

Uncharitable Giving: What may be paid with *ma'aser* money?

Adapted from the writings of Dayan Yitzhak Grossman

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The Mishnah Berurah rules regarding *matanos la'evyonim* (the gifts to the poor that must be given on Purim):

One must give the two gifts of his own (money), and not of *ma'aser* (*kesafim*—the tithe of one's income designated for charity), but the additional gifts (as per the Rambam's recommendation to prioritize *matanos la'evyonim* over *mishlo'ach manos* and the Purim meal for additional spending) one may give of *ma'aser*.^[1]

This seemingly simple ruling, however, actually hinges on several important and far-reaching halachic questions, which we explore in this article.

The ultimate sources of the Mishnah Berurah's ruling are a responsum of the Maharil and a passage in the Shelah. The Maharil rules that one may not fulfill the mitzvah of *matanos la'evyonim* with *ma'aser kesafim*, based on the Talmudic principle that "*kol davar shebechovah eino ba ella min hachulin* (anything that is an obligatory matter must come only from that which is non-sacred)." ^[2]^[3] The Shelah makes the same argument with regard to *matanos la'evyonim*, *mishlo'ach manos*, and even the custom of *machatzis hashekel*.^[4]

There is, however, a dissenting view. R' Yehoshua Heshel (the Meginei Shlomo) rejects the similar argument, made by his correspondent ("*gaon echad*"), that the principle of *kol davar shebechovah eino ba ella min hachulin* bars the uses of *ma'aser kesafim* funds to make certain contributions to charity that were mandated by the community, on two grounds. First, as is apparent from the Talmudic context, the category of *davar shebechovah* is limited to obligatory sacrificial offerings, but does not extend to other obligations. Second, the category of *chulin* does not exclude *ma'aser kesafim*, which, like all charitable funds, are considered completely *chulin*.^[5] It would seem, then, that he would reject the rulings of the Maharil and Shelah as well.^[6]

There is, however, another argument against the legitimacy of satisfying charitable obligations with *ma'aser kesafim* funds. One may not pay a debt, or even an existing charity obligation, with *ma'aser ani* (the produce tithe designated for the poor).^[7] The Taz extends this to paying with *ma'aser kesafim* as well,^[8] but the Bach maintains that the rule is limited to *ma'aser ani* and does not apply to *ma'aser kesafim*.^[9] The disagreement hinges on whether *ma'aser kesafim* is considered an absolute obligation or not an obligation at all (but merely a praiseworthy custom).

R' Yehoshua Heshel, too, utterly rejects the comparison between *ma'aser ani* and *ma'aser kesafim*, arguing (like his contemporary the Bach) that the prohibition against paying an obligation with *ma'aser* certainly does not extend to *ma'aser kesafim*, which is not mandatory but merely customary and mitzvah *min hamuvchar* (the ideal fulfillment of the mitzvah to give charity).

In summary, the question of whether one can satisfy an existing charity

obligation with *ma'aser kesafim* hinges on two points of contention among the *poskim*: whether the principle of *kol davar shebechovah* applies in this context (the Maharil and Shelah maintain that it does, whereas R' Yehoshua Heshel holds that it does not); and whether *ma'aser kesafim* is obligatory, in which case the prohibition against paying an existing obligation with *ma'aser* applies (the Taz maintains that it is obligatory, so the prohibition applies, but the Bach and R' Yehoshua Heshel hold it is not, so the prohibition does not apply).

In light of the above, it is difficult to understand why the Mishnah Berurah rules unequivocally that *ma'aser kesafim* may not be used to fulfill the basic requirement of *matanos la'evyonim*: with respect to the principle of *kol davar shebechovah*, the arguments of R' Yehoshua Heshel against its applicability seem quite cogent, and as to the question of whether *ma'aser kesafim* is mandatory, many, perhaps most, *poskim* rule that it is not.[10] The truth is that in other contexts as well, the seemingly reasonable assumption of the Bach and R' Yehoshua Heshel that insofar as *ma'aser kesafim* is not mandatory, it may be used to pay an existing obligation, is not generally accepted. R' Yaakov Blau, for example, rules unequivocally that *ma'aser kesafim* may not be used to pay an existing obligation, and he infers from a responsum of R' Yehuda Assad that this is so even according to those who consider *ma'aser kesafim* to be a mere custom.[11] Similarly, R' Moshe Feinstein rules that school tuition for one's children may not be paid with *ma'aser kesafim* because the payment of tuition is considered religiously mandatory,[12] and it is my impression that this general rule that a mandatory obligation may not be paid with *ma'aser kesafim* is widely accepted by contemporary *poskim*.

Again, however, the reasoning underlying all these rulings is unclear, since the application of the principle of *kol davar shebechovah* is debatable, and the prohibition against paying an obligation with *ma'aser* would not seem to apply according to those that do not consider *ma'aser kesafim* mandatory.

[1] Mishnah Berurah *siman* 694 s.k. 3, based on Magein Avraham *ibid.* s.k. 1 (and see below n. 4). This is also the position of the Aruch Hashulchan *ibid. se'if* 2.

[2] Beitzah 19b, Pesachim 71a, and elsewhere.

[3] Shu"t Maharil *siman* 56.

[4] Shnei Luchos Habris, Aseres Hadevarim: Maseches Megillah-Amud Hatzedakah. These rulings of the Maharil and Shelah are cited (very tersely) in Magein Avraham *ibid.*

[5] Shu"t Pnei Yehoshua *cheilek* 1 *siman* 2.

[6] R' Yehoshua Heshel, who died in 5408, would not have seen the Shelah, which was first published (posthumously) in the years 5408-9. He was also apparently unaware of the Maharil's responsum.

[7] Tosefta Peiah 4:16, Rambam *Hilchos Matnos Ani'im* 6:17, and Tur Y.D. *siman* 331, as explained by Bais Yosef *ibid.*

[8] Taz *ibid.* s.k. 32.

[9] Bach *ibid.*

[10] See Tzedakah Umishpat *perek* 5 *se'if* 2 and n. 19.

[11]Tzedakah Umishpat *perek 6 se'if 2* and n. 5. Cf. *se'if 11* and n. 29, that one may not pay a communal tax from *ma'aser kesafim*. This is the opinion of the Taz, however, and the Bach would seemingly disagree (as would R' Yehoshua Heshel).

[12]Shu"t Igros Moshe Y.D. *cheilek 2 siman 113*.