are G-d-fearing relatives. Next come the poor of one's own community. After this come the poor of Eretz Yisroel and then the poor of other communities. Within the list of poor, one should donate to Torah scholars before others. If they are all equal, the *kohain* comes first, and so on. Some causes override all others, such as redeeming captives and arranging weddings, especially for orphans. The poor of one's 'household' come right af-