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UNCHARITABLE GIVING: WHAT MAY BE PAID WITH MA'ASER MONEY?

Adapted from the writings of Dayan Yitzhak Grossman

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

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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 Magen Avraham ibid.

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

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PARSHAS TETZAVEH MAJORITY WULE

Excerpted and adapted from a shiur by
Rav Moshe Zev Granek

The Mishnah (Kilayim 9:1) says that all the *bigdei kehunah* are made of sheep's wool, linen, or both together. The Mishnah later says that if one mixed together sheep's wool and camel's wool, the status of the thread follows the *rov* (majority) of the fibers. The context of this halacha is that of *kilayim* (which only applies to mixing sheep's wool—not camel's wool—with linen). Would it also apply to *bigdei kehunah*, making a blended camel's wool-sheep's wool fabric valid as wool if it was majority sheep's wool?

To resolve this, we need to explain the basis for this halacha. According to the Bais Yosef (based upon his understanding of the Rambam and Smag), this halacha of *rov* stems from the concept of *bitul* (nullification), where the majority thread nullifies the minority. But perhaps *bitul* can only be used to nullify an *issur* mixed in with *heter* and render it permitted, but not to provide a required status that an item does not have. Thus, if the *bigdei kehunah* must be made from sheep's wool, perhaps a garment with (continued on page 2)

Meal Ticket

Q I am strict not to eat on Purim morning before fulfilling the mitzvah of *mishlo'ach manos* (see Kovetz Halachos 17:1 and Mo'adim Uzmanim 2:186). This Purim, I plan to attend a bris. In order to partake of the meal, may I take some food from the buffet and give it to another guest as *mishlo'ach manos*?

A *Mishlo'ach manos* must be given from one's own property, so the question is who owns the food that a host serves his guests. Can the host be assumed to intend to gift to each guest the (continued on page 2)

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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

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.

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a majority of sheep's wool does not qualify based on *bitul*. This issue may be subject to a dispute among the *Rishonim* (see Kovetz He'aros 59).

According to the Noda Bihuda (*Tinyana* 186),

the halacha of *rov* concerning linen and wool is not based on *bitul*, but based on the idea that every fabric has a halachic status. If a majority of the fibers are sheep's wool, the fabric is classified as sheep's wool, but if the majority is another material, it isn't. According to this it would seem that a fabric with a majority of sheep's wool and a minority of

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.

other material would be acceptable for the *bigdei kehunah*, because the fabric is halachically defined as sheep's wool.

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portion he takes, or does the host just allow the guest to take the host's food, and possession only passes to the guest when he puts the food in his mouth?



The Rama (Even Ha'ezer 28:17) rules that if a guest would take his food and use it as *keseif kidushin* to marry a woman, the marriage would take effect. *Poskim* debate whether the Rama means that it is certainly valid or that it is possibly valid. It would seem that the same debate would apply to *mishlo'ach manos*, so you shouldn't rely on *mishlo'ach manos* you give with bris food to fulfill the mitzvah. But with regard to the stringency of not eating before *mishlo'ach manos*, you can rely on the opinion that it was your property and the mitzvah was valid so you may now eat.

In addition, it has become common for bris guests, after eating, to take additional food to go, either to eat for lunch or to bring home to their families. Sometimes almost as much food as is consumed at the bris leaves the building in aluminum foil provided by the host. In light of this tacit permission to remove food from the premises, the Shoshanas Yisrael (Purim 11:17) points out that it is reasonable to assume that at such a bris the host means to gift the food to the guest as soon as he lifts it, so you could indeed fulfill the mitzvah of *mishlo'ach manos* with food from the bris.



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