



# **Tzedaka and Maaser Kesafim**

A Practical Guide To Giving Charity

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## Mitzvah of Tzedaka

Everyone knows that there is a Mitzvah to give Tzedaka<sup>1</sup>. What is less well known is that refusing a pauper's request for help is a violation of the prohibition <sup>2</sup>לא תאמץ את לבבך ולא תקפוץ את ירך. Even after one has already given enough charity to fulfill his obligations, turning a pauper away empty-handed is a violation of <sup>3</sup>אל תשיב דך נכלם.

According to most Poskim, the above-mentioned prohibition applies only when the pauper is asking for assistance<sup>4</sup>. Thus, walking by a pauper who is begging in a shul or on a street would be prohibited. In

<sup>1</sup> Shulchan Aruch Yoreh Deah 247:1 points out that the Mitzvah is repeated numerous times in the Torah. This underscores its importance.

<sup>2</sup> Dvorim 15:7

<sup>3</sup> Yoreh Deah 249:4 according to the explanation of Shviley Dovid.

<sup>4</sup> Rambam Sefer Hamitzvos 232, Chinuch 478, Rishon Ltzion, Shevet Halevy 9:199, Maaser Kesafim rule that mere knowledge of the existence of a pauper obligates one to help.

Ri Kurkos implies that one must actually see the pauper.

Rashba Shvuos 25, Rambam Matnas Aniyim 7:2, Imray Binah Schitah 18, Arugas Habosem Yoreh Deah 219, B'orach Tzedaka 1 (5), Derech Emunah, Even Yisroel 9:92, Tzedaka Umishpat 1 (3) rule that the obligation is only when the pauper asks for assistance.

contrast, the mere knowledge that there is a pauper somewhere who requires assistance would not trigger a violation. Many Poskim rule that receiving a mass-mailing would not create an obligation to donate<sup>5</sup> (although it is certainly commendable). However, a Gabbai Tzedaka or messenger sent by the pauper would create an obligation<sup>6</sup>.

There is a general rule of *עוסק במצוה פטור מן המצוה*, one who is preoccupied with a mitzvah need not stop in order to fulfill another mitzvah. Therefore, one who is davening need not give Tzedaka if it would require interrupting his davening.<sup>7</sup> In contrast, one would have an obligation to give Tzedaka on his way out of Shul after Davening.

The exemption of *עוסק במצוה* generally does not apply while one is learning, and therefore one would be obligated to interrupt his learning to give charity<sup>8</sup>.

### *Definition of a Pauper*

A person is entitled to collect charity if he does not have the means to support himself and his family for one year<sup>9</sup>. If one's job<sup>10</sup>/income plus his savings will not suffice for the year, he may collect charity even though he has funds to cover his immediate needs.

If a person owns investments or luxurious personal items, he is obligated to sell them before accepting public charity<sup>11</sup>. This includes any family heirlooms. However, if one is unable to realize the true value of his investments because it is known that he is desperate, he may accept charity until he is able to sell his assets at their market value<sup>12</sup>. The above applies when a person's assets are sufficient to cover his living expenses for a year. In contrast, if liquidating all available assets would not generate sufficient funds to support his family for a year, he would not be obligated to do so (although he would be limited in the

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The consensus of Achronim seems to accept this lenient view.

<sup>5</sup> Tzedaka Umishpat 1 (3), Halichos Chaim 36 quoting Rav Chaim Kanievsky and Rav Pam, B'orach Tzedaka 1 (12) quoting Rav Elyashiv, maintain that there is no obligation to respond to every letter. See however Bier Moshe 4:92 and Maishiv Bhalacha 18 that argue.

<sup>6</sup> Kol Eliyahu 2:19, Maishiv Bhalachah 18.

<sup>7</sup> Derech Emunah. Rav Gross (Tel Talpiot 66) extends this exemption to pisukei dzimruah as well.

See also B'orach Tzedaka that Rav Moshe Feinstein would leave a pile of money near his shtender, so that paupers could help themselves without disturbing his davening.

See also Mishna Berurah 92 (36) that it is improper to collect funds during *Krias Hatorah*. Pri Mgadim 132 writes that it is improper to collect during *Chazaras Hashatz*.

<sup>8</sup> The general rule is that one must interrupt his learning to do a mitzvah when there are no others that can perform the mitzvah. Therefore, Rav Chaim Kanievsky (Halichos Chaim 36) writes that one must interrupt his learning to give Tzedaka.

See however, Chut Shanee Yom Tov pg 352, Shevet Halevy 10:157, that one need not interrupt a public learning seder for a pauper. See also Ohr Zarua 161.

<sup>9</sup> Yoreh Deah 253:1.

See however, Shevet Halevy 2:120 (based on 253:2) that today, one is qualified to accept Tzedaka unless he has enough capital to live off its income indefinitely. However, Chasam Sofer 239 and Derech Emunah 9:13 maintain that a person may never collect more than he needs for one year.

<sup>10</sup> Tzedaka Umishpat 2:6.

<sup>11</sup> Yoreh Deah 253:1.

<sup>12</sup> Limitations and parameters of this halachah are discussed in Yoreh Deah 253:3.

amount of funds that he may accept). Regardless, one is not obligated to sell his house to avoid accepting charity<sup>13</sup>.

Under normal circumstances, a pauper may not collect additional funds once he has received enough to support himself for a year. However, if he is on a fundraising trip, he may continue collecting until the end of his journey<sup>14</sup>. In addition, if there is an anticipated large expense that the pauper will be unable to cover if he waits until the year, he may begin collecting earlier.<sup>15</sup>

The above guidelines define when one has the halachic right to accept charity. However, Chazal teach us that one should go to great lengths to avoid accepting charity<sup>16</sup>. One should accept a job that is beneath his dignity before accepting Tzedaka. Nevertheless, there are times that a person is obligated to accept Tzedaka. An elderly or infirm person that refuses to accept charity is compared to a murderer<sup>17</sup>. If his pride leads him to endanger his own life to avoid accepting charity, he would presumably risk other people's lives as well because of his arrogance. One certainly may not steal or defraud another in order to avoid accepting charity.

According to most Poskim, one need not support a pauper that has the ability to get a job and simply refuses to do so<sup>18</sup>. However, one must carefully verify that that is truly the case, and one should not be quick to jump to conclusions<sup>19</sup>.

If a pauper asks for food, one is obligated to give him<sup>20</sup>. One may not delay in order to verify that he is truly a pauper<sup>21</sup>. However, if the pauper is collecting for other needs, the donor is entitled to first verify that the person is indeed a pauper. That being said, if a person chooses not to do any background checks, he may not avoid giving charity on the basis that perhaps the person is a fraud<sup>22</sup>.

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<sup>13</sup> Shevet Halevy notes to 253, Yosef Ometz.

<sup>14</sup> Yoreh Deah Ramuh 253:1

<sup>15</sup> Derech Emunah 9:13

<sup>16</sup> Yoreh Deah 255:1

<sup>17</sup> Yoreh Deah 255:2

<sup>18</sup> Rashdam 166, Kli Yakar Mishpatim 23:5, Drisha Even Haezer 71, Maishiv Bhalachah 18, Maaseh HaTzedaka page 136 quoting Rav Chaim Pinchas Sheinberg.

See however, B'orach Tzedaka 5 (26) quoting Rav Elyashiv that one still has an obligation to support the person's wife and children, since they cannot be forced to suffer for their husband's/father's behavior. See also Smak Mitzvah 20, Igros Moshe Yoreh Deah 4:37:4, Divrey Shaul Kesubos 67, B'orach Tzedaka page 386 quoting Rav Chaim Kanievsky that write that there is an obligation to support such people.(see however Dibros Moshe Bava Kama 89 hiurah 16)

<sup>19</sup> See Emes Lyaakov Yoreh Deah 249 note 141, Shevet Hakehasee 5:177 that explains that often, a person who appears to simply be lazy actually suffers from some form of illness that is preventing him from functioning correctly. Shevet Hakehasee concludes that although one must give a pauper when the cause of his unemployment is unclear, one may give priority to other paupers who are clearly unable to support themselves.

<sup>20</sup> Yoreh Deah 251:10

<sup>21</sup> See Tanis 21a for an illustration of the punishment that befalls one that hesitates when asked for charity.

<sup>22</sup> Mierer Kesubos 68 writes that even when there are reasons to suspect that the 'pauper' is not entitled to Tzedaka, one must continue to support him until the suspicions are confirmed. Chidushay Harim Choshen Mishpat 97:1 implies this as well.

### *Level of support:*

The obligation of Tzedaka is not simply to provide the pauper with enough food to keep him alive. Rather, the Torah obligates us to provide him with all of his needs, **די מחסורו אשר יחסר לו**. The gemara<sup>23</sup> relates stories where paupers were given fine wine, a stallion to ride on, and even a servant to accompany him. As a matter of practice, this concept's application is severely limited according to many Poskim:

- The pauper is only entitled to the lifestyle that he was originally able to afford, and not if he lived beyond his means<sup>24</sup>. According to some Poskim, it applies only to a pauper that had been born into wealth<sup>25</sup>; a pauper of modest upbringing that upgraded his lifestyle as he became wealthy could not maintain that artificial standard if he became poor once again.
- **די מחסורו** applies to food or personal items that refined people may require<sup>26</sup>, and to maintaining the pauper's dignity<sup>27</sup>; expensive tablecloths or other luxury items do not qualify. In addition, it applies only to a 'normal' lifestyle. Extraordinary 'needs' would not be subject **די מחסורו**.<sup>28</sup>
- According to some Poskim, only an old or infirm pauper that is not capable of changing his lifestyle is entitled to such levels of support; in contrast a young and healthy pauper is told to reduce his standard of living<sup>29</sup>.
- A person may only collect charity if he qualifies as a pauper and has sold off most of his personal belongings. A person that has not done so is not entitled to charity at all, and can certainly not claim **די מחסורו**.
- According to Mierree, a donor need not provide a pauper with a higher standard than he himself enjoys.<sup>30</sup>
- The obligation to provide **די מחסורו** is on the public and not on any individual donor<sup>31</sup>. Therefore, an individual donor that is approached is not obligated to provide the pauper with all of his needs. Rather, he may let others know about his plight so they can all share the burden.

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See however, Maharsha Kesubos 68 and Avney Yoshfe 4:101 that argue. Presumably, if one has the ability to verify the paupers credentials but chooses not to do so, all would agree that there is an obligation to give Tzedaka, וצ"ע

<sup>23</sup> Kesubos 68b

<sup>24</sup> Aruch Hashulchan Yoreh Deah 250:2

<sup>25</sup> Maharsha Kesubos 68

<sup>26</sup> Tosfos Kesubos 69a.

<sup>27</sup> Kesubos 68 with respect to a stallion and a servant to run before him.

<sup>28</sup> Shitah Mekubetzes Kesubos 69a quoting Talmidey Rabbeinu Yonah that a luxury that 'only one in a thousand need' does not qualify. In contrast, the Gemara clearly states that a pauper that was accustomed to eating aged wines and fatty meats is entitled to maintain his lifestyle.

<sup>29</sup> Mierree Kesubos 68b.

<sup>30</sup> Kesubos 68.

<sup>31</sup> Yoreh Deah 250:1.

- The most significant limitation is that, as explained in section “Priority”, the most pressing needs are given the highest priority for Tzedaka funds<sup>32</sup>. Therefore, although a particular pauper may claim a high standard of living, if there are limited funds, we focus on the other paupers that have more basic needs. Therefore *מחסור די* will only be applied after the basic needs of all paupers are met, which is unfortunately not very common<sup>33</sup>.

## Priority

We are all faced with endless opportunities to donate charity. An important question is how does one prioritize between the many worthy causes? Which people or organizations deserve our focus? The following is a summary of the priority that Halacha gives to different causes<sup>34</sup>:

- 1) One must first provide for himself, his wife, and his young children<sup>35</sup>. One should not give excessive charity if it will deprive his family of their basic needs<sup>36</sup>.
- 2) Parents. A person is obligated to support his parents<sup>37</sup>. It is preferable to support one's parents with private non-Tzedaka money<sup>38</sup>; however if cannot afford to do so, one may use Tzedaka funds. One is obligated to support his grandparents as well<sup>39</sup>.
- 3) Sons and Daughters. Adult sons and daughters have priority for Tzedaka over other relatives. Grandchildren have priority as well<sup>40</sup>.
- 4) Sisters and brothers.
- 5) Other relatives.
- 6) Wife's relatives.<sup>41</sup>

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However, if the public is unwilling or unable to donate the appropriate amount, the obligation falls back on each individual.

<sup>32</sup> Yoreh Deah 251:7.

<sup>33</sup> A notable exception is when one is providing for his parents. As explained in section “Priority”, a parent's need comes before other paupers. Therefore, one is obligated to provide one's parents with their full *מחסור די* before giving charity to others. Chasam Sofer Yoreh Deah 229.

<sup>34</sup> These halachos are discussed in Yoreh Deah 251: 3-9.

<sup>35</sup> Yoreh Deah 251:3. Shach limits this to children below the age of 6. However, Igros Moshe Yoreh Deah 1:143 maintains that today, there is an obligation to support children until they are married.

<sup>36</sup> Aruch Hashulchan clarifies that this applies only to one's basic needs. If a person lives a comfortable lifestyle, he is obligated to give regular charity.

<sup>37</sup> See Chasam Sofer Yoreh Deah 229 that one must give all of his Tzedaka money to parents if they need it.

<sup>38</sup> Yoreh Deah 240:5.

See however Maharil 54, Bais Dino Shel Shlomo Yoreh Deah 1, Shevet Halevy 5:133 that this restriction does not apply to *Maaser kesafim*.

<sup>39</sup> Tzitz Eliezer 7:38, Tzedaka Umishpot 3 (19)

<sup>40</sup> Tzitz Eliezer 7:38. See also Pischei Teshuva

<sup>41</sup> Pischei Teshuva quotes Maharam Mintz 7 that a wife's relatives do not have priority. Maharam Ziskind rules that they should receive 1/3 of what one gives his own relatives. See however Aruch Hashulchan Yoreh Deah 251:8 who rules that a wife's relatives have equal priority to one's own relatives.

- 7) Paupers that live in your neighborhood<sup>42</sup>
- 8) Paupers that live in your city<sup>43</sup>
- 9) Paupers from Yerushalayim<sup>44</sup>
- 10) Paupers from Eretz Yisroel
- 11) All other paupers.

Within any given category, a *Kohein* has priority over a *Levi*, who has priority over a *Yisroel*. However, a Talmud Chacham has priority over even a *Kohein*<sup>45</sup>. In addition, a woman has priority over a man.<sup>46</sup>

The above priorities are subject to three important limitations:

- 1) A pauper with greater needs has priority over paupers with lesser needs<sup>47</sup>. Thus, if a local pauper has sufficient food but needs clothing, while paupers from another city do not have food, the paupers from the other city should be given priority over the local paupers<sup>48</sup>. This rule has an important exception. Relatives have priority over unrelated paupers, even though the relative's needs are less critical. Thus, one should provide his adult children with all of their needs even though there are other paupers that have more pressing needs. There is a dispute among the Poskim as to which relatives are included in this exception<sup>49</sup>.
- 2) According to the Chofetz Chaim, a pauper that is capable of obtaining funds elsewhere should be given lower priority than a pauper who will have a harder time obtaining funds elsewhere.<sup>50</sup>

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See also Tzitz Eliezer 7:38, Shevet Halevy that one's in-laws are not treated like one's own relatives, but do receive priority over unrelated paupers.

<sup>42</sup> Aruch Hashulchan Yoreh Deah 251:1 quoting Tana Dabay Eliyahu 27.

<sup>43</sup> Yoreh Deah 251:3, Shach and Bach.

<sup>44</sup> Chasam Sofer Yoreh Deah 233, Birkey Yosef.

<sup>45</sup> Shemesh Tzedaka 3, quoted by Pischei Teshuva, Aruch Hashulchan, rule that a local pauper has priority over a Talmud Chacham from another city. However, Ahavas Chesed (Nesiv Hachessed 1:6 (14), Divray Chaim Choshen Mishpat 2: 68 write that a Talmud Chacham has priority. Chachmas Adam 145:4 is unsure.

<sup>46</sup> Yoreh Deah 251:8

<sup>47</sup> Yoreh Deah 251:7

<sup>48</sup> Yoreh Deah 251:7, Chasam Sofer Yoreh Deah 234

<sup>49</sup> Panim Yafos Parshas Rieh.

Shevet Halevy 5:134:5 limits this to household members only. In contrast, Emek Shaila 69, Nesiv Hachessed 6:4, Derech Emunah 7 (102), Aruch Hashulchan, Minchas Yitzchok 6:101 extend it to all relatives. See Chasam Sofer Yoreh Deah 234 states that a parent is included in this exception, but in response 231 he rules that one should give half of his funds to such relatives, and the other half to the paupers with more pressing needs.

<sup>50</sup> Ahavas Chesed 6:3.

However, one can argue that this rule is said by the priority of a woman over a man. Aruch Hashulchan states that if the man has a more pressing need, a woman does not have priority. This implies that the

- 3) The levels of priority are not meant to be exclusive, and one should not distribute all of his funds to the highest level of priority<sup>51</sup>. Under normal circumstances one should distribute half of his funds to the highest level, and distribute the rest to other paupers<sup>52</sup>.

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more pressing need that can obtain it elsewhere trumps a less-pressing need that will have more difficulty obtaining it? וצ"ע

<sup>51</sup> See the Poskim mentioned in the next footnote. In addition, Maharam Ziskind 10, Givaas Pinchus 64, Aruch Hashulchan Yoreh Deah 251:5 all state that one should not distribute all of their Tzedaka funds to the highest level of priority, but do not give specific guidelines.

See also Igros Moshe Yoreh Deah 1:144.

<sup>52</sup> Derech Emunah Matnas Aniyim 7 (104) quoting Chazon Ish and Chasam Sofer, Avkas Rochel 3, Gan Hamelech 70.

See however Daas Torah Yoreh Deah 251:3 quoting Tana Dbay Eliyahu, Maharsham 1:32 quoting Ohr Zarua Tzedaka 22, Radvaz 4:147 (1218) that one should give all of his Tzedaka funds to the highest level of priority.



## Amount of charity

We are all surrounded by endless opportunities and requests for charity. Perhaps the most important question regarding the Tzedaka is how much is a person obligated to give? Shulchan Aruch<sup>53</sup> states that there are three levels. A generous person will give twenty percent of his assets to charity. An average person will give ten percent. Anything below ten percent is considered stingy<sup>54</sup>. However, the Chofetz Chaim<sup>55</sup> qualifies these levels and explains that the above guidelines apply only when there are few paupers, or to a person who cannot easily afford to give larger sums to charity; for him twenty percent is considered generous, while ten percent is considered average. In contrast, Chofetz Chaim suggests that a wealthy person who can easily afford to give more would be obligated to do so. They have a strict obligation to give at least twenty percent, and should preferably give even more<sup>56</sup>.

In determining what level of Tzedaka is appropriate for you, one should keep in mind the words of the Rambam<sup>57</sup> לעולם אין אדם מעני מן הצדקה, ולא דבר רע ולא היזק מתגלגל על ידה, שנאמר והיה מעשה הצדקה שלום. כל המרחם מרחם עליו שנאמר ונתן לך רחמים ורחמך והרבך.

Regardless of the Tzedaka 'bracket' one is in, the percentage that must be given is a one-time obligation. Once a person has given the required percentage of his assets or income, he has no further obligation<sup>58</sup> until he earns additional funds, which would then be subject to the same level<sup>59</sup>. Nevertheless, one may not turn any pauper away completely empty-handed, and must offer him at least something to show that one commiserates with his plight<sup>60</sup>.

Even the poorest of poor is obligated to give a minimal amount of charity each year, equal to a third of a shekel<sup>61</sup> (approximately ¼ of an ounce of silver<sup>62</sup>), which is worth approximately ten dollars today.

<sup>53</sup> Yoreh Deah 249:1.

<sup>54</sup> Mechaber implies that although below ten percent is considered stingy, it is not strictly forbidden. See however, Rabbeinu Yeruchem, quoted by Bais Yosef Orach Chaim 656, that implies that there is an obligation to give at least ten percent. Furthermore, Mechaber may be limited to instances where there are few paupers, and their needs can be satisfied by others.

<sup>55</sup> Ahavas Chesed 19:4 quoting Vilnah Goan, Birkey Yosef.

<sup>56</sup> According to Shielas Yaavetz 6, Shevet Halevy 2:121, Even Yisroel 9:92, Yufeh Mareh on Yerushalmi Peah 1, Prisha, there is an obligation to give more than 1/5

According to Ahavas Chesed 2:20, Chachmas Adam 144:10, Minchas Yitzchok 5:34 one should, but is not obligated to, give more than 1/5.

According to Minchas Pitim 249, Igros Moshe Yoreh Deah 143, Even Yisroel 9:92 explaining Ramuh, one may not give more than 1/5

<sup>57</sup> Matnas Aneyim 10:2, Shulchan Aruch Yoreh Deah 247:1

<sup>58</sup> See Igros Moshe Yoreh Deah 1:163, Maaseh Ish volume 2 page 114 quoting Chazon Ish, Bikurey Yaakov 656:11 that one should not spend collectively more than 1/5 of his assets on all Mitzvos collectively. Accordingly, Igros Moshe rules that one should not spend an excessive amount on purchasing a Sefer Torah since it will crowd out other Mitzvos.

<sup>59</sup> Yoreh Deah 249:1.

<sup>60</sup> Yoreh Deah 249:4.

<sup>61</sup> Yoreh Deah 249:2.

<sup>62</sup> Tzedakuh Umishpat 1 (13) writes that it is the value of 6.5 grams of silver. He adds that according to Shach, one should preferably give the value of 75 grams of silver.

## Maaser Kesafim

### *Difference between Tzedaka and Maaser.*

Many people have the custom<sup>63</sup> to give Maaser Kesafim, one tenth of one's income, to Tzedaka<sup>64</sup>. Maaser differs from the classic obligation to give Tzedaka in a number of ways: 1) Tzedaka is based on needs; one is only obligated to give Tzedaka if there are paupers that require assistance. In contrast, the custom to separate Maaser applies even if there are no current needs<sup>65</sup>. 2) Tzedaka is fulfilled simply by giving money to paupers. In contrast, many Poskim maintain that one must calculate his exact profits, and separate precisely one-tenth to properly fulfill the custom of Maaser<sup>66</sup>. 3) The amount of Tzedaka one is obligated to give is based on his assets. In contrast, Maaser is based on his income<sup>67</sup>. 4) Tzedaka applies only to funds given to the poor. In contrast, some people use Maaser funds for other Mitzvah purposes<sup>68</sup>.

### *How to Calculate Maaser*

Maaser is taken off net profits. Expenses incurred running a business are deducted before calculating Maaser. This includes both the direct costs of running a business, plus additional expenses such as travel, work clothing, etc. However, only costs necessary for the business may be deducted. A person who buys himself a luxury car that is not needed for their business would not be able to deduct the expense from his Maaser calculation, regardless of whether the car is being paid out of a business

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<sup>63</sup> According to Maharam 74, Bach 331, Shvus Yaakov 2:85, Chavos Yair 224, Pnay Yehoshua 2, Chelkas Yaakov 137, Shielas Yaavetz 1:6, Pischeh Teshuva Yoreh Deah 331, B'orach Tzedaka 2 (5) , Maaser is a custom but not a strict obligation.

<sup>64</sup> The concept of Maaser needs explanation. Everyone is obligated to give Tzedaka. Ten percent is the level of charity that a typical person is expected to give. If that is the case, what is the significance of the Minhag of Maaser- it is simply the basic requirement of Tzedaka? To make the question stronger, many people use Maaser funds to fulfill other mitzvos that are not strictly Tzedaka. If a person is obligated to give one tenth of his assets to Tzedaka regardless of the custom of Maaser, than anyone diverting Maaser funds for other Mitzvos will not be fulfilling his basic obligation of Tzedaka?

Perhaps the answer is that there is a basic difference how the amounts of Tzedaka and Maaser are calculated. Mitzvos are generally based on assets- if a Mitzvas Aseh will cost a person more than 1/10 or 1/5 (see Mishna Berurah Orach Chaim 656) of his net worth, he is often not obligated to do it. Maaser however, is based on income- to fulfill Maaser correctly one must give ten percent of his income, even if he already spent virtually all of the income before a pauper approached him. If this is correct, the custom to give Maaser is a tremendous Chumrah- people who spend most of their income as they earn it would still have to give ten percent of their income to fulfill Maaser, even though their obligation of Tzedaka is only ten percent (or twenty percent) of what is left. According to this, most people will still fulfill their ten percent obligation to Tzedaka even if some of his Maaser funds are used for other Mitzvos.

It should be noted that even Tzedaka and other mitzvos are somewhat based on income. The ten or twenty percent level is only spent once for any given asset or income, and a person has no further obligation to spend money for mitzvos until he earns additional income. Otherwise, a person that has a number of Mitzvos would be obligated to spend all of his available capital.

<sup>65</sup> See Tzedaka Umishpat 5 footnote 42

<sup>66</sup> See footnotes 72 and 73

<sup>67</sup> See footnote 64.

<sup>68</sup> See section "Uses of Maaser Funds"

account<sup>69</sup>. Similarly, personal expenses such as gas used for private travel, cannot be deducted from Maaser calculations.

One may deduct all business taxes before calculating Maaser. Thus, all employee taxes, sales tax, real estate tax for the business, and any corporate income tax reduces the profits subject to Maaser. In addition, one may deduct personal income taxes and social security taxes<sup>70</sup>. However, sales tax for personal items or real estate taxes on one's home cannot be deducted from Maaser according to many Poskim.<sup>71</sup>

It is often extremely difficult for a business owner to determine the precise amount of Maaser due. Although the Poskim state that one should separate the exact amount of Maaser and should not use estimates<sup>72</sup>, when this is not feasible, one may use an estimate<sup>73</sup>.

When calculating Maaser, most Poskim<sup>74</sup> permit one to offset losses and profits *if they occur in the same year*<sup>75</sup>. In other words, if a person's business earns a profit of \$100,000, but his investments suffer a loss of \$20,000, if they occur in the same year, one would only need to Maaser the net profit of \$80,000. However, if one earned a profit of \$100,000 during one year, and then suffered a loss of \$20,000 the following year, he may not 'claw back' the Maaser owed; he would be required to give \$10,000 of Maaser for the first year's profit, and could not reduce it because of a loss suffered the following year. Similarly, one who suffers a loss in one year may not 'carry forward' the loss to a subsequent profitable year. The Poskim recommend starting the year from Rosh Hashanah, since that is when a person's livelihood is determined<sup>76</sup>. Nevertheless, one may use a more convenient year if they wish. As a practical matter, it is often easiest to use the fiscal or calendar year that your taxes are based on<sup>77</sup>.

One is not obligated to Maaser unrealized gains. Thus, if one's assets appreciate in value, there is no obligation to Maaser the appreciation until the asset is actually sold. Furthermore, one is not obligated to Maaser profits until they are actually received. If one sells on credit, the profit is only realized when the invoices are actually paid<sup>78</sup>. In addition, one need not Maaser profits if the principal is still at risk<sup>79</sup>.

<sup>69</sup> Chavos Yair 224, Rav Moshe Shternbuch, printed in Am Hatorah 5743 choveres 5

<sup>70</sup> Igros Moshe Yoreh Deah 1:143, Tzedaka Umishpat 5 note 8. See however, Emes Lyaakov Yoreh Deah 249 that only exempts taxes that were withheld. Income tax that one pays at the end of the year must be Maasered.

<sup>71</sup> Igros Moshe Yoreh Deah 1:143, Tzedakuh Umishpat 5 note 8, Rav Shlomo Zalman Aurbach, (Kol Torah 5743 volume 39).

See however, Minchas Yitzchok and Shevet Halevy that permit under certain circumstances.

<sup>72</sup> Mierer Avos 9:16, Ahavas Chesed 19:3, Kneses Hagedola 249:1.

<sup>73</sup> Shevet Halevy 5:133:3 based on Mishnas Chachamim Yesodey Hatorah (end)

<sup>74</sup> Chavos Yair 224, Shielas Yaavetz 1:6, Shaar Ephraim 84, Bais Lechem Yehuda 249:3, Nodeh Beyehuda Yoreh Deah Tinyanah 198, Shevet Halevy 5:133, Igros Moshe Yoreh Deah 1:143 all permit offsets in certain situations.

See however Shvus Yaakov 2:86, Bais Dino Shel Shlomo Yoreh Deah 1, Yosef Ometz that one must give Maaser from every profitable investment, and may not offset it with losses suffered elsewhere.

<sup>75</sup> Nodeh Beyehuda Yoreh Deah Tinyanah 198, Shevet Halevy 5:133, Igros Moshe Yoreh Deah 1:143

<sup>76</sup> Chavas Yair 224, Shevet Halevy 5:133

<sup>77</sup> Shevet Halevy 9:201

<sup>78</sup> Shevet Halevy 9:201, Rav Shlomo Zalman Aurbach, (Kol Torah 5743 volume 39), B'orach Tzedaka page 367 quoting Rav Nissin Korelitz.

Thus, a speculative investment that is currently paying out returns would not be considered profits for Maaser calculations until the original investment is recovered. In contrast, the interest generated by a secured loan would be Maasered as it is received.

Another common question is how to deal with funds that are reinvested in the business. It would seem that any funds that are needed to adequately capitalize the business would not be subject to Maaser. Just like a conventional partner would not have the right to demand distributions if the profits are required to maintain the business, one would not be required to make a Maaser distribution either. In contrast, if the profits are not needed to maintain the business, but are rather kept in the company for tax purposes or to invest in additional opportunities as they arise, one should take Maaser immediately. The above presumes that the decision whether to distribute or reinvest the profits is under your control. However, a passive investor would have no obligation to Maaser the profits until he has the ability to withdraw the funds. If one directs his brokerage to reinvest the income or dividends of his portfolio, the profits should be Maasered.

One is only obligated to give Maaser on real gains. In contrast, gains that are attributable to inflation do not reflect a true profit, and one need not Maaser them<sup>80</sup>. A person that sells his house at a profit may deduct the amount of inflation during the period that he owned the property. However, some Poskim maintain that one should not use the official CPI index. Rather, one should calculate the 'halachic inflation rate' by comparing the value of the basic staples that consumers need<sup>81</sup>. As a matter of practice, this is extremely difficult, and as mentioned before, one is permitted to estimate his Maaser in such situations.

One is also permitted to add his expenses into the cost basis of his house. If a person buys a house for \$100,000, and over the years makes an addition which costs an additional \$75,000, if he then sells the house for \$175,000, there is no profit above his actual cost.

One who borrows money need not take off Maaser. The loan proceeds are not profit since they must ultimately be repaid. Therefore, real estate investor that 'cashes out' of his investment need not give Maaser at the time of the loan. Rather, he should give Maaser as the investment generates income, and may not deduct the mortgage payment or interest if the loan proceeds went to his personal use.

If one sells his house in order to buy a larger one, one need not Maaser the 'profit' on the first sale. Since it is not a business transaction, and the person is simply using the equity he built in one home to purchase another, it is not considered realized gains<sup>82</sup>. However, an investor that sells one property at a profit and then buys another investment property must Maaser the profits he made.

### *Maaser on Gifts and Inheritance*

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<sup>79</sup> Yosef Ometz

<sup>80</sup> Igros Moshe Yoreh Deah 2:114, Shevet Halevy 9:201, Avney Yoshfe 3:90 quoting Rav Elyashiv, B'orach Tzedaka 9:3, Vayeshev Moshe 1:16, Teshuvos Vhanhagos 1:565

<sup>81</sup> Igros Moshe Yoreh Deah 2:114, Vayeshev Moshe 1:16, Teshuvos Vhanhagos 1:565

<sup>82</sup> B'orach Tzedaka 9:8 quoting Rav Elyashiv.

Maaser is not limited to profits generated by business activity. Maaser should be given from money inherited<sup>83</sup> and to gifts received<sup>84</sup>. This holds true even if the donor/testator took off Maaser from his assets. An exception to this rule is when a person is supporting a child, and specifies that he does not want the recipient to give Maaser of the funds he receives. Since the funds are being given for a specific purpose, he may not use the funds for other purposes. However, if the recipient has other funds generating income, he must Maaser that income regardless of the wishes of his sponsor<sup>85</sup>.

There is a dispute as to whether Maaser must be taken from non-monetary gifts. Some Poskim maintain that one must separate Maaser, based on the value of the item<sup>86</sup>. However, others maintain that the custom is not to Maaser non-monetary gifts<sup>87</sup>. The common practice seems to follow this ruling.

### *Uses of Maaser funds*

The definition of Tzedaka is supporting the poor. Today, people typically call virtually any mitzvah performed with money 'Tzedaka' and therefore use Maaser funds for a wide range of activities. As a matter of Halachah, the primary use of Maaser funds should be to provide for the indigent<sup>88</sup>. Using Maaser funds for other mitzvos is subject to a dispute among the Poskim<sup>89</sup>. While the custom today is to be lenient and to use Maaser funds for certain other mitzvos as well, the focus should be on charity for the poor. Special emphasis should be placed on supporting relatives, and the focus of the remaining funds should be on supporting Torah scholars<sup>90</sup>. Regardless of the above, a person that separates one fifth of his income (as per the Mechaber's recommendation) may certainly use the second 1/10 for mitzvah purposes<sup>91</sup>.

Even those that permit using Maaser funds for mitzvos impose the following restrictions:

<sup>83</sup> Pischey Teshuva 249 quoting Shela, Ahavas Chesed 18:3 quoting Elyah Rabuh Orach Chaim 156:2

<sup>84</sup> Rabbeinu Yonah in Sefer Hayirah 213

<sup>85</sup> Igros Moshe Yoreh Deah 2:112

<sup>86</sup> Tzedakah Umishpat 5(5), Even Yisroel 9:92, Kol Torah 5743 volume 39 quoting Rav Shlomo Zalman Aurbach, Yosaf Ometz quoting Chayey Olam, rule that one must give Maaser. Tzedakah Umishpat qualifies that one only takes Maaser based on the amount that he would pay for such an item.

<sup>87</sup> Derech Emunah Matnas Aniyim 7 (27), Chut Shanee Shabbos page 331, Cheshev Haephod 3:33

<sup>88</sup> Ahavas Chesed 2:19, Rav Shlomo Zalman Aurbach.

<sup>89</sup> Ramuh 249:1 quotes Mahril 56 that one may not use Maaser funds for other mitzvos. Shach, Drisha and Taz quote Maharil, but then quote Teshuvos Rav Menachem that permits one to buy seforim with Maaser funds if he cannot otherwise afford to. Bier Hagola and Goan understood that all agree that one cannot use Maaser funds for a mitzvah that one is *obligated* to do, and that all agree that one can use Maaser funds for a mitzvah that is not obligatory. However, Chasam Sofer disagrees and maintains that Maaser is intended for paupers only. Nevertheless, because Maaser is only a Minhag, a person can choose when he accepts the Minhag how he will perform it. Thus, although mitzvos are not the true purpose of Maaser, if one accepted the custom with the intent to use the funds for other mitzvos, he may do so. Based on this, Shevet Sofer 84, B'orach Tzedaka 11:3 rule that today, where the widespread norm is to use Maaser for any non-obligatory mitzvah, anyone who accepts the custom of Maaser is presumed to have done so with the right to use the funds for mitzvos. However, Shevet Sofer only permits when one cannot otherwise afford to do the mitzvah.

See Pri Yitzchok that rejects these leniencies. See also Ahavas Chesed and Derech Emunah.

<sup>90</sup> Ahavas Chesed.

<sup>91</sup> Ahavas Chesed 2:19:3, Bais Din Shel Shlomo Yoreh Deah 1

- 1) One may not use Maaser funds for a mitzvah that he is obligated to do. Thus, one may not use Maaser funds to purchase an Esrog or Lulav for himself. In addition, if one made a pledge to an organization or obligated themselves to support a son-in-law without intending to use Maaser funds, he would be unable to change his mind later and use Maaser funds. If however, at the time he made the pledge his intent was to pay it with Maaser funds, he would be permitted to do so<sup>92</sup>.
- 2) One may not use Maaser funds to purchase an item of real value. It is permitted, however, to derive tangential benefit from his donation. Thus, one may use Maaser funds to purchase a kibbid<sup>93</sup> (see below). However, if one uses Maaser funds to attend a dinner, he must subtract the actual benefit he receives from the dinner meal<sup>94</sup>. Similarly, one may only use Maaser funds to purchase a raffle ticket if it has no real value. However, a raffle campaign that sells a limited amount of tickets and offers an expensive prize may have a real value, which must be paid for with personal money.<sup>95</sup> Some Poskim rule that under all circumstances, a prize won from tickets purchased with Maaser funds would belong to Tzedaka.<sup>96</sup>

It should be noted that the fact that one may not use Maaser funds for a particular purpose does not mean that it should be neglected. On the contrary, many of the mitzvos that are not eligible for Maaser funds have higher priority than the mitzvah of Maaser. For example, mitzvos that are obligatory would clearly come before Maaser if a person is unable to fulfill both. In addition, some Poskim rule that supporting a shul is a greater mitzvah than Tzedaka<sup>97</sup>. Therefore, the question of whether Maaser funds can be used for a specific mitzvah is simply a question of whether one must give Maaser above what he spends for such mitzvos, or whether such expenditures count towards his Maaser total.

### *Practical Examples*

**Supporting children:** One may not use Maaser to pay for the living expenses of children that one is obligated to support. Children under the age of six are definitely included in this category<sup>98</sup>. Older children that are living at home should not be supported with Maaser money according to many Poskim<sup>99</sup>. Supporting<sup>100</sup> a child that is married is certainly Tzedaka, and one may do so with Maaser funds<sup>101</sup>.

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<sup>92</sup> Chasam Sofer 232.

<sup>93</sup> Taz Yoreh Deah 249:1

<sup>94</sup> Emes Lyaakov Yoreh Deah 249.

<sup>95</sup> Tzedaka Umishpat 1:85, Igros Moshe Orach Chaim 4:76.

<sup>96</sup> Derech Emunah 7 "Vechad", Even Yisroel 2:62, Chut Shanee Shabbos page 331.

<sup>97</sup> Yoreh Deah 249:16; see however Biur Hagra. See also Aruch Hashulchan and Shevet Halevy 9:199 that qualify this Halachah.

<sup>98</sup> Shach Yoreh Deah 251:4.

<sup>99</sup> Taz Yoreh Deah 249, Birkey Yosef 251:18, Teshuvah Meahava 3:249, Aruch Hashulchan 249:7.

Orchos Rabbeinu 1 page 297 quoting Chazon Ish, Derech Emunah Matnas Aniyim 7 (57), Igros Moshe Even Haezer 1:106, Kol Torah (5743) volume 39 quoting Rav Shlomo Zalman Aurbach.

<sup>100</sup> Only funds needed for his support, or to enable him to learn torah without distraction, would be eligible for Maaser. Funds given for other luxuries (that do not qualify for די מחסור) would not qualify.

<sup>101</sup> An exception is when a person obligates himself to support his child, and at the time of the obligation did not intend to use Maaser funds.

**Tuition:** One is obligated to teach his son Torah. If one is unable to personally teach them, there is an obligation to hire someone else to do so<sup>102</sup>. Because of this obligation, one may not use Maaser funds to pay for tuition<sup>103</sup>. However, in times of great need, some Poskim<sup>104</sup> permit using Maaser funds to pay for expenses associated with teaching the child torah shebal peh<sup>105</sup>. See however Igros Moshe that maintains that one has an obligation to send minor children to yeshiva since they would otherwise be required to attend public school (this argument would apply to girls tuition as well)<sup>106</sup>. Regardless, the portion of tuition that goes to pay for a child's food would be governed by the discussion in section "Support"<sup>107</sup>. School expenses associated with non-mitzvah activities cannot be paid for with Maaser funds under any circumstances.

If one sends his child to a more expensive school in order for him to learn better, one may use Maaser funds for the extra expense (according to the opinions that permit using Maaser for mitzvah purposes unrelated to charity)<sup>108</sup>.

Subsidizing a pauper's tuition payments is certainly a valid use of Maaser funds.<sup>109</sup>

**Shul Membership:** one may not use Maaser funds to pay for mandatory shul membership<sup>110</sup>. However, if the shul does not require membership, or if one wishes to make an additional donation, Maaser funds may be used according to the Poskim that permit doing other Mitzvos with Maaser funds.

**Purchasing an Aliyah:** One may use Maaser funds to purchase an Aliyah in shul, provided that he intended to use Maaser funds at the time of the bid. According to most Poskim, he may only use Maaser funds for the amount he bid above the previous bidder. The amount that the shul would have received regardless from the other bidder cannot come out of Maaser funds<sup>111</sup>. Presumably, if the other bidder also intended to use Maaser funds for his purchase, one may use Maaser funds for the entire sale amount.

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<sup>102</sup> Yoreh Deah 245:4.

<sup>103</sup> Ahavas Chesed 19:2.

<sup>104</sup> Shevet Halevy 5:133, Pri Yitzchok 2:27.

<sup>105</sup> As the obligation to hire a rebi may only apply to Tanach. See Yoreh Deah 245:6.

<sup>106</sup> Igros Moshe Yoreh Deah 2:113.

See however, B'orach Tzedaka 11 note 71 quoting Rav Elyashiv that disagrees. See also Minchas Yitzchok 10:85 quoting Elyah Rabuh 156 that prohibits using Maaser funds to educate a daughter. Minchas Yitzchok however, permits with certain conditions if there is a great need. See also Shevet Halevy 5:133 that permits the use of Maaser funds for a daughter's tuition, but limits the use of Maaser funds to the portion of tuition that goes towards mitzvah activities.

<sup>107</sup> Tzedakah Umishpat 5 (35).

<sup>108</sup> B'orach Tzedaka 11:40 quoting Rav Elyashiv.

<sup>109</sup> Ahavas Chesed 2:19.

<sup>110</sup> Emes Lyaakov Yoreh Deah 249 note 134. See however Minchas Yitzchok 8:83.

<sup>111</sup> Rav Akiva Eiger notes to Shulchan Aruch Yoreh Deah 249, Emes Lyaakov, Ksav Sofer 112, Elyah Rabuh 156 quoting Shela.

**Seforim:** Although there was a custom to use Maaser funds to purchase seforim, one should not do so today<sup>112</sup>.

**Chesed Organizations:** Chesed Organizations may not qualify as Tzedaka in the strict sense. However, as mentioned above, the prevalent custom seems to be to permit the use of Maaser funds for other Mitzvos, which would include such organizations. It should also be noted that many chesed organizations provide vital services to people who cannot afford to pay for them. That is certainly Tzedaka.

### *Before One Begins Giving Maaser*

As mentioned above, Maaser is not a strict obligation, but rather a custom. However, once a person accepts upon themselves to give Maaser, or if they gave Maaser three times without stipulating *bli neder*, it becomes like a vow and one is obligated to continue the practice<sup>113</sup>. Because of the many differences of opinion mentioned above, the Poskim advise that before one actually begins the mitzvah, one should specify that he does not intend to create a *Neder* to always give Maaser<sup>114</sup>, and that when he does give Maaser, he will rely on the various leniencies mentioned above<sup>115</sup>.

### *Afterword*

The Gemara describes the terrible suffering that Rav Nachum Ish Gam Zu endured towards the end of his life. He lay on a bed, blind in both eyes, his hands and feet cut off, and his entire body covered with boils. He explained to his Talmidim that all of his sufferings were caused by one specific incident; a pauper had once approached him and asked for help. Rav Nachum Ish Gam Zu immediately agreed, but asked him to wait until he finished unloading his wagons. But it was too late. The pauper died while waiting for Rav Nachum to finish his task. Rav Nachum, filled with remorse, prayed that his eyes that did not pity the eyes of the pauper should be blinded, and that his hands and feet that disappointed the pauper should be cut off, and that his entire body should be covered with boils.

This story needs explanation. While we all understand the importance of Tzedaka, the punishment for a few moments delay seems extreme. Rav Nachum was unaware of the pauper's desperation, and did not expect the short delay to have such consequences. To properly understand this Gemara, we need to reconsider the obligation of Tzedaka.

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<sup>112</sup> Derech Emunah.

<sup>113</sup> Shielas Yaavetz 1:6 rules that it becomes obligatory after doing one time. However, Chasam Sofer Yoreh Deah 231, Imray Yosher 2:136, Cheshev Haephod 3:33, Chelkas Yaakov 137, Derech Emunah Matnas Aniyim 7 (Tziun 57), Minchas Yitzchok 10:85, rule that it becomes obligatory after three times. See also Halichos Shlomo 2 page 387 note 24, Salmas Chaim 2:38 that the *Hataras Nedarim/Mesiras Moda'ah* on Erev Rosh Hashanuh prevents the practice from becoming a *Neder*.

<sup>114</sup> Ahavas Chesed 2:18:2

<sup>115</sup> Ahavas Chesed 2:19:3



If a country is conquered in war, the losing general must turn in his medals. If a country declares bankruptcy, the finance minister must turn in his credentials. These are not punishments. Rather it reflects that the entire purpose of a general is to protect the country; if the war is lost, he has failed in his mission and can no longer continue. A finance minister's entire existence is to ensure the fiscal viability of his country- when it is insolvent he has utterly failed and can no longer serve his nation.

Rav Nachum Ish Gam Zu recognized that the entire existence of a Jew is to help one another. If a pauper died on his watch, if he failed in his mission to help those that were less fortunate than him, he felt he could simply not justify his continued enjoyment of his body. The terrible suffering were not a punishment for a misdeed, rather he felt he was no longer deserving of the gift of eyesight if he did not use it to empathize properly with others, and that he was no longer deserving of hands or feet if he had failed in his mission to use them to help others.

This illustrates the importance of Tzedaka. It is not simply another Mitzvah. Rather it reflects that the mission and purpose of each Jew to help one another.

In Talmud Yerushalmi, the word Mitzvah means Tzedaka. The Tanya explains that when a person performs a mitzvah, it brings kedusha and sanctifies the particular limb with which the mitzvah was done. Tzedaka is performed by giving away funds that were earned **בזעת אפריך**, through the toil and sweat of one's entire body. Consequently, the mitzvah brings kedusha to the entire donor, and its effect is not limited to one particular limb.

What emerges is that Tzedaka is a Mitzvah that literally defines a person. If done correctly, it infuses Kedusha and meaning into his one's entire day, and transforms one's job from simply a career, into a vehicle of **עבודת ה'**. There is no denying the difficulty of giving the appropriate amount of Tzedaka. Our living expenses have been skyrocketing, and the cost of raising a family is certainly a heavy burden. Yet, we need to recognize the importance of Tzedaka, and how it is a middah that has defined the Jewish nation for millennia. In the Zechus of the Mitzvah of Tzedaka we should all merit bracha and hatzlacha in all our endeavors.