

# TORAH & HORAHAH

Vayitzei 5778

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## Dear Reader,

The Midrash in this week's parashah teaches that in the merit of Leah's giving thanks to Hashem – she expressed her special gratitude for the birth of Yehudah – she was given the privilege of being mother to Yehudah and David. David said "Give praise to Hashem, for He is good." Yehudah, in turn, said "She is more righteous than I."

The connection of David's praise with the thanks of Leah is clear cut. But what does the admission of Yehudah have in common with the gratitude that Leah expressed? Although they share the same

This week's article discusses the basics of donating maaser kesafim. Which virtues are associated with donating a tenth of one's income to charity? Do these refer only to exactly one tenth, or even to similar amounts? Is giving maaser an obligation or a custom? From which income must maaser be separated? These questions, among others, are discussed in this week's article. This week's Q & A discusses the question of opening a car's trunk on Shabbos.

## Maaser Kesafim: Obligation, Custom and Virtue

The mitzvah of giving charity, tzedakah, is among the most central of mitzvos that define Jewish communal life. Rather than taking an individualistic and distant approach from one another, the Torah urges us to be attentive to the needs of the other, and to come to the assistance of those who require it.

Of the importance of the mitzvah of tzedakah, the Sages teach that charity "weighs against all other *mitzvos* of the Torah" (*Bava Basra* 9a). We likewise find that charity is "of tremendous importance, for it brings closer the redemption" (*Bava Basra* 10a).

Chazal quantify the minimum obligation of giving charity as one third of a (Torah) shekel—an amount that even a poor person, himself dependent on charity donation, must give (*Bava Basra* 9a; see *Aruch HaShulchan*, *Yoreh De'ah* 248:4; *Derech Emunah*, *Matnos Aniyim* 7:68). This amounts to a very small sum. However, people who can afford to are required to give one tenth of their income to tzedakah, which can reach a respectable amount.

One of the first sources for the virtue of giving *maaser* is ➤➤

Hebrew root (*todah*), the two concepts – thank on one hand and admission on the other – appear to be unrelated?

In fact, the Torah sense of *hodaah*, giving thanks, runs far deeper than the everyday “thank you.”

When a person truly thanks somebody else, he declares his indebtedness. He admits, so to speak, that he is indebted, beholden to return the goodness that he has received.

The deepest indebtedness, of course, is due to Hashem. This is why when we say *modim*, giving thanks to Hashem for all He does for us, we prostrate ourselves before Him. Our very being, and everything we have, are from Him. In thanking Him, we declare that we are annulled before Him, that our deepest self is wholly indebted.

related to the statement of Yaakov Avinu: “And all that You will give me, I shall surely tithe for You” (Bereishis 28:22). Dwelling on the words, the commentary of *Baalei Tosafos* quotes from a Midrash: “Ya’akov Avinu enacted the tithing of one’s wealth.” This Midrash is not found in our compilations, but Chazal, in several places, do mention the concept of *maaser* in relation with Yaakov’s tithing.

We therefore take the opportunity to discuss the basics of donating *maaser*. Which virtues are associated with donating a tenth of one’s income to charity? Do these refer only to exactly one tenth, or even to similar amounts? Is giving *maaser* an obligation or a custom? From which income must *maaser* be separated? These questions, among others, are discussed below.

### The Virtue of Giving Maaser

The principle halacha of tithing one’s income is presented in the Gemara (*Taanis 9b*). Concerning the tithing of one’s produce that one must donate to a Levi, the Torah states *aser taaser*, “you shall surely tithe.” Chazal make a hermeneutical interpretation: “You shall surely tithe—tithe, so you become wealthy.”

*Tosafos* (s.v. *aser*) quote from the Sifri, where we find that the instruction to tithe is not limited to the produce of the field, but applies rather to all forms of income: “Interest payments (from non-Jews), business dealings, and all other income.”

Indeed, we find that Yaakov Avinu achieved great wealth in the merit of his vow to tithe everything he receives, as the verse writes (Bereishis 30:43), “The man spread out exceedingly, and he had great herds of cattle, and maidservants and servants, and camels and donkeys.”

Rabbi Yitzchak Avuhav, in *Menoras Hame’or*, cites from a Midrash that takes this promise a step further: “Therefore one should not slacken in giving *maaser*, from the field and from the home, and from all that comes to a person’s hand, for through this a person preserves his wealth, and increases it a thousand-fold.” The Kabbalists also expound on the virtue of giving *maaser*, as the *Chafetz Chaim* (*Ahavas Chesed*, vol. 2, no. 2, sec. 7) alludes to.

It is even permitted to “test” Hashem in the matter of *maaser*. While in general the Torah instructs us to refrain from this (“Do not try Hashem, your G-d”—Devarim 6:16), concerning *maaser* it is permitted to test Hashem: One may tithe the income,

and check if the gain of wealth is as promised. As the verse in *Malachi (3:10)* states, “Bring the *maaser* to the storehouse, and there will be plenty in My house; test me in this matter, says Hashem” (see *Or Zarua, tzedakah 13; Tur, Yoreh De’ah 247; Aruch Hashulchan*).

### Giving Exactly One Tenth

According to some authorities, the special virtue of *maaser*—for which the Torah promises wealth (and even permits “testing” Hashem)—is limited to donating exactly one tenth of one’s income. Therefore, even a person who gives more than 10% of his income to charity, should preferably separate exactly 10% first, and then give the extra moneys (*Shut Chavos Ya’ir 234*, based on Mishna in *Avos 1:16*).

Other authorities (see *Pischei Teshuva, Yoreh De’ah 249:2*, quoting from *Mishnas Chachamim*) state that it is permitted to approximate when one separates *maaser kesafim*, and there is no need to give precisely one tenth. Yet, several authorities write that one needs to be precise for achieving the special virtue of *maaser* (see *Avkas Rochel 3; Ahavas Chesed; Kenesses Hagedolah 249; Birkei Yosef; Machazik Beracha*). *Ahavas Chesed* quotes from *Sefer Hakarnayim* (of Rabbi Aharon Mikardia) that the heavens are sustained in the merit of *maaser*, and they shower blessing onto one who donates one tenth of his income.

Some are careful, following the advice of the Vilna Gaon, to give a *chomesh (20%)* to charity. Even in this case, one should preferably give *maaser* twice, rather than giving a direct donation of one fifth (*Ahavas Chesed 19:3*). To ensure one gives a tenth to charity, the *Pischei Teshuva (249:1)* quotes from *Noda Biyehuda*, who advises that during the year one should write down amount of charity that one gives, and once or twice a year make a calculation, ensuring that the amount of charity comes to 10%.

### Obligation or Custom?

Is giving *maaser* an obligation, or a custom? In fact, there are three different opinions concerning the classification of *maaser*: Some maintain that it is a Torah obligation; others consider it a rabbinic obligation; and others yet—in fact, the majority of authorities—regard it as a custom.

Based on the words of *Tosafos* (noted above), Rabbi Dovid

The same is true for deeply felt gratitude to flesh and blood. If we truly recognize that which somebody has done for us – for instance parents, siblings, friends, and anybody else – we will feel indebted to them. We “owe” them something back.

Part of the Hallel prayer is the surprising supplication: “Please, Hashem, send us salvation; please, Hashem, send us success.” As we express our gratitude before Hashem, we are empowered to beseech Him for all that we need.

Let us give thanks for the past. At the same time, we beseech Hashem for the future: “Please, Hashem, send us salvation; please, Hashem, send us success.”

Oppenheim (cited in *Shut Chavas Yair*, no. 224) writes that the concept of giving *maaser* is a full obligation. However, although *Tosafos* (quoting from *Sifri*) mention a Torah verse concerning the obligation, this does not constitute proof that giving *maaser* is an actual Torah law. It is possible that the obligation is rabbinic, and the verse is only an *asmachta* (a textual support) for the rabbinic enactment. This, indeed, is the implication of the Midrash Tanchuma *Re'eh* 18), which mentions an “allusion” to the concept of *maaser kesafim*.

On the other hand, the *Bach* (*Yoreh De'ah* 331:19) writes that it is permitted to use one's *maaser* money for the purpose of paying off debts. This indicates that the actual giving of *maaser* is not considered an obligation, because if it would be an obligation, one would not be permitted to use it for the fulfillment of other monetary obligations. *Ma'aser sheni* (or *ma'aser ani*), for example—the tithing of produce that grows in the Land of Israel—is a full obligation, and cannot be used for fulfilling monetary obligations. The *Bach* maintains that the tithing of other income is only customary, and can therefore be utilized for paying off monetary obligations.

The *Taz*, the illustrious son-in-law of the *Bach*, differs with his father-in-law, and maintains that *maaser* is a full obligation, and one may therefore not use moneys for making obligatory payments. Many authorities, however, side with *Bach*, and maintain that there is no formal obligation to tithe one's income, and the concept of *maaser kesafim* is only a *minhag*.

Having said this, it is important to note that once somebody begins to tithe (even by doing so once), it is possible that the practice becomes obligatory by virtue of its being a *neder* (a vow).

In our continued analysis, we will use the word “obligation” for donating *maaser*, though as

noted, according to many it is not a full obligation, but rather an important custom.

### Is a Poor Person Obligated?

If we assume that the concept of *maaser kesafim* is a custom, rather than a full obligation, it follows that tithing is not a separate obligation, but rather a quantification of the general mitzvah of giving charity. Meaning: there is a custom of fulfilling one's obligation of giving charity by donating one tenth of one's income to tzedakah. The *Rambam* (*Matnos Ani'im* 7:5) thus writes that giving a tenth is the “median trait” in giving charity.

According to this viewpoint, a poor person is not obligated in tithing his income, since the poor are generally exempt from the mitzvah of charity (see *Shach*, *Yoreh De'ah* 248:1), with the exception of the minimal one-third of a shekel per annum.

The *Rema* (*Yoreh De'ah* 251:3) rules according to this position, stating that “one's own livelihood takes precedence over that of any other's.” There are some halachic precedents nonetheless noting that a poor person who strives to give *maaser* will not lose out from doing so; this of course is left to each person's discretion (See *Shut Teshuvos Vehanhagos*, vol. 1, no. 560)

### Separating Maaser from Inheritance and Gifts

From which income is *maaser* separated?

Rabbeinu Yonah writes that “any matter of income, including teaching, writing, working, or even one who finds a find or one who receives a gift, or any other matter, be it gold or silver—from all one should separate one tenth.” As we will see below, not all authorities concur with this opinion: according to Rabbeinu Yonah, there is nothing a person receives which is exempt from

tithing.

Concerning an inheritance, the *Pischei Teshuvah* (249:1) writes in the name of the *Shelah* that a full obligation applies. This is true even if the deceased was always particular to take *maaser* from his income. The principle behind the ruling is that the obligation of *maaser kesafim*, unlike the tithing of produce, is incumbent on the person (*gavra*) rather than the money (*cheftza*). When a person gains, he becomes obligated in tithing, irrespective of how many times the money (or assets) were already tithed.

The same rule applies to monetary gifts, from which *maaser* must also be separated. Thus the *Taz* (331:12) writes, concerning marriage gifts: “Is this an obligation on the money, so that we could say that the money is already exempt?! It is an obligation on the person, who is obligated to separate from that which Hashem has given him!”

However, under special circumstances a person giving a gift is able to exempt the recipient from taking *maaser* by separating *maaser* twice, with the intention that the recipient should therefore be exempted from the obligation. In Poland, it was customary to do this for monetary gifts given to children for their marriage, so that the children will not have to separate *maaser*, and thereby create a *neder* (vow) regarding future income (*Pischei Teshuvah* 249:1). Yet, this mechanism should not be applied without a special reason for doing so. Additionally, nowadays since this is not the custom, the parents would need express permission from the children to tithe on the children’s behalf

In addition, there are situations, when if the person giving the gift objects to the recipient separating *maaser*, the recipient does not have the right to go against the giver’s wishes. This ruling is given by *Shut Iggros Moshe* (*Yoreh De’ah* vol. 2, no. 112) concerning somebody

who gave an amount of money to his son-in-law, so that he would be able to study Torah in financial tranquility, promising to add more according to his needs.

When the son-in-law wished to separate *maaser*, the father-in-law objected, arguing that this would cause him a loss in having to pay more.

Rav Moshe ruled in favor of the father-in-law: A person has the right to stipulate condition concerning gifts, and the father-in-law gave the monetary gift on condition that it should be used exclusively for the recipient’s sustenance in order to avoid additional expenses. This ruling has been seconded by additional authorities (see *Orach Tzedakah*, p. 364).

## Gifts and Inheritance of Goods and Land

The rulings above, whereby a person is obligated to separate *maaser* from gifts and inheritance, are limited to inheritance and gifts of money. Concerning a gift (or inheritance) of goods or an apartment, the *Chazon Ish* (quoted in *Derech Emunah, Matnos Ani’im* 7:27) ruled that there is no obligation of separating *maaser*.

The reason for this is that *maaser* is only a quantification of charity (as explained above), and there is no obligation to sell one’s possessions in order to give charity (*Orchos Rabbeinu*, vol. 1, p. 396). In light of this explanation, somebody who sells the gifts he was given is obligated to separate *maaser* from the income he receives. Although most authorities follow the ruling of the *Chazon Ish*, it is noteworthy that Rav Shlomo Zalman Auerbach disputed this, and ruled that even non-monetary gifts are obligated in separating *maaser*.

A common example of this halacha concerns parents who bought an apartment for their children. According to the lenient opinion, the

children are obligated to give one tenth of the value of their apartment (fortunately for them). This is also the prevalent custom (*Shut Shevet Halevi*, vol. 5, no. 133, sec. 7).

Even if the parents do not purchase the apartment on behalf of their children, but only give them money with which to buy the apartment, the children are not obligated to give a tenth to charity. However, it is preferable that the children should not take full possession of the money, but rather serve as agents of their parents to purchase the apartment (based on *Orchos Rabbeinu*, *id*).

Another example of this halacha refers to coupons or vouchers for making various purchases, or bus cards, and the like. Once again, the lenient opinion (above) will exempt such items from the obligation of *maaser*. However, *Chut Hashani* (*Yom Tov* and *Chol Hamoed*, p. 351) rules that if one receives supermarket vouchers, which can be used for buying a range of products, the obligation of *maaser* applies. Due to the purchasing power of these vouchers, they are considered (in this opinion) money, and therefore obligated in *maaser*.

### Finding a Find

In the above words of Rabbeinu Yonah, we see that even finds that a person comes across are obligated in *maaser*. According to the lenient opinion above, this will apply to a find of money

alone, and not to finds of objects.

In the matter of found money, we find a great *chiddush* in the commentary of *Haflaah* (*Kesubos* 50a). In his opinion, not only is somebody who finds money obligated in separating *maaser*, but even somebody who loses money, gives up hope of finding it, and then finds it, is obligated in tithing the money.

He writes that the same applies to somebody who loses hope of collecting a monetary debt, and then manages to collect it. It is considered a “new gain,” which is obligated in *ma’aser*.

As pointed out in *hilchos tzedakah* of Rav Yosef Fleischman *shlita* (no. 5, note 25), this *chiddush* is not without numerous difficulties, and it is difficult to accept it in a practical sense.

Indeed, we find an interesting ruling of Rav Shlomo Zalman Auerbach (cited in *Orach Tzedakah*, p. 324), which states that there is no obligation of separating *maaser* from reparation payments made by Germany to Holocaust survivors. Although the survivors had obviously lost hope of seeing their money again, their getting it back does not obligate them in separating *maaser*.

We have not discussed the uses of *maaser kesafim*: to whom should *maaser* be given, and which uses qualify as legitimate causes for the purpose of *maaser*? We will please G-d discuss these questions in a separate article.

## Halachic Responsa

to Questions that have been asked on our website [dinonline.org](http://dinonline.org)



### The Question:

A bag of diapers are locked in the trunk on Shabbos, and one has an old car with no lights in the trunk:

Is it permitted to use the car key to open the trunk on Shabbos? Nothing electrical is happening, and it is no different than opening any other door. Can one close the car trunk afterwards?



### Answer:

It is permitted to open the trunk to get the diapers, provided of course that the area has a reliable eruv.

Concerning closing the trunk, it is certainly permitted if there is a permitted item inside that will be kept safe by closing the trunk. If there is no permitted item inside, some prohibit closing the trunk, yet there is room for leniency (see sources below).

This should not be done in public.



### Sources:

It is forbidden to move even part of a muktzeh item, as we find concerning closing the eyes of the dead (Beis Yosef and Shulchan Aruch **208:42**, citing from the Ran). See also Magen Avraham **305:9**; Darkei Moshe **311:7**; Shulchan Aruch **311:7**. The Rema (**308:3**) likewise states that any movement is forbidden.

However, a car has two distinct usages. One use is for driving, and the other is for sitting inside or for storing items. Concerning the use of the car for driving, the car is muktzeh. However, for use as storage it is not muktzeh, and it is therefore permitted to open the trunk.

This is similar to a fridge. Although the fridge itself is muktzeh (machmas chisaron kis), and it is forbidden to move it on Shabbos, it is nonetheless permitted to open the door of the fridge. The reason for this is that concerning the use of the fridge the fridge is not muktzeh.

The same idea applies to a car. Although it is not permitted to move the car, it is permitted to open its doors or trunk (provided of course that no light goes on).

Another point is that it is not clear that a car is muktzeh machmas chisaron kis, and it is possible that the car is only a keli shemelachto le'issur, in which case it is certainly permitted to open the doors for a legitimate need (of taking something out).

This is the approach taken by the Shemiras Shabbos Kehilchasa (**15:25**; **20:80**) concerning the door to a washing machine, and the same will apply to a car door.

The difference between the two approaches is closing the car door afterwards. According to the first approach, the door to the car or trunk is simply not muktzeh, and it can be closed as usual. According to the second approach, however, it is only permitted to close the door of the car or trunk for a need of something permitted, for instance to ensure the safekeeping of permitted items in the trunk – but not for looking after the car itself.

In general one should avoid doing this in public; it is unusual, to say the least, to open a car door or trunk on Shabbos, and one should refrain from raising “halachic eyebrows” where possible.