

ליקוטי ופסקי הלכות "חוקי חיים"

ותלמוד
"תקופת התנאים"
לעשות רצונך
בלבב שלם



שע"י "חדר הוראה" שכונת מנחת יצחק פעיה"ק ירושלם תובב"א - בראשות הרב חיים אהרן בלייער שליט"א

Halachos compiled by HaRav Chaim Bleier – Translated from the Hebrew edition by R' Zerachya Shicker

Please do not
read during
davening or
Krias HaTorah

Halachos of Nedarim, Pledges

Nitzavim-Vayeilech 5784

340

Minhag to Sell Aliyos and Mitzvos

Evolution of the Minhag

1. There is an accepted minhag in many Jewish communities to sell aliyos and mitzvos in shul. There are several halachos pertaining to this minhag. As we stand before the Yamim Noraim, a time of many Krios HaTorah and aliyos at lofty moments, we will strive to explain some of them, as they are very relevant these days.
2. **Specific mitzvos.** The earliest sources for this minhag show that the minhag was to sell specific mitzvos, e.g., hotza'ah v'hachnasa of the sefer Torah (א' קריאת התורה אות א') and gelilah (הבנתים תקכ"ג, טור או"ח סי' קמ"ז, מ"ב סק"ח ספר חסידים סי' תשס"ד, מרדכי בשם מהר"ם מרוטנבורג ב"ב חזקת) and aliyos.
3. **Aliyos.** Over the years, this minhag expanded to include selling specific aliyos, e.g., Chosson Torah and Chosson Bereishis (ספר (המנהגים סי' ס"ג, מהר"ל מנהגים הל' סוכות, מהר"ק שורש ט' ספר) (של שלמה ב"ק פ"ח סי' ס', לבוש או"ח סי' קל"ו הובא במ"ב סק"ד).

Reasons for Selling Mitzvos

4. **Tzedaka, maintaining the shul.** The poskim give multiple reasons for the minhag to sell aliyos (ע"י בקונטרס מכירת המצוות בהלכה להגרא"י) (לבקוביץ שהביאם בט"ט משהר"ל ישי"ש גיטין פ"ה, שו"ת מב"ט ח"ג סי' ס', שו"ת נחלת) (שבעה סי' ד' אהבת חסד ח"ב פט"ז בהג"ה).
5. **Prevents arguments.** Another reason cited in sefarim that record minhagim is that it prevents arguments and fights that can arise between gabbaim and mispallelim regarding how the aliyos and kibbudim are divided. By selling the mitzvos, peace reigns in shul (ישי"ש שם, שו"ת מהר"ם מיינץ סי' ו, א"ר תרט"ט).
6. **Love for mitzvos, honor for Torah.** Another reason given is to show love for mitzvos. Spending substantial sums of money increases the honor for Torah (טור או"ח סי' קמ"ז, שו"ת מהר"ק סי' ט).
7. **Mitzva for pay.** Another reason given is that there is no comparison between the level of one who does a mitzva for free and of one who pays for a mitzva. Thus, it is proper to pay for the mitzvos of aliyos to the Torah and other kibbudim (ע"פ זוה"ק פ' ע"פ שער האייתון) (תרומו דף קכ"ו ע"א): *It is proper for a person to strive to buy an aliya before Rosh Hashana to go up to the Torah on Rosh Hashana day. The main mitzva is specifically to buy it with money, not [to get it] for free, as mentioned in many places in the Zohar.* This is true not only of Rosh Hashana, but throughout all the Yamim Noraim (מ"א הובא במ"ב סי' ט) (תקפ"ד סק"ח, חיי אדם כלל ס"ח סט"ז).

Validity of the Kinyan When Buying Mitzvos

8. **True kinyan.** The poskim discuss and qualify the validity of the kinyan on the sale of mitzvos. Some want to say it has the force of a true kinyan with the halachos of kinyanim. However, the poskim struggle to understand how this fits with several rules of kinyanim. A kinyan requires an action (שולחן ח"מ הל' מקח וממכר סי' קפ"ט) while an aliya is sold verbally with no action, sometimes with just a signal of the finger or head. Also, an aliya is something intangible [אין בו ממש], for which kinyanim do not work (שו"ת ח"מ סי' רי"ב ס"א) (ממש). It is also something not yet in existence [לא בא לעולם], for which kinyanim do not work (שו"ת ח"מ סי' ר"ט ס"ה), as when it is sold, the time for the

mitzva has not yet come. Also, in a regular transaction, a seller sells something he owns to a buyer – who owns the mitzvos that are sold for a transfer of ownership from seller to buyer to take place?

9. **Kinyan situmta.** We will discuss multiple approaches given for this kinyan. Some poskim hold that sale of aliyos works with a kinyan "situmta." This means any action people customarily view as a kinyan action that obliges the parties is a full-fledged kinyan even if it lacks details of kinyanim determined by Chazal (גמ' ב"מ דף ע"ד) (ע"א). An example is saying "Mazel u'bracha" when selling diamonds. Based on this, the poskim write that since a tzibbur has an accepted practice of buying aliyos verbally, doing so has the full force of a kinyan (ערך ש"י י"ד סי' ר"ג ס"ה, שו"ת ארץ) (ישי"ש ב"ק פ"ח סי' ס', צבי ח"א סי' ל"ט, בית מאיר או"ח סי' קנ"ד, שו"ת מהרש"ג ח"ב סי' ע"ז).
10. However, this does not totally resolve the kinyan status, as there is a machlokes if a kinyan situmta works for something not yet in existence (ישי"ש ב"ק פ"ח סי' ס"ב, חת"ס ח"מ סי' טו) or something intangible (ע"י נתה"מ סי' ר"א סק"א, שו"ת דברי יציב ח"מ סי' נ"ב) (שו"ת הרא"ש כלל י"ב ס"ג, מהרש"ם במשפט שלום ח"מ סי' ס' (ר"א משמ"ר"ש אות ג', רדב"ז ח"א סי' רע"ח, וע"ע בקי' מכירת המצוות בהלכה).
11. **Neder.** Some poskim hold the force of a sale of mitzvos stems from the halacha of a tzedaka neder, as the money goes to the poor or for the shul's needs. Thus, it takes effect verbally and works for things that are intangible or not yet in existence (שו"ת המב"ט ח"ג סי' ס').
12. Some question this too, as sometimes aliyos are sold through a wordless gesture, e.g., by nodding the head or pointing the finger – how can this effect a neder? (בית מאיר או"ח סי' קנ"ד)
13. **Communal matters don't require a kinyan.** Since it is difficult to precisely classify the validity of a kinyan for mitzvos, some poskim hold it works based on the rule that all communal matters and needs do not require kinyanim (רמ"א ח"מ סי' קס"ג ט"ו). Thus, when the gabbai sells mitzvos in an accepted manner and as a shliach of the community, it produces an effective sale even without the rules of kinyanim.

Selling Mitzvos on Shabbos and Yom Tov

14. Chazal decreed an issur to make transactions [מקח וממכר] on Shabbos out of concern for writing (רמב"ם פכ"ג שבת ה"י"ב) (Shabbos and Yom Tov). Accordingly, some forbid selling mitzvos on Shabbos and Yom Tov (הגרי"א, בתוספת מעשה רב סעי' ל"ד).
15. However, most poskim are meikel (מ"ב סי' ש"ו סק"ג), and this is the minhag in most communities (שיירי כנסת הגדולה בהג"ב"י סי' ערוה"ש, שיירי כנסת הגדולה בהג"ב"י סי' ערוה"ש, שיירי כנסת הגדולה בהג"ב"י סי' ערוה"ש). The reason is that it is for a mitzva matter, which is mutar (גמ' כתובות דף ה' ע"א, מהר"ל הל' סוכה אות י', א"ר סי' ש"ו אות) [חפצי שמים]; (שו"ת מהר"ק סי' ט) (שו"ת מהר"ל שם); or because it is for public benefit (מהר"ל שם); or there is no issur of transactions because the sale of mitzvos does not involve a tangible item (ישי"ש ביצה פ"ה סי' ה', מ"ב שם, ערוה"ש שם).
16. **Changing the name of the currency.** The minhag in some places is to only mention the sum, not the currency, at the time of the sale, e.g., "One hundred for Shlishi." It is advisable for one who wants to buy a mitzva to ascertain which currency the aliyos are being sold in in that place. Otherwise, it can create shailos, e.g., if they are selling in dollars and he intended to bid in shekalim (ע"י שו"ת) (שמרו משפט ח"ב סי' ט"ז).
17. Some use a different name for the currency, e.g., if the bid starts at ten, instead of saying, "Ten shekel, Shlishi," they say, "Ten thousand, Shlishi" [the minhag in Ashkenaz is to say "tzen towzent" in Yiddish]. This change differentiates the sale so it doesn't look like a real transaction (מ"ר הגרי"י בלויא בספר צדקה ומשפט פ"ד הע"י).

Miscellaneous Halachos

Kohen Aliya

18. **וקדשתו**. A Kohen gets the first aliya, then a Levi, then a Yisroel (ש"רע (וקדשתו) [סי קל"ה ס"ג]. The posuk says we must sanctify the Kohen [וקדשתו] Chazal's tradition is that it means the Kohen is first in all matters of kedusha. Most poskim agree it is a mitzva d'oraisa (ש"רע מהר"ם ש"י"ק) (א"ר"ח ס"י ס"א; see Issue 137).
19. **Asking Kohanim to leave**. Thus, l'chatchila Kohanim should not be asked to leave shul so that the aliya can be sold for the shul's needs, as this negates the mitzvas aseil (וקדשתו) (א"ר"ח) (ש"רע שיבת ציון א"ר"ח) (סי"ו, ש"רע אבני צדק א"ר"ח ט' ט' ש"רע חת"ס א"ר"ח סי' כ"ד וכו', ש"רע מנחת יצחק ח"ב סי' מ"א, ש"רע שבט הלוי) (ח"ח סי' כ"ה, תשובות והנהגות ח"ז סי' כ"א).
20. **Only one Kohen**. If there are multiple Kohanim, the Kohen aliya can be sold to honor the Kohen of the buyer's choosing. If there is just one Kohen present though, there is no reason to sell it, as that Kohen gets the aliya regardless. Thus, if the Kohen aliya was sold with the understanding that there were multiple Kohanim present and a Yisroel bought it intending to honor a Kohen, and then it became clear that Kohen was the only one present, the Yisroel does not need to pay for the aliya since the sale was pointless and made mistakenly.
21. **Kohen entered after sale**. If no Kohanim were present when the aliyos were sold and a Yisroel bought the aliya, and then a Kohen arrived before Krias HaTorah, the sale stands. There is no need to honor the Kohen since he was not present at the time of the sale, combined with the fact that some poskim hold the Kohen aliya may be sold to someone else (מו"ר בעל שבט הקהתי בס' וישמע משע ח"ד).

Deception Regarding the Price

22. **Raising the price**. One who does not want to buy may not bid for a mitzva or aliya in shul with the sole intention of raising the price. This involves deception, sheker, and geneivas daas, and it is a מצוה חיד"א יוסף אומץ סי' נ"ז, מהרש"א ח"א סוכה דף כ"ט ע"ב, חוט שני) (הבאה בעבירה) (חובות שבלב עמ' ש"ט).
23. If one bid just to raise the price and a second person bought it, the second person must pay the full price even if he finds out the price was improperly raised (הגרה"מ וואגנר קובץ שערי הוראה ח"ז עמ' קפ"ט) (א"ר"ח סי' כ"ד וכו', ש"רע חת"ס א"ר"ח סי' כ"ד וכו', ש"רע מנחת יצחק ח"ב סי' מ"א, ש"רע שבט הלוי) (ח"ח סי' כ"ה, תשובות והנהגות ח"ז סי' כ"א).
24. **Selling for cheap**. Similarly, a gabbai should not intentionally end a sale on a specific person's low bid if there are still others who might bid higher, as doing so deprives the tzedaka fund. An exception can be made in a very sensitive situation, e.g., if this person really has more of a chiyuv to get an aliya than others, but the minhag in that place is to sell aliyos anyway.
25. Even if the shul rav makes a bid in a public auction, anyone who actually wants to buy can outbid him, as when it comes to mitzvos, we do not bestow honor on the rav (לדוד אמת פ"ב ס"ג) (א"ר"ח סי' כ"ד וכו', ש"רע חת"ס א"ר"ח סי' כ"ד וכו', ש"רע מנחת יצחק ח"ב סי' מ"א, ש"רע שבט הלוי) (ח"ח סי' כ"ה, תשובות והנהגות ח"ז סי' כ"א).
- [I remember that once, when the Gaavad of Yerushalayim זצ"ל wanted to buy an aliya on Rosh Hashana for a family member, he asked a regular mispallel to bid on his behalf for the aliya. He did not want people to know the Gaavad wanted to buy it so as not to deprive the beis medrash. He paid about \$2,000 for it.]

Presence for the Selling of Aliyos

26. One should be present when the aliyos are sold, as it is a form of honor to the Torah – when something prestigious and valuable is sold, its prestige and honor are shown. One certainly should not leave the beis medrash to evade taking a share in the shul's expenses. The Chofetz Chaim protested against people who show disrespect by leaving while the aliyos are sold to make another minyan (אהבת חסד ח"ב פט"ז בהג"ה).
27. Similarly, it is improper to speak or get caught up with idle chatter when aliyos are sold, as doing so shows disregard for the things being sold. In a public real estate or antique Judaica auction, one would sit solemnly and not speak. When aliyos are sold to honor the Torah, it is certainly proper to respect the occasion and not to show disregard. However, one may learn at that time or read Torah pamphlets...
28. **A good purchase**. Also, when a gabbai starts the auction at a nominal price and no one is bidding, it shows disregard, as though it were an item people are not eager to buy. Thus, if one sees this, it is proper for him to make a bid, simply to show honor for the Torah and that it is a good purchase.

Nedarim and Pledges with Maaser Money

Aliyos to the Torah with Maaser Money

29. **Money designated for the poor**. When one buys an aliya in shul and he knows the proceeds will be for tzedaka to the poor, he may pay for the aliya with maaser money if, when he bought it, he had intent to be able to pay with maaser money (ש"רע מגילה פ' נר מצוה, אהבת חסד ח"ב פ"ט ס"ב, הליכות שלמה תפילה י"ב סט"ז). This is because maaser money is designated for the poor, and one is allowed to benefit [טובת הנהגה] from giving tzedaka (ס"ז י"ד רמ"ט ס"א).
30. **Designated for the shul**. Strictly speaking, maaser money was established for the poor, and it is their money (רמ"א י"ד סי' רמ"ט; see Issue 55 at length). The poskim argue whether one may use maaser money for non-chiyuv mitzva purposes, e.g., for a shul's expenses, lighting, etc. Some say one should not buy mitzvos with maaser money if the money goes to the shul (רמ"א שם).
31. Others hold one may buy mitzvos in shul with maaser money, especially if he cannot buy the mitzva without maaser and he has intent when buying it to pay with maaser (מהרש"ל דרישה, הגר"ן קרליץ, באורה); this is the prevalent practice (א"ר"ח סי' כ"ד וכו', ש"רע חת"ס א"ר"ח סי' כ"ד וכו', ש"רע מנחת יצחק ח"ב סי' מ"א, ש"רע שבט הלוי) (ח"ח סי' כ"ה, תשובות והנהגות ח"ז סי' כ"א).
32. Thus, it is proper l'chatchila for one to stipulate when he first takes it upon himself to give maaser from his money that he will also be able to use maaser money for mitzvos, buying aliyos, and the like; then all poskim agree it is mutar (א"ר"ח סי' כ"ד וכו', ש"רע חת"ס א"ר"ח סי' כ"ד וכו', ש"רע מנחת יצחק ח"ב סי' מ"א, ש"רע שבט הלוי) (ח"ח סי' כ"ה, תשובות והנהגות ח"ז סי' כ"א).
33. One who gives 20% [חומש] to do the mitzva in the shul (issue 54, par. 9) may use half of it – i.e., maaser – for mitzva purposes and aliyos in shul even if he did not stipulate in advance that he can do so. He may use it even just for hiddur mitzva (ש"רע אג"מ י"ד ח"ג סי' כ"ד וכו', ש"רע חת"ס א"ר"ח סי' כ"ד וכו', ש"רע מנחת יצחק ח"ב סי' מ"א, ש"רע שבט הלוי) (ח"ח סי' כ"ה, תשובות והנהגות ח"ז סי' כ"א).
34. **Paying the entire sum with maaser?** Some hold that when aliyos are auctioned to the highest bidder, one may only use maaser for what he added to the previous bid, but everything beyond that must be paid with personal funds. For example, if the current bid is \$100 and someone bids \$150, he can only use maaser for the extra \$50 he bid, as the previous bidder might have paid \$100 from personal funds. If the new bidder will pay the entire \$150 with maaser, he just caused a \$100 loss to maaser funds (ש"רע מגילה שם, גליון רע"א ש"רע י"ד ריש סי' רמ"ט, ש"רע חת"ס א"ר"ח סי' כ"ד וכו', ש"רע מנחת יצחק ח"ב סי' מ"א, ש"רע שבט הלוי) (ח"ח סי' כ"ה, תשובות והנהגות ח"ז סי' כ"א).
35. However, in a place where it is known that all the mispallelim usually have in mind to pay with maaser, e.g., in a minyan of bnei Torah, all poskim agree he can pay the entire sum with maaser, as doing so does not cause any loss to maaser funds (אחרונים).

Mi Shebeirach Money

36. One may use maaser money for a "mi shebeirach" pledge (חז"א, חז"א) (א"ר"ח סי' כ"ד וכו', ש"רע חת"ס א"ר"ח סי' כ"ד וכו', ש"רע מנחת יצחק ח"ב סי' מ"א, ש"רע שבט הלוי) (ח"ח סי' כ"ה, תשובות והנהגות ח"ז סי' כ"א).

Seat in Shul

37. If a person can really daven in one of two places, one where he has to pay for a seat and the other where he does not, but he prefers to daven in the place that requires payment, he may pay for his seat with maaser money. This is because he has the option of davening somewhere without paying, and davening in the shul of his preference is not like a chiyuv (ל"ו הע' כ"ו) (א"ר"ח סי' כ"ד וכו', ש"רע חת"ס א"ר"ח סי' כ"ד וכו', ש"רע מנחת יצחק ח"ב סי' מ"א, ש"רע שבט הלוי) (ח"ח סי' כ"ה, תשובות והנהגות ח"ז סי' כ"א).
38. However, if one must daven in a certain shul, e.g., he belongs to a Chassidus and would not consider davening elsewhere, it is like he has a chiyuv to daven there, and he may not pay with maaser money (Issue 6, par. 21). But he may upgrade to a better seat with maaser money (ש"רע שרגא המאיר ח"ה סי' נ"ד ב').
39. If the gabbai charge more than the accepted rate for seats, one may use maaser money to pay for whatever is above the accepted rate (ש"רע שרגא המאיר שם).
40. **Membership**. Many poskim agree that if a shul requires everyone to pay membership, which includes an assigned seat in the shul, one may not use maaser money. However, if everyone is just asked – but not obligated – to pay, one may use maaser.
41. **Seat in the ezras nashim**. Women have no chiyuv to daven in shul. Thus, if a woman prefers to daven in shul, one may use maaser to pay for her Yamim Noraim seat in the ezras nashim.

Paying All Pledges and Debts

42. The minhag in the Yamim Noraim season is to pay before Yom Kippur all debts, nedarim, and pledges one committed to throughout the year so that he is not held accountable on the Yom HaDin because he did not fulfill his word. Thus, it is advisable to contact the shul gabbai to take care of all of one's commitments that have accumulated over the year.
43. Similarly, one should remember all the places he bought an aliya or mitzva throughout the year. One should also make an accounting of all shuls to which he made mi shebeirach pledges and try to pay what he pledged.

ברוב שמחה והודאה להשי"ת אודה ה' בפני ובתוך רבים אהלנו
נתרם ע"י ידידנו הר"ר **מאיר צבי משעסר** הי"ד

לרגל לידת בתו שרה שתחי'
שתוכו לגדלה לתורה לחופה ולקש"ט
ברכת מול טוב לאביו הר"ר **שמואל יוסף** הי"ד
ולחמיו הר"ר **בערל קאליש** הי"ד

