SHIURIM

ON HILCHOS

Tzedakah

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Positive mitzvah

The Torah spells out the mitzvah of tzedakah in Parshas Re'ah:" לֹא תְאַמֵּץ אֶת...כִּי יִהְיֶה בְךָ אֶבְיוֹן כִּי פָתֹחַ תִּפְתַּח לְבָבְךָ וְלֹא תִקְפֹּץ אֶת יָדְךָ מֵאָחִיךָ הָאֶבְיוֹן: ... אֶת יָדְךָ לוֹ וְהַעֲבֵט תַּעֲבִיטֶנּוּ דֵּי מַחְסֹרוֹ אֲשֶׁר יֶחְסַר לוֹ נָתוֹן תִּתֵּן לוֹ וְלֹא יֵרַע לְבָבְךָ בְּתִתְךָ לוֹ". "When there will be one who is destitute... do not harden your heart or hold back your hand from your poor brother. Rather, you shall open your hands to him and give him what he needs... give him and do not feel bad when giving him." (15:7-12)

We see that the Torah spells out many positive and negative commands in regards to the mitzvah of tzedakah. The Sifri points out, based on the double expression used (פָתֹחַ תִּפְתַּח and נָתוֹן תִּתֵּן), that one must continuously give, as often as necessary, even 100 times!

The Rambam also quotes another pasuk in Parshas Behar (25:35): וְכִי יָמוּךְ אָחִיךָ וּמָטָה יָדוֹ עִמָּךְ וְהֶחֱזַקְתָּ בּוֹ "When your brother becomes poor, you shall strengthen him." This is referring to helping him in other ways, including lending him money, to put him back on his feet. This, according to the Rambam is a subcategory of the mitzvah of

tzedakah and is considered to be one big mitzvah. The Rambam actually considers this the highest form of fulfilling the mitzvah of tzedakah.

The Smag agrees with the Rambam that this is a subcategory of the mitzvah of tzedakah and actually counts it as an additional mitzvah that one can fulfill in regards to the mitzvah of tzedakah. However, the Ramban takes issue with this statement and asserts that the mitzvah of lending is a separate mitzvah, which is not connected to the mitzvah of tzedakah.

We thus have three opinions: According to the Rambam, lending money is a part of the umbrella mitzvah of tzedakah. According to the Smag, although lending is a subcategory of the mitzvah of tzedakah, it is counted as a separate mitzvah. According to the Ramban, lending money is not connected to the mitzvah of tzedaka, but is counted as a totally independent mitzvah.

The Chofetz Chaim (in his classical sefer, Ahavas Chesed) when discussing the rules and regulations of giving maaser kesafim (which we discussed in a previous shiur), raises the question whether one can use the allocated money, for a gemach, to lend people money, as opposed to using it for tzedakah purposes.

He states as follows: According to the Rambam, one can definitely use it as such, since

lending money is halachically considered a subcategory of the mitzvah of tzedakah. He adds that even according to the Ramban that does not consider lending a part of the mitzvah of tzedakah, it is possible, that if one sets aside the money to be used on a steady basis to help out people in need, that it would, indeed, be allowed.

Giving tzedakah happily

As was quoted earlier, in addition to the actual mitzvah of giving tzedakah, the Torah stipulates: "Give him and do not feel bad when giving him." In other words, it is not enough for one to give tzedakah, but one must do so without any resentment or bad feelings. The Sefer Hachinuch affirms that this is a part and parcel of the the mitzvah of tzedakah, giving happily and with a "good heart."

Many Rishonim (Ramban, Sma"k, And Yera'im) state that if one does give begrudgingly, he is actually transgressing a separate prohibition.

Not giving tzedakah – one issur or two?

As was mentioned, the Torah tells us not to refrain fron giving tzadakah. The Torah uses two expressions לֹא תְאַמֵּץ אֶת לְבָבְךָ וְלֹא תִקְפֹּץ אֶת יָדְךָ

מֵאָחִיךָ הָאֶבְיוֹן: "Do not harden your heart and do not hold back your hand from your poor brother." The question is, is that one big prohibition or two separate ones.

This would seem to be a source of dispute in the Rishonim. The Gemara mentions numerous scenarios where people were forced to fulfill the mitzvah of tzedakah. Tosfos in a number of places raises the question as to why people were forced, when the rule of thumb is that we do not force people to fulfill a mitzvah that the Torah spells out a reward, and indeed in Parshas Re'ah the Torah adds that when you fulfill the mitzvah of tzedakah, Hashem will bless you.

Tosfos in Bava Basra (8b) answers that the mitzvah of tzedakah is different, since there is a negative command, and whenever there is a negative command we do indeed use coercion. Tosfos in Kesuvos (49b), however, adds that the mitzvah of tzedakah is different, since there are two negative commands. The Shach also concurs with this Tosfos. So it would seem that there is a difference of opinion whether these two expressions are counted as two separate prohibitions or as one big prohibition.

This can be explained further as follows: Those that explain it as being one prohibition seem to be

understanding that the Torah is telling us one concept: Refrain from hardening your heart, which would lead to holding back your hand from giving tzedakah.

However, if the Torah is stating two different prohibitions, there may be different ways of explaining these two prohibitions.

The Sifri seems to understand that, first and foremost, the Torah warns a person not to be stingy. Additionally, on occasion, a person actually may take out the money, but finds that his hands "freeze," not allowing himself to part with his hard-earned money. From that phenomenon as well, the Torah forewarns us, and gather the courage to complete the mitzvah.

The Smak seems to have a slightly varying understanding of the second prohibition. According to the Smak, the first prohibition is about one who refuses to give and the second one is adding that even if one gives, he must have the proper feelings, not thinking why should I bother helping him? Let him take care of himself!

"Do not send an impoverished person away in shame"

The Rambam and the Shulchan Aruch add another prohibition, spelled out by David Hamelech

in Tehillim (74:21): אַל יָשֹׁב דַּךְ נִכְלָם “Do not send an impoverished person away in shame.”

One must understand why they needed to skip to a pasuk in Tehilim and did not suffice with the clear prohibitions that are stated in the Torah.

The sefer Badei Hashulchan suggests that there are situations when one would not transgress the Torah-prohibitions, for example when one already gave the maximum required (20%). Although the Torah-prohibitions no longer apply, one still must give something to placate the poor person and not send him away empty-handed.

Giving all one’s money

As mentioned in previous shiurim, one is not required (and sometimes not allowed) to give more than 20% of hi assets to tzedakah. Based on the above, that besides the mitzvah of tzedakah, there is additional prohibition one transgresses by not giving tzedakah, we can raise the following question. The rule of thumb is that one must give 20% of his assets in order to fulfill a positive command and one must give away his entire wealth to avoid transgressing a negative commandment. Since we now know that there are negative commandments involved in giving (or not giving) tzedakah, one should be required to part with his entire wealth to

fulfill the mitzvah of tzedakah, or at least give more than 20%.

One answer is given, based on the notion that it is not a negative command per se which one must give up his entire wealth, but rather the underlying factor is whether it is an action or refraining from an action. Transgression of a negative command is usually accomplished through an action. That must be avoided at all costs. However, abstaining from fulfilling a positive commandment is usually a passive action and for that one does not have to give more than 20%. Based on this notion, avoidance of transgressing a passive negative command would be the equivalent of abstaining from fulfilling a positive commandment which only requires giving 20%.

This is the opinion of the Chasam Sofer and the Chavos Ya'ir, among others. However, Rav Akiva Eiger quotes the opinion of the Rivash opines that for all prohibitions one is equally required to give his entire wealth. According to them, the above explanation will not work.

There is another answer given by the Maharil Diskin. In this case, the negative command is not a separate prohibition, but rather as an introduction to the mitzvah. In other words, the Torah is stating:

"Do not abstain from giving, but rather open your heart and your wallet."

Not giving tzedakah – what does it take to transgress?

There is a seeming contradiction in the words of the Rambam as to what is the exact situation that one transgresses the prohibition of not giving tzedakah. The Rambam in Mishne Torah states that one transgresses the prohibition when he sees a poor person who requests tzedakah and he ignores the request. Seemingly, the knowledge alone of the poor man's plight will not suffice to cause one to transgress, however, in sefer hamitzvos, the Rambam stipulates that the , the knowledge alone of the poor man's plight does indeed suffice for one to transgress.

The Shevet Halevi (V:131) suggests that the Rambam in Mishne Torah also agrees that the knowledge alone of the poor man's plight is sufficient for one to transgress. The Rambam was just mentioning a case in point, where by seeing the poor man requesting – even if he is requesting from others – that is sufficient knowledge of his predicament, requiring one to take action.

However, the Shevet Halevi quotes a Rashba (Shavuos 25a), who is of the opinion that the

requirement to give only comes when the poor man actually makes a request. Since this is a dispute between the Rishonim, the Shevet Halevi asserts that one must be stringent and give as soon as he has knowledge of the poor man's plight.

It is not so clear – according to those that say it depends on the poor man actually requesting – does that mean that the request has to be a personal request from you, or is it suffice if the poor man made an appeal in the shul or walks around and passes your table.

There is also a difference as to who it is that is collecting. If there is someone collecting for a yeshiva or an organization etc., there is definitely no requirement to give, since the prohibition is specifically in regards to the poor.

Furthermore, even if someone is collecting for poor people, as long as it is not the poor man himself collecting, one does not transgress this prohibition by not giving. Additionally, even if the man collecting for others is getting paid for his job, and even if he himself is a poor man, the poskim (Derech Emunah s"k 48, Badei Hashulchan s"k 28) maintain that one does not transgress. The payment they receive is considered a salary for his job and not part of the tzedakah collection.

Other poskim (Maaser Kesafim pg. 155 in the name of the sefer Kol Eliyahu Y"D II:19) are quoted as saying that one does indeed transgress when not giving to a collector for others. Rav Moshe Shternbuch Shlit"a (Teshuvos V'hanhagos III:287) also leaves this case as a question.

The sefer Imrei Bina (O"C 13:3) suggests that one does not transgress when a poor man is going around collecting, because each person is only giving a little bit and presumably by missing out some donations, he will still be able to get what he needs from going to others.

One who is approached by a poor person and does not have any money at all to give, the Derech Emunah (s"k 8) writes that he is not required to borrow in order to give to the poor man. However, if one does have money at home or in the coatroom, he quotes his illustrious uncle, the Chazon Ish, who ruled that one would, indeed, be required to go and get the money. If one wishes to avoid going, he would need to borrow from others to answer the needs of the poor man. However, if the poor man is not willing to wait until you get the money, you would not be required to borrow money just to be able to give tzedakah.

Regarding letters requesting of solicitation that one receives in the mail, the Debretzeiner Rav

asserts that one does transgress if he does not respond. However, the sefer Tzdakah U'mishmat (Rav Bloy) maintains that one does not transgress. He reasons that this does not qualify as a direct request from the poor person. Additionally, it is usually an organization that is sending these requests, which is not better than someone collecting for others, where, as mentioned earlier, one does not transgress if he does not give, since the prohibition is only when ignoring the poor man himself.

2. Precedence in giving tzedakah

The importance of prioritizing in giving tzedakah

People sometimes have a tendency to give tzedakah to various and sundry causes and forget about the close ones. The Sefer Chasidim points out in a number of places that if one doesn't take care of his close relatives, then even the ones that he gives to, will not appreciate him and will eventually become his enemies.

Additionally, he asserts that one who gives to the gabbai and does not care about his close relatives is not considered צדקה but rather צעקה (a screech).

It is therefore incumbent on every person to know his priorities – to know who to give first and how much to give each person – and thus be able to distribute his money accordingly.

The Sefer Hachinuch points out that we must realize that tzedakah is not only for the poor. There are times that a rich person can also find himself in a situation that he may need tzedakah, e.g., he is away from home and needs temporary financial help. (This is not a contradiction to the Gemarah in Sukah 49b which states that tzedakah is only for poor people, because in this situation he is, for all

practical purposes, like a poor person.) Therefore, even a man of means can occasionally be the one who takes precedence if he finds himself in a desperate situation.

Source for prioritizing in giving tzedakah

There are a number of sources for the requirement to prioritize in giving tzedakah. The Sifri in Parshas Re'ah (quoted by the Gr"a in Shulchan Aruch) mentions some of the priorities. Another source is the Tana Dv'ei Eliyahu (also quoted by the Gr"a), based on the pasuk in Yeshaya, "You must not forget your kith and kin." The Tana Dv'ei Eliyahu goes on to say that one must first give one's own parents and then comes brothers, and then other family members.

The Tana Dv'ei Eliyahu continues to delineate the various priorities, putting next on the list after one's own family members the members of one's immediate area (e.g., a complex or development), then comes one's neighborhood and only then the rest of the town. Consequently, a neighborhood collection will take precedence to other collections in the town.

A third source is the Gemara in Bava Metzia, regarding the precedence for lending money. Lending money to a fellow Jew takes precedence to

lending to a non-Jew (even though when one lends to a non-Jew, one may take interest). The Gemara there continues to outline the order of who takes precedence in lending money. Although that Gemara is discussing lending money, we are familiar with the fact that lending money is considered a branch of tzedakah (and is actually considered the highest level of tzedakah); therefore, we can deduce the rules and regulations of tzedakah from the rules of lending money.

The first person on the list

The Minchas Yitzchok points out that it is possible that the first recipient on one's list to give maaser, may actually be oneself or his own wife. He explains that since it is so important to give maaser, everyone should try to separate maaser and if he himself is in need of the funds he can then keep it for himself. We have already come across such a concept that one should specifically separate 10% when one who wishes to give more than the 10% of maaser. He is told to first give the 10% and only then give additional money. So too, one can separate the maaser and then use it for his own needs. (It is possible that this will only be considered a fulfillment of maaser and not tzedakah.)

Other relatives

What is status of one's wife's relatives – do they take precedence? The Pischei Teshuva states that they are not considered equal to one's own relatives and therefore should allocate two thirds for his own relatives and one third for her relatives. However, the Aruch Hashulchan says they are, indeed, of equal status.

One's own parents come first. The Chasam Sofer asserts that one is required to provide them with all their needs, even if that means that there is no money left for others. This is unlike other cases of priorities, where one should not give all his money to one needy person, as stated in Shulchan Aruch (Siman 257:9 and Shach s"k 19).

In regards to one's parents, who takes precedence, a father or a mother? At first glance, the father should take precedence, as we see in the Gemara in Kiddushin, that honoring one's father takes precedence to honoring one's mother. However, in regards to tzedakah, because of the shame involved in collecting and because it is not the nature of women to go collecting, the Shulchan Aruch (Y"D Siman 251:8) lays down the rules that females take precedence, so it is possible that the mother should come first.

Anieyei irchah - Former residents

The Shulchan Aruch (Y"D Siman 251:3) tells us that the poor of one's own city take precedence to the poor of other cities.

There is an interesting question discussed by the Divrei Chaim, in regards to the money that was allocated for the tzedakah of Kupas Rav Meir Baal Haneis. The system was that every country had their own group collection and would send these funds to Eretz Yisroel for the needy. The question was raised whether the people in Eretz Yisroel who originated from that country have the sole rights to that money or does is it go to any needy people in Eretz Yisroel.

The Divrei Chaim spells out four reasons why these former residents do not have exclusive rights to the money:

1. Once the people moved out, they are not considered residents of the original city and do not retain the special status of the anieyei irchah, poor of your city.

2. The Shulchan Aruch (Y"D Siman 251:8) asserts that when money is specifically earmarked for the poor of a different city, there is no association to the city of the givers and no precedence is given to anieyei irchah, poor of your city.

3. It is not logical to suggest that if there are only a few people from that country living in Eretz Yisroel that they should keep all of the money.

4. The whole concept of anieyei irchah, poor of your city, is only applicable to one's city, but has no implication with regards to the entire country or even neighboring cities, which was the usually the case, with the money arriving from people all across the entire country.

He does add that since there was a whole dispute involved, it would be recommended to give them a little more than the others to promote the peace.

Aniyei Yerushalayim come first

The Shulchan Aruch (Y"D Siman 251:3) tells us that the poor of Eretz Yisroel take precedence to the poor of the Diaspora. The Pischei Teshuva quotes the Chasam Sofer (Y"D Siman 233- 234) who adds that the poor of Yerushalayim also take precedence to the poor of other cities in Eretz Yisroel.

The Shevet Halevi mentions that this only applies to Yerushalayim proper, i.e., residents of The Old City.

Others that take precedence

The Chasam Sofer there points out that any matter of life and death takes precedence to everyone else.

Additionally, he asserts that every level of poverty is dealt with first. Therefore, if someone further down the line is missing basic necessities (e.g., only has bread and water and nothing more), he would take precedence to those that already have their basic needs filled. In other words, according to the Chasam Sofer, one must first go down the line and ensure that everyone has bread and then start again and go down the line to see if everyone has other food and then clothing, etc.

The Chofetz Chaim (hilchos halva'ah), however, states otherwise. He brings a proof from Rav Akiva Eiger (the father-in-law of the Chasam Sofer) that one must provide all those earlier on the list with all that they need before moving on to the next one.

3 types of tzedakah

The Aruch Hashulchan raises the following question: if one must give precedence to relatives, then all people of means will be providing for their own relatives and others will die of hunger.

(According to the abovementioned Chasam Sofer, this would not be a question since one must first take care of the bare necessities of all needy people, especially if it involves an issue of life and death.) He goes on to say that it must be that one does not give all the money to relatives, but rather one should give them 50% of his tzedakah and then continue on to the others (that way the relatives will be getting more than the others).

This would seem to be a contradiction to the Tana D'vei Eliyahu mentioned earlier that one must give first to his relatives and only if there are additional funds, should he proceed to help others.

We can reconcile these two ideas based on the words of the Chachmas Adam (145:5), who spells out three different ways that one can allocate funds for tzedakah.

Sometimes a person gives tzedakah to a gabai, the one in charge of distribution of tzedakah funds. In such a case there are no rules of priorities (not for the relatives of the benefactor and not for the relatives of the gabai) and they give out the money as they see fit. In such a case, even the gabai has no right to give to his relatives. Similarly, if a person gives specifically for a certain cause, then it goes for whatever cause he earmarked the funds.

If one gives tzedakah without specifying who it is for, then we assume that is to be distributed according to the rules and regulations of the Torah. In this case, says the Chachmas Adam, one can give all the money to his relatives.

However, if a person says that he is giving to all needy people, this would be the case that he should split it between his relatives and the others. The Derech Emunah asserts that this would also apply to maaser, which is supposed to be money which is made to give to various causes; he should also split it between his relatives and other causes.

We can therefore suggest that the Tana D'vei Eliyahu that asserts giving first to relatives is discussing tzedakah that was not earmarked for any specific cause; then one must follow the priorities of giving relatives first. However, the Aruch Hashulchan is discussing maaser or funds to be distributed to all causes; then one should not give exclusively to his relatives, but rather split it between his relatives and other causes.

3. Overview of maaser kesafim

Overview of maaser kesafim

There is a big discussion in the poskim as to the source of giving away maaser kesafim, a tenth of one's assets.

Some assert that it is a bona fide obligation from the Torah; others say that one is required to give, but it is only a rabbinical requirement; and yet others maintain that it is not an obligation, but rather it is a minhag.

Min Hatorah – scriptural obligation

There are two possible sources quoted by the poskim that teach us about the obligation to give maaser kesafim.

Tosfos in Taanis 9a quotes a Sifri (this can also be found in Midrash Tanchuma and Yalkut in Parshas Re'ah), that when the pasuk states: "Aser te'aser es kol maaser tevuasichah, give a tenth of all of your grains," not only is one required to give a tenth of the grain, but the word "kol" includes any other monetary assets that one acquires. Additionally, since the pasuk states: "shana shana, year by year, that would imply that, unlike maaser ani, which is only twice every seven years, maaser kesafim, is a yearly requirement.

Since it is the most similar to maaser ani, the tenth that it is given to the poor, therefore, this tenth is given to the poor as well.

The Biur HaGra quotes from the Yerushalmi another source for the requirement to give maaser kesafim. The pasuk in Mishlei states: "Kabed es Hashem m'honcha u'merishis kol tevuasichah, one shall honor Hashem [by giving away] from his wealth and from his grains." (It is interesting that he considers this pasuk as a scriptural source, although this pasuk is not in the Torah, but rather in kesuvim.)

Halachic differences

There are a few halachic differences between these two sources.

As already mentioned, the Noda B'yehuda points out that according to the first source mentioned, since it says shana shana, we can understand why it must be given every year.

This pasuk can also be a source for a big leniency. The rule is that we calculate a tenth based on one's income (subtracting all expenses and losses incurred). But, how do we calculate, with each deal separately or the whole year together?

If you calculate each business deal separately, one would be required to separate a tenth from each

time one makes money (even if he incurs losses at other times). However, based on this pasuk, we can infer that one can calculate the whole year all together, and would thus be allowed to subtract all the losses throughout the year - a big leniency.

The Igros Moshe (Y"D I:143) affirms that one can rely on this leniency, but adds that one who chooses to go the other route and calculate each deal separately, will receive additional blessing.

Another halachic difference may be if this obligation of maaser kesafim is limited to financial assets or includes other resources as well. In Igros Moshe (E"H IV:26), Rav Moshe zt"l asserts that just as one is required to give a tenth of his wealth, it would seem that one must give a tenth of his time to help others, as well. Consequently, one would be required to spend time learning with those that need help with their studies.

This ruling may depend on the abovementioned sources. According to the second source, that we learn from "Kabed es Hashem m'honcha, one shall honor Hashem [by giving away] from his wealth," this can, indeed, be extended to all of one's resources. This extension is mentioned in Tosfos (Kiddushin 31a) in the name of the Yerushalmi: m'honcha can also be read m'choncha, from all that Hashem gave you, including one's time.

However, if the source is from aser te'aser, it is possible to suggest that it would be limited to one's financial assets.

Additional Sources

As already mentioned the Sifri is a source for the opinion that maaser kesafim is a scriptural obligation. Additionally, the Tosfos Chadashim (beginning of Pe'ah) maintains that it is a scriptural obligation. This is also the opinion of the Chasam Sofer (SHU"T Y"D 232), quoting the Maharil.

In fact, this mitzvah may have even been introduced in the times of the avos. The Daas Zekainim points out that Yaakov Avinu actually promised to give a tenth of his assets to Hashem. On his flight for his life, escaping the wrath of his brother Eisav and entering the unknown world of his uncle, Lavan the swindler, he made a promise: "If I will make it out alive, I will give a tenth of what I acquire to Hashem." The Midrash states that from here we see that Yaakov instituted the mitzvah of maaser kesafim.

The P'nei Yehoshua and the Or L'tzion add that giving maaser kesafim is actually a fulfillment of a mitzvas asei (presumably, a subdivision of the mitzvah of tzedakah).

Historically speaking, it may have been even earlier. In Pirkei D'Rabi Eliezer, there is an opinion that it was actually Avraham or Yitzchak who instituted the mitzvah of maaser kesafim.

So, we have three opinions in the different midrashim, which one of the avos instituted the mitzvah of maaser kesafim. These opinions are also mentioned by the Rambam and Raavad.

D'rabanan

Others are of the opinion that the mitzvah of maaser kesafim is only a rabbinical institution. The Mishna (Pe'ah 1:1) tells us: "אֵלּוּ דְבָרִים שֶׁאֵין לָהֶם וּגְמִילוּת חֲסָדִים וכו׳ שִׁעוּר" – "The following things do not have any limit … charitable deeds." The Bartenura explains that this is only referring to physical kind deeds, that there is no limit. On the other hand, when it comes to monetary kindness there is a limit. However, the Tosfos Yom Tov and others explain that the Mishna also means that there is no limit for monetary kindness. This is because as far as the Torah is concerned there is no limitation; the limit is only of a rabbinical nature. Rav Akiva Eiger explains that this is because the aforementioned drasha is really only a rabbinical institution, and is merely alluded to in the pasuk.

The same opinion is upheld by the Teshuva M'ahava (disciple of the Noda B'yehuda), the Chavos Yair, and the Mor U'ktziah (Rav Yaakov Emden).

According to their opinion, the pasuk mentiond by the Sifri, will be assumed to be only an asmachta, an allusion to the rabbinical institution of maaser kesafim.

Minhag

There is a third opinion, mentioned by the Maharam M'Rottenberg, that the mitzvah of maaser kesafim is not an obligation at all, but rather a minhag, a custom. He adds that although it is only a minhag, once one started, he must continue giving.

The Bach (Y"D Siman 331) also seems to concur with the Maharam M'Rottenberg. He asserts that although maaser ani must be given to the poor, that is only in regards to maaser ani, which is a scriptural obligation, but maaser kesafim, which is only a minhag, can be given to other causes.

Others question the Bach on this statement, but the Pischei Teshuva explains that the Bach's source is from the Maharam M'Rottenberg.

According to this opinion, what do we do with the drasha of the Sifri? The Derech Emunah asserts that even according to this opinion, we can say that

it is an asmachta, an allusion to the minhag. The Shevus Yaakov and Chavos Ya'ir answer that we do not follow this drasha of the Sifri since it is not brought in Shas.

And although we brought sources that one of the avos established maaser kesafim, one can argue that it still did not become a requirement, but was only established as a minhag.

The Chavos Ya'ir and the Aruch Hashulchan point out that the language used by the Shulchan Aruch would seem to show that is not an obligation. The Shulchan Aruch states that if one does not give the required amount, he is considered to have a "bad eye." If it would be an obligation, then he is not just one with a "bad eye", but rather "a transgressor" and a much stronger language should have been used.

The Taz argues on his father-in-law, the Bach, and maintains that it clear in the Shulchan Aruch, in the beginning of Y"D Siman 249, that it is a bona-fide obligation. (It is not clear what his proof is.)

He does not specify if he means that it is a scriptural obligation or rabbinically mandated.

The Beis Lechem Yehudah suggests that although there may be an obligation to give maaser kesafim, there still remains an aspect of minhag in

regards to what to use it for (and that may also be the intent of the Bach).

This may also be the intent of the Taz, when he states that the Shulchan Aruch holds that it is a bona-fide obligation, he means the actual obligation to give, but who to give to is only a minhag and that is why the Shulchan Aruch uses the expression of a "bad eye."

Differences between tzedakah and maaser

Although maaser kesafim is clearly a subcategory of tzedakah, there are numerous differences between them.

1. Exact amount

Although when it comes to tzedakah, there is no maximum and the more the merrier, maaser kesafim, on the other hand, must be exactly one tenth. The K'neses Hagedola asserts that one must keep an exact calculation; otherwise, one only gets a mitzvah of tzedakah and not maaser. (However, the Pischei Teshuva is not sure about this regulation.)

In fact, the Bach takes this concept a step further. Although the basic requirement is to give 10%, one can give up to 20%. This is based on the double expression "a'aser a'asrenu," used in the pasuk, in regards to Yaakov. Since the pasuk splits it

up, he asserts that when giving a fifth, one should give 10% and then again 10%.

Rabbi Yitzchok Berkowitz (a posek in Yerushalayim) is quoted as saying that if one is not sure how much his expenses are and wants to give more, he should stipulate that whatever is more than maaser should be considered as tzedakah.

2. What to do with the money

Another difference is what to do with money. Tzedakah must be given to the poor where as maaser can be used for other causes.

Adiitionally, the Chofetz Chaim (Ahavas Chesed, begining of Perek 18) brings different opinion if one can use the money of maaser to make a gemach (a free loan service). However, when it comes to tzedakah, lending out the money is considered to be the highest form of tzedakah.

3. Who has to give

Another difference: Tzedaka is required by all, even a poor person, who is receiving tzedaka. But maaser is only for someone who is making money.

4. When one has to give

Tzedakah is only an obligation when one is approached, but maaser is an obligation incumbent

on anyone to allocate one tenth of his financial gains to others, regardless of whether he was approached.

5. Your money or not

The Yosef Ometz states that giving maaser is not a fulfillment of tzedaka, because tzedaka must be given from one's own money and maaser is not considered one's own money, since this is the amount that one is required to separate. Once a person indeed separated the proper amount, it is no longer his. He therefore suggests that one give a little more than a tenth to ensure that he fulfills the mitzvah of tzedaka, as well.

6. Extent of the mitzvah

Another special bonus with maaser is that when giving tzedakah one is considered doing a mitzvah just with the actual money given. However, maaser on the other hand is not just the actual money given, but rather through separating 10% of one's assets, one is partnering with Hashem in all of his money and thereby gaining His partnership in all endeavors.

7. Testing Hashem

There is a unique stipulation in regards to maaser. The pasuk stipulates that one may actually

"test" Hashem to see if he will become rich from giving maaser. Some say that this applies only for maaser and not in regards to tzedakah.

8. In the Diaspora

The Minchas Yitzchok (X:85), in the name of Shu"t Shaarei Tzedek, discusses if the obligation is applicable in chutz la'aretz (Diaspora). Some propose that it is similar to maaser ani which is only in Eretz Yisroel.

Others say that, just the opposite, the main reason for the mitzvah was for people in chutz la'aretz, who don't have maaser ani.

4. Giving more than a fifth to tzedakah

Not to give more than a fifth to tzedakah

The Gemara (Kesuvos 50a) tells us that one may not give to tzedakah more than a fifth of his money because that may cause him not to have enough for his own needs and eventually need to collect himself.

The simple reading of the Gemara seems to imply that this is a rabbinical regulation, forbidding one to give more. The Rambam – in his Peirush Hamishna – understands that it is not forbidden; rather the point is that one is not required to give more. In fact, the Rambam adds that if one wishes to go "the extra mile," he may give more than a fifth. However, most commentators understand that it is an issur. The Aruch Hashulchan and the Igros Moshe also prove from the Gemara and the Shulchan Aruch that it is an issur and not optional.

In fact, the Gr"a, in his elucidations on Meseches Pe'ah, goes even further and maintains that this is indeed a Halachah L'moshe M'sinai (an oral tradition handed down at Mt. Sinai, together with the Torah), which has the status of a Scriptural prohibition. But, at one point it was forgotten and the chachamim merely reminded everyone of the original prohibition.

Other mitzvos

Simply understood, this rule is only regarding giving tzedakah. However the Rosh and Rabeinu Yerucham extend this regulation to other mitzvos as well. They state that one should not spend more than a fifth of his assets to facilitate the fulfillment of any mitzvah. This is quoted by the Rama (O"C Siman 656), in regards to how much one should spend on buying a lulav and esrog.

The question is, if this would seem to be a regulation regarding tzedakah, how did they extend it to other mitzvos?

It is possible that it is self-understood. Since the reason for this regulation is to ensure that one does not become destitute himself, the same should apply regarding all other mitzvos, as well.

However, Rabeinu Yerucham seems to take this extension a step further. Not only does he say that one may not spend more than 20%, he also stipulates, in regards to fulfilling any mitzvah, that one is required to spend up to 10%, one tenth of his assets, as we see regarding tzedakah.

The Beis Yosef asks: where did he get this from? The Eliyahu Raba points out that Rabeinu Yerucham bases his innovation on the rules of tzedakah. But this still needs to be understood; how can we extend this regulation to other mitzvos (as

indeed the Biur Halachah questions)? Another question can be asked: according to many poskim, there is no requiremrnt to give 10% and the regulation of giving 10% to tzedakah is a minhag, if that is the case how can we establish rules and regulations for mitzvos, based on a custom?

The sefer Vayedaber Dovid (by Rabbi Dovid Heller zt"l) suggests the following explanation. There are actually two independent mitzvos: giving tzedakah and giving maaser. The simple understanding is that the rules of 10% or 20% are regulations in the mitzvah of giving maaser. However, it is possible that these are regulations in the mitzvah of tzedakah. In other words, the mitzvah of tzedakah must be fulfilled with a minimum of 10% and one may give up to 20%. Once it is a regulation in the fulfillment of a mitzvah, we can extend it to other mitzvos as well.

The Biur Halachah (O"C Siman 656) discusses whether the limitation of 20% applies even to a mitzvah overes, a mitzvah which comes up and if one does not give the extra money, he will lose out the opportunity to fulfill the mitzvah.

The Mishnah Berura (O"C Siman 656 s"k 8) also points out that the same rules and regulations of maaser kesafim will apply. Therefore, just as the rule is regarding maaser kesafim that one gives the

first year 10% or 20% from all his assets and the following years just from the profits, the same will apply to all mitzvos.

Exceptions

1. On one's deathbed

One who is on his deathbed is not subject to the limitation of 20%. This is mentioned in the Gemarah (Kesuvos 67b): Mar Ukva, on his death bed, feeling that he had not done enough for his place in the next world, generously gave of his money to tzedakah. The Gemara goes on to explain that the normal limitations do not apply, since he will no longer need the money for himself after he passes away.

The Rama (Y"D Siman 249) states that one may give all of his money before his death. The Bach similarly allows one to give away most of his money. However, Rav Akiva Eiger, in his glosses on the Shulchan Aruch, quotes the Sh'iltos and the Pri Megadim that one must also take into account leaving some money for his family. Therefore they assert that one should only give away up to a third of his assets, leaving two thirds for the family. The Aruch Hashulchan advises that one can give up to a half to tzedakah, thereby splitting the money between himself (for his merit in the next world) and his family

2. For supporting Torah

The sefer Ahavas Chesed (written by the Chofetz Chaim) quotes the Shita Mekubetzes (Kesuvos 50a) that when supporting torah learning there is no limitations to how much one may give. He explains that when one gives money to support torah learning, he becomes a partner in all of the torah that is being learnt, similar to the concept of Yissachar and Zevulun, where the dividends of the learning are shared. Thus, one is not considered to be giving, but rather he is on the receiving end by making an investment and reaping the dividends on his great deal. This is also affirmed in Derech Emunah (7:26)

3. One who is very rich

The Shulchan Aruch seems to say that the limitations only apply to one who is in an average financial position. However, if one is extremely wealthy and giving more than 20% of his money will not have any effect on him, there is no concern that his giving will make him destitute and he is not bound by the above limitations.

In Igros Moshe (Y"D I:143), Rav Moshe zt"l suggests that the Rama, who comments on the above-mentioned Shulchan Aruch, that one should

not give more than a fifth, is disputing the opinion of the Mechaber and stating that one should never exceed the 20%, regardless of his financial means. However the Chachmas Adam and the Ahavas Chesed affirm that a wealthy person can give more than 20%. The Minchos Yitzchok also agrees that one who can afford it is not bound by the above limitations (proving this from the words of the Darchei Moshe Ha'aruch). The Derech Emunah (7:24) proposes that if one is financially able, not only would he be allowed to spend more, it is possible that he is actually required to do so, since he is able to help the poor people with their needs.

4. Poor people asking

The Ahavas Chesed (20:2) states that the 20% limitation may only apply if one is not approached by poor people. However, if one is asked by a poor person for help, he may not be bound by any limitations, since he is thereby required to help this person and the Chachamim did not exempt the person from the Scriptural obligation of tzedakah.

5. Life threatening

The Ahavas Chesed adds that the limitations will not apply if there is a life-threatening situation.

6. Giving from one's salary

Additionally, the Ahavas Chesed adds that the limitation is only on one's assets; however, if one has a set income, which is more than what he needs for his expenses he is allowed to use that extra money for tzedakah, even if it exceeds the 20%.

7. One who is a spender

The Ahavas Chesed points out how we see that a great emphasis is placed on one not spending too much of one's money; the Chachamim did not even allow one to spend too much on the extraordinary mitzvah of tzedakah. That being the case, one should certainly not splurge on worthless vanities (such as fancy clothing and mansions), thereby chipping away at his finances. He goes on to say that it is possible that one who is an extravagant spender, may not be subject to the 20% limitation. This is also quoted in Derech Emunah (7:26)

8. For kapara (atonement)

In the Igeres Hateshuva (written by the Baal Hatanya – Chapter 10), he writes that the limitation of 20% only applies to one is giving tzedakah simply for the sake of the mitzvah. However, one who seeks atonement for his aveiros – which can be

achieved through giving tzedakah – is not bound by these limitations. Just as one will go all-out to pay for doctors to heal his physical ailments, one may do the same to heal his spiritual ailments. He adds that the reason why tzedakah has such a powerful potency to achieve atonement, since it is extremely difficult for people to part with their hard-earned money, when one does give tzedakah, it has the immense power to heal one's soul.

9. A leader

A leader of the Jewish people is also not subject to these rules because it is incumbent on the people to support him and there is no concern that he will be stuck without funds.

10. Lending

Lending money is also another exception. The Ahavas Chesed quotes the Sefer Hachinuch that since he is not giving away the money forever, but will be paid back, he must give more than the 20% and lend whatever he is able to lend.

11. Approximating

The sefer Badei Hashulchan (249:10) suggests that in regards to 20%, one does not need to be

exact; an approximate calculation will suffice. He bases this on the words of the Pischei Teshuva, who, in regards to the 10%, states that one can be approximate. However, one can question this analogy. Even in regards to 10%, there are those that dispute the Pischei Teshuva and assert that one must be exact. Additionally, the words of the Pischei Teshuva may apply specifically in regzrds to the 10%, where no prohibition is involved. However, in regards to giving more than 20%, which is not allowed, one can argue that an exact calculation would be required.

5 - Tzedakah - why there is no brocha

Tzedakah -why don't we recite a brocha

The mitzvah of giving tzedakah is a mitzvah that is clearly spelled out many times in the torah. In fact, the Rambam and the Shulchan Aruch have an unusually lengthy introduction to these halachos and elaborate on the importance of this great mitzvah. The obvious reason for this is, since people are very attached to their money, it is therefore hard to give it away and it calls for an extra dosage of awareness about the greatness and the wonderful dividends that one will receive through giving tzedakah.

The Rishonim raise the question as to why, unlike many mitzvos, no brocha is recited on the mitzvah of giving tzedakah? The Derech Emunah quotes one of the Rishonim, Rabeinu Eliyahu, who actually recited a brocha.

(The sefer Yalkut Mei'am Lo'ez writes that it is a recommended practice to have in mind the mitzvah of tzedakah when reciting Birchas Hatorah. Birchas Hatorah is in essence a mitzvah given to prepare for all other mitzvos and therefore inherently can include any mitzvah that does not have its own brocha.)

We do not follow his opinion and the question is why.

There are many explanations given and I would like to discuss some of them.

1. Mitzvah contingent on others does not require brocha

The Rashba asserts that whenever a mitzvah depends on others to be accomplished, no brocha is recited. This would apply, says the Rashba to many mitzvos that are interpersonal, such as kibud av va'eim, bikur cholim, and nichum aveilim. Since the recipient may not accept what is being given, no brocha is recited. Therefore, in the case of tzedakah, as well, the poor person may not be willing to accept what is being given and no brocha is recited

The simple way to understand this answer is that we are concerned about the fulfillment of the mitzvah being hindered, thus causing a brocha to have been recited in vain (l'vatalah).

The Pnei Moshe raises a question on this understanding. If the benefactor approaches the poor person, we may be concerned that his donation will not be appreciated. But, if a poor person approaches someone and has asked for a donation, would it not be safe to assume that he will accept what he is given? We must contend that even in such a scenario, there remains a possibility that the donation will not be accepted.

There is another interesting question raised on this understanding. The Ra'avad states that the brocha on kidushin (marriage) is recited after the ceremony and not before, because maybe she will have a change of heart.

So, even if we are concerned that the poor person will not accept, that is not a sufficient reason to abolish the recital of the brocha entirely, but rather a reason to push off its recital until after the fulfillment of the mitzvah.

The Sheiris Yosef suggests that the aforementioned reasoning of the Raavad is only is regards to the brocha that is recited upon getting married, which can be classified as a birchas hashvach, praising Hashem, which is appropriate even after the deed has been done. However, birchas hamitzvos, a brocha recited in conjunction with a fulfillment of a mitzvah, can only be recited before the mitzvah is done. Consequently, when the brocha cannot be recited prior to the fulfillment of the mitzvah (because it is contingent on the cooperation of the poor person involved), no brocha will be recited at all.

However, it seems that there may be a deeper intent to this explanation of the Rashba. The Rashba bases this notion on a Gemara in Kesuvos 40 a. The Gemarah there is discussing one who has a mitzvah

to marry a certain girl, but cannot fulfill the mitzvah because she is forbidden to him (e.g., she is a mamzeres). The Gemara raises the following question: why don't we say asei doch'e lo sa'asei, that the mitzvah to marry her supersedes and pushes away the prohibition? The Gemara answers that since this mitzvah is contingent on her agreement to marry him, the prohibition will not be set aside. The Rashba proves from this that when a fulfillment of a mitzvah is contingent on the agreement of the various parties involved, it becomes a "second-class" mitzvah, and will not be empowered with the right to push aside any prohibitions. This being the case, the Rashba takes this concept a step further, to the regulations of reciting brochos, and suggests that a "second-class" mitzvah does not require a brocha.

There are some questions raised with this understanding. Rav Vozner zt"l asks on the Rashba, that even if it is clear from the Gemara that it can be classified as a "second-class" mitzvah, it is still, nonetheless, a bona-fide mitzvah, so why shouldn't a brocha be recited?

2 – Constant mitzvos do not require a brocha

The Or Zarua (one of the Rishonim, and a teacher of the Maharam M'Rottenberg) suggests

that a brocha was only instituted when a particular mitzvah is done sporadically, such as tzitzis, tefillin, sukah, and mezuzah, which generates a certain dimension of excitement (chavivus). However, mitzvos that are done constantly and are required 24/7, such as believing in Hashem and kibud av va'eim, no brocha was instituted. Therefore, tzedaka, which is required to be done all the time, whenever the need arises, will not require a brocha.

The Or Zorua raises a difficulty with this notion from birchas hatorah, the brocha recited on learning, which is also a mitzvah that is done 24/7 and should therefore not require a brocha. He answers that although there is a mitzvah to learn 24/7, one can fulfill the bare minimum by learning a little in the morning and a little at night.

However, the question can still be raised: even if technically, with a little learning, a person can fulfill the bare minimum of learning every day, it is still incumbent on a person to learn as much as possible in order to acquire as much Torah knowledge as possible. So, indeed, the mitzvah of learning Torah does not end.

We can possibly suggest another answer to the Or Zarua's question. A person must constantly study the Torah, thereby acquiring new understandings and opening new vistas of knowledge in Torah.

Furthermore, even when reviewing "old" material, each time one learns, one must feel as if it is new and different; therefore there will still be the dimension of excitement to require a brocha.

We can also suggest another approach to answer the Or Zarua's question, while keeping his premise that one cannot recite a birchas hamitzvah on the Torah, since it is a constant mitzvah. The Levush, among others, suggests that the brocha that we recite on the Torah is not a brocha on the mitzvah of learning, but rather a birchas hashevach, thanking Hashem for this precious gift and in regards to birchas hashevach, a brocha can indeed be recited.

3 –Hard to fulfill properly

Another explanation given as to why no brocha is recited is because it is extremely difficult to fulfill the mitzvah properly. The Gemara states that one who is approached by a needy person should try to fill the request in its entirety and give him all that he needs, even a horse to ride on or provide a servant to run in front of him (a form of honor which was customary for certain wealthy individuals). In fact, the Gemara tells us that the great Tana Hillel, when no one else was available, ran in front of a man who had been accustomed to receiving such honor,

before losing his wealth. Since this an almost impossible task to accomplish and one should be wary of the fact that he is not fulfilling the mitzvah completely, no brocha was instituted.

4 – Not to disgrace or cause distress to the recipient

Another suggestion is that it is a disgrace to the recipient if he is told: "Please wait a moment, while I recite a brocha on helping you!"

A similar suggestion is that this would cause undue pain and suffering to the needy person who will need to wait to receive his donation. In fact, the Gemara quotes the famous incident where a man who was extremely destitute actually died while waiting to receive the donation from Nachum Ish Gam Zu.

(This answer would depend if one would recite a new brocha each time he gives tzedakah or only once in the morning-as we do for birchas hatorah. If, indeed, one brocha suffices for the whole day then it would still be possible to recite the brocha in the morning in the comfort of one's home, before putting money in the pushka, which does not involve anyone getting embarrassed. However, since there is no one asking for tzedakah, one can argue

that just putting money in the pushka will not require a brocha.)

5 – No brocha at the expense of others

The Raavad suggests that no brocha was instituted when the mitzvah is based on someone else's downfall or distress. The only way to have an opportunity to fulfill this mitzvah is through someone else's downfall and being needy. The same notion will explain many similar mitzvos, such as nichum aveilim and bikur cholim, which are only applicable when someone is sick or passed away.

6 – Proper intent

We are familiar with the halachic concept of mitzvos tzrichos kavanah, which means that one must have the specific intention to do the mitzvah of Hashem. However, if one has the wrong intentions when donating (e.g., to get honor), he may actually forfeit the mitzvah. Therefore, since there is a possibility that the mitzvah will not be fulfilled no brocha is recited. The Chofetz Chaim does point out that this should not keep someone from giving tzedakah, since we know, מתוך שלא לשמה בא לשמה, by doing a mitzvah, albeit with improper intentions, he will be training himself to do mitzvos

and will eventually reach the level of doing it properly.

7 – Is he a bona fide pauper?

The Chidushei Harim (the founder of the Gerrer dynasty) suggests yet another reason. In many instances, we cannot be certain that this person claiming to be destitute is indeed in that poor state.

Although this will not justify abstaining from giving, since it still possible that he is needy, but the fact that there is an element of uncertainty puts this into the rule of safeik bracha (in regads to brocha – when in doubt, leave it out) and is sufficient reason to refrain from reciting a brocha.

8 – Logical mitzvah does not require a brocha

A mitzvah that is common sense and would be done even if we were not commanded to do so and even done by non-Jews, as well, is not so clear that it is being done because Hashem commanded us to, no brocha was instituted, since it is not inherently clear that it is the mitzvah of klal yisroel.

(Based on this understanding, we can answer the question Rav Vozner zt"l raises on this answer, that if the non-Jews also keep this, all the more so, is that not a reason to pronounce that our intention is

not for any other reason but to fulfill the mitzvah? However, based on the above, we can understand that the performance of the mitzvah must be inherently clear that it is done for Hashem's mitzvah in order to proclaim that one is doing this action solely for the mitzvah that was given to us.)