YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**20th Century Teshuvot**

**By Rav Gidon Rothstein**

**Shiur #06:
R. Uziel on Using *Ma’aser Kesafim* Money to Purchase Land in Israel**

After five weeks with R. Kook, let’s turn to [R. Ben-Zion Meir Chai Uziel](https://en.wikipedia.org/wiki/Ben-Zion_Meir_Hai_Uziel), who was born in Yerushalayim in 1880, served as Sephardic Chief Rabbi of Yaffo in partnership with the Ashkenazic R. Kook, and in 1939 became Chief Rabbi of Mandatory Palestine and the State of Israel, until he passed away in 1953.

For this first foray into R. Uziel’s thought, we will consider his response to a rabbi from [Meknes](https://en.wikipedia.org/wiki/Meknes), Morocco, in a 1946 letter reproduced in *Shu”t Mishpetei Uziel* 2, YD43. The rabbi wanted to know if he could use his *ma’aser kesafim* money, the tenth of his income set aside for charity, to support the settling of Israel. One reason not to allow it would be the Rema’s statement, YD249:1, that *ma’aser kesafim* cannot be used for ordinary *mitzvot*,like financing the candles in the *shul*, but must be given to the poor.

[I would have wanted to share this responsum if only to review this idea of Rema’s. For reasons that will become clear over the course of the responsum, giving to “the poor” can include more than just a direct gift to a poor person, which blurs the issue. Fundamentally, though, the practice of giving a tenth of one’s income was supposed to be about giving to the poor. This reminds us that “charity” is about the poor; people can and should use money for other good causes, but it’s not *tzedaka*.]

**The Mitzva of Settling Israel**

First, R. Uziel confirms that if settling Israel is an already-existing mitzva, like that of having a *shul* with lit candles (for a more common current example, giving to the poor on Purim is an independent mitzva that we therefore may not fulfill with *ma’aser kesafim* money), Rema would prohibit supporting it with our tithed money. And indeed, R. Uziel is certain that it *is* a Biblical mitzva, incumbent on every Jew to the extent of his or her abilities, to be involved with fostering the flowering and settlement of the Land of Israel. (The phrasing of “to be involved with” allows room for those unable to settle in Israel themselves to still fulfill the mitzva by supporting the settlement.)

To prove his point, he quotes the fourth of the obligations Ramban thought Rambam failed to count in his *Sefer Ha-Mitzvot*. Ramban cited *Bamidbar* 33:53-54, where the Torah tells us to conquer the Land and live in it.

Some readers of *Sefer Ha-Mitzvot* thought Rambam disagreed and held there is no Biblical mitzva to settle or live in Israel, perhaps with the view that the commandment only applied to the Jews who first arrived. R. Uziel rejects this based on Rambam’s *Laws of Kings* 5:9-12. There, Rambam codified the rule that a Jew may not leave Israel other than in certain specific instances, an idea that R. Uziel – who presumes that Rambam assumed a Biblical obligation to settle in Israel, and simply had some reason not to count it among the 613 – is sure extends from the mitzva of settling the Land. Rambam also chose to include in his rulings the Gemara’s idea that a Jew should choose to live in Israel, even in a city with an idolatrous majority, over living outside of Israel in a city with a majority of Jews.

The mitzva includes redeeming the Land, buying it from non-Jews, and/or taking deserted land and making it habitable. It is incumbent on individuals as well as the community, says R. Uziel, and hastens the redemption and return of Zion’s children to their borders. (If only he had known of the return Hashem would provide over the ensuing decades – with an estimated 6.75 million Jews in Israel now, compared to the 600 thousand of his time. R. Uziel’s certainty that there is such a mitzva hurts the cause of using *ma’aser kesafim* money, which cannot go for existing *mitzvot*.

**Conditions Accepted?**

One maybe have thought to find room for leniency in the *Taz* (YD249:1), who suggested the possibility of setting aside *ma’aser kesafim* with the condition that one could use it for other purposes. This leniency is narrower than it appears; he allowed buying honors in *shul*, but the money paid for those honors did go to the poor.

However, R. Uziel rejects the idea, based on a passage in *Beitza* 19b where R. Yochanan told Resh Lakish such conditions are ineffective, the basic commitment (to give *ma’aser kesafim*, for our case) takes effect, and the incorrect condition falls away. The same applies to *ma’aser kesafim*, because buying land in Israel is a pre-existing obligation.

**A Blurry Minimum**

The actual road to permission starts with realizing that the mitzva of *yishuv Eretz Yisrael*, settling the Land of Israel,has no end: *ein la shi’ur*; there is no amount that completes the mitzva. In such situations, one fulfills the basic obligation with any amount of money. Thus, if the rabbi from Morocco gives some amount of new, non-*ma’aser* money for the mitzva, he can then give more from *ma’aser* money. Rambam demonstrated this idea in *Laws of Chagiga* 2:8, where he permitted using *ma’aser sheni* money mixed with regular money to buy the *shalmei chagiga*, celebratory offerings of a holiday. Since *ma’aser sheni* is a pre-existing obligation (to either eat the tithe in Jerusalem, or redeem it and use that money to buy food in Jerusalem), the money from redeeming *ma’aser sheni* should not be available to use towards another obligation; however, as long as there is non-*ma’aser sheni* money to supplement, Rambam allows using *ma’aser sheni* money towards the c*hagiga* mitzva as well.

This solves Rema’s concern about using *ma’aser* money to fulfill a pre-existing mitzva, but not yet his point that the money is supposed to go to the poor.

**It’s *Tzedaka*, Too**

Another avenue of leniency opens up when we consider who will benefit. This rabbi intends to buy land to be settled, and the mitzva is fulfilled when the land is being used productively, for residences, businesses, farms, whatever. Fostering a thriving economy helps the poor, too, because they will find it easier to support themselves – the highest form of *tzedaka*.

[He cannot mean this as radically as it sounds. I couldn’t start a private business with my *ma’aser kesafim* money, on the theory that I intend to support many employees who would not have work otherwise. R. Uziel was operating in a very difficult economic environment – as we will see in other responsa – and in that context, donations toward setting up a better economy in Israel could count as charity.]

Among the poor, Torah scholars have a special place in our hearts, and R. Uziel recommends putting at least some of the donation toward a special fund within the *Keren Kayemet Le-Yisrael*, to bring those who study Torah and observe *mitzvot* to live in Israel. In doing so, the rabbi would fulfill two *mitzvot* well, and would bring closer the time of our redemption.

**A Second Letter**

The next responsum (*Shu”t Mishpetei Uziel* 2, YD44) went to this same rabbi. Perhaps most interesting, R. Uziel begins this letter by explaining his general policy not to answer on a topic he has already addressed, because he has no time. Out of respect for this man’s thirst for Torah from Israel, however, he has chosen to read the man’s letter and respond.

In the first letter, R. Uziel had stressed the money should go for projects that hire Jews. (In a coming *shiur*, we will again see his strong interest in what was called *avodat Yisrael*, hiring Jews.) The rabbi who had asked the question didn’t understand why, arguing that because a rising economy lifts all boats, money given to buy land and allow Jews to live there should be good enough, even if those Jews would hire non-Jews.

R. Uziel concedes, and says he was reflecting the facts: the *Keren Kayemet Le-Yisra’el* required that anyone who took their funds commit to hiring Jewish workers. It was not a condition for the money to be given from *ma’aser.*

**Paying For *Mitzvot* That Do Not Benefit the Poor**

R. Uziel had also said that *ma’aser* money can be used for a mitzva that is not a direct obligation (like extra money for settling Israel). The rabbi from Meknes knew Maharil had said the money can only go to the poor, so how could it go for *mitzvot*? The rabbi also quoted *Chatam Sofer* along these lines and inferred the idea from *Rema*, but R. Uziel reminds him that *Taz* had allowed setting conditions when putting aside *ma’aser* money, even to pay for candles for a *shul.*

R. Uziel assumes *Taz* allowed it because supporting the running of a *shul* helps the poor as well as the rich. In addition, the functionaries of the *shul* – the c*hazanim,* the teachers, the people who see to the *shul*’s physical upkeep – are all poor, making only a bare living from their communal work. [This is an interesting example of how times have changed; today, some *shul* employees still earn only a bare salary, but many rabbis and other communal workers are, thank God, paid a reasonable wage. For R. Uziel, we would have to re-examine the permissibility of giving *ma’aser* money to such a *shul*.]

Making it even hard to allow, R. Uziel agrees more with *Chatam Sofer,* that one should not purchase *mitzvot* in *shul* with *ma’aser* money – the reason he had offered other reasons to allow it.

**The Source for the Mitzva of *Ma’aser***

The Meknes rabbi had assumed the obligation of *ma’aser kesafim* was Biblical, while the amount was Rabbinic – an idea *Sifrei* seems to support in the way it interprets *aser te’aser et kol tevu’at*, “you shall surely tithe all the crops,” to include business and all other profits, not just harvests.

*Taz* (YD 331:32) recognized the implication, then noted that *Beit Yosef* had quoted a *Yerushalmi* that assumed it is a Rabbinic rule and treated the inference from *aser te’aser* as an *asmachta*. *Bach* to YD 331 went further, insisting it was not even a Rabbinic obligation. R. Uziel thinks R. Yosef Karo (who wrote *Beit Yosef* as well as *Shulchan Arukh*) accepted this opinion, as he does not mention such an obligation in the *Shulchan Arukh*. To R. Uziel’s view, no one concludes there is a Biblical obligation of *ma’aser kesafim*.

R. Uziel further notes that common practice supports this claim, as only certain particular individuals are careful to give *ma’aser kesafim*, and that *Chatam Sofer* (YD 231) said it was not a clear obligation; rather, some give*,* and some do not.

**What You Can Afford**

The rabbi had also hoped to fulfill the obligation of *pidyon shevuyim,* redeeming captives, with this same money, since the *Keren Kayemet* used its collected funds to resettle Holocaust survivors, so he would be redeeming them, too. R. Uziel thinks not, if the rabbi can afford more.

Really, *ma’aser* should be for the poor, and it adds to the basic obligation of charity for the poor. The value in giving it to the *Keren Kayemet* lies in its addressing more than one poor person, in line with *Shulchan Arukh*’s adjuration (YD257:9) not to give all of one’s *tzedaka* to one recipient.

The same would apply to not giving it to one charity, R. Uziel assumes. He cites verses and Talmudic passages extolling the value of *tzedaka*, apparently to stress the value of spreading *tzedakah* money across platforms, to cover as many bases as possible.

Our first exposure: R. Uziel, a man whose many involvements generally preclude him from answering the same issue twice, who values the love of the Land of Israel enough to show how a rabbi from Morocco could and could not direct his charitable giving towards the building of the Land of Israel.