

Too Good to Pass Up!

Ain Maavirin al Hamitzvos – We Do Not Pass a Mitzvah By

Question: I understand that in the morning, one should first put on ones talis, and then tefilin. Does that mean that if I picked up my tefilin first, I should put them down in order to put my talis on first? And what about if I removed the tefilin shel rosh from the bag before the shel yad, should I put it back and take out the shel yad?

1. From Sanctuary to Synagogue

A major principle regarding mitzvos emerges from the Gemara's discussion¹ of the order of the morning service in the beis hamikdash. First the golden mizbeach was cleaned out from the ashes of the ketores [incense], and then the lamps of the menorah were cleaned out. The Gemara explains that this order is based on the principle of Reish Lakish: *ain maavirin al hamitzvos* – one does not pass by an opportunity to perform a mitzvah. Therefore, since the golden mizbeach is closer to the entrance of the sanctuary than the menorah, and the kohen who enters encounters it first, its avoda takes precedence.

A practical expression of this principle can be found in the Shulchan Aruch² regarding the order of putting on talis and tefilin in the morning. The correct order is first talis and then tefilin. For this reason, states the Shulchan Aruch, one should be sure to arrange matters so that when he puts his hand into the bag containing his talis and tefilin, he will encounter the talis first; for if the tefilin were to be closer to the top of the bag, and he encountered them first, he would then have to reverse the order and put the tefilin on first, the reason being: *ain maavirin al hamitzvos*.

- What if the person does not actually touch or handle the tefilin first, but merely has to reach past them in order to get to his talis, would we still invoke the principle of *ain maavirin*?

The Mishna Brura³ points out, that if we consider the source of the principle as found in the beis hamikdash, we will note that the kohen does not have to come into physical contact with the golden mizbeach in order to get to the menorah. Nonetheless, the mere fact that it is nearer to him as he enters, and he would have to bypass it on his way to the menorah, is sufficient to require him to give it precedence.

Another application of this principle relates to tefillin. A person should arrange his tefilin in a way that he will encounter the shel yad first. In this instance, however, the outcome would be different. The halacha is that one is not allowed to wear the shel yad without the shel rosh. Therefore, were a person to encounter the shel rosh first, he would actually have to put it down and put on the shel yad first. In order to avoid such a situation where

¹ See Yoma 33a

² Orach Chaim 25:1

³ Ibid sec 3, biur halacha s.v. shelo

one be forced to bypass a mitzvah, arrangements should be made to ensure that he will always meet the shel yad first.

2. And Back Again

Let us return to the beis hamikdash for a moment, and consider the halachos of spilling the leftover blood of the various korbanos. The halacha distinguishes between two types of chatos [sin offering]

- a. Inner Chatos – whose blood is applied inside the sanctuary.
- b. Outer Chatos – whose blood is applied outside the sanctuary, i.e. to the mizbeach in the courtyard of the beis hamikdash.

Now, not all of the blood is used in these applications. The leftover blood is to be poured on the side of the mizbeach. The Gemara discusses which side the leftover blood should be poured on, and distinguishes between inner and outer chatos offerings.

With regards to inner offerings, the leftover blood is spilled on the west side of the mizbeach. The Gemara⁴ provides the background to this designation:

“What is the reason? For the verse states⁵ [and he shall pour the blood] on the foundation of the mizbeach of olah [= the mizbeach in the courtyard], which is by the entrance to the ohel moed [= the sanctuary, namely], the side of the mizbeach which he encounters first.”

What this means is, the Torah refers to a kohen who has been applying the blood of the inner chatos inside the sanctuary, which is located on the west side of the temple courtyard. Thus, when he exits the sanctuary into the courtyard, he is moving east, in which case the side of the courtyard mizbeach that he will encounter first will be the west side. It is on that side that the torah says to pour the leftover blood.

3. Special Lesson Required?

It is pointed out by Tosafos,⁶ that it seems Rashi’s version of the Gemara did not contain the concluding words that are found in our version which state: “[namely,] the side of the mizbeach which he encounters first”. What is the difference in terms of how the Gemara reads whether it concludes with those words or not? The answer is subtle, but very important:

If those words are included, then it is *this pasuk* which is teaching us to pour the blood on the west side of the mizbeach.

⁴ Zevachim 51a

⁵ Vayikra 4:7

⁶ Ibid s.v. asher

If those words are not included, then the pasuk is quoted only to identify the side of the mizbeach that will be encountered first, but does not teach us that the blood needs to be poured out on that side.

Yet if the pasuk isn't teaching us that we need to pour the blood on that side, then how do we know that this is the case?

The answer, according to Rashi, is very straightforward: *ain maavirin al hamitzvos!*

That is to say, given that we have a principle which states that one does not bypass an opportunity to perform a mitzvah, we do not need the pasuk to tell us anything beyond where that first opportunity will be; the rest we can work out for ourselves based on the principle of *ain maavirin*.

Tosafos, however, endorse the inclusion of these words, which means that the pasuk itself is teaching us that the blood should be poured on the west side. In light of the above, however, this will raise a basic question: Why should we need a pasuk to tell us to pour the blood on that side? As soon as we have identified which side the kohen will encounter first, we will know that the blood needs to be poured on that side, based on the principle of *ain maavirin!*

4. *Ain Maavirin* within One Mitzva

Tosafos respond to this question with a major statement regarding the principle of *ain maavirin*. This principle, say Tosafos, only applies *between two mitzvos*, with the question being *which one* to perform first. *Ain maavirin* tells us that one does not bypass one mitzvah for the sake of performing another. Indeed, this is what we saw in our earlier example of not bypassing the mitzvah of cleaning the inner mizbeach in order to fulfill the mitzvah of cleaning the menorah. However, if we are dealing with *one mitzvah*, and the question is *when* to perform it, there is no violation of *ain maavirin* by foregoing the first opportunity to perform that mitzvah. Therefore when it comes to the question of which side of the mizbeach to fulfill the mitzvah of pouring the blood, we will need a special lesson from pasuk to provide us with the answer, for we ourselves would not know it based on the principle of *ain maavirin*.

Rashi, by contrast, understands this principle to be applicable to not bypassing opportunities within one mitzvah as well. We will be looking to try and understand the background to this dispute.

But before we do that, we need to consider a couple of places in the Gemara which seem to contradict outright Tosafos' position regarding this principle...

5. Purim, Omer and Beyond

As we know, Purim is celebrated on the 14th (and 15th) of the month of Adar. In a leap year, when there are two months of Adar, in which one will Purim take place? The Gemara⁷ records a dispute among tanaim over this issue:

R' Eliezer ben R' Yose says it will take place in the first Adar. The Gemara comments that his reasoning is obvious: *ain maavirin al hamitzvos* – we do not pass up the opportunity of celebrating the mitzvos of Purim in the first Adar.

Raban Shimon ben Gamliel holds that it will take place in the second Adar. His reason is that there is an overriding concern that the redemption of Purim should be celebrated as close to possible to the redemption of Pesach.

- What are the implications of this discussion for the position of Tosafos regarding the principle of *ain maavirin*?

Tosafos had stated that the principle does not apply when it comes to considering opportunities to fulfill a mitzvah, only when it comes to deciding between two mitzvos. Yet we see the Gemara plainly invoking this principle with regards the question of when to celebrate Purim! Moreover, even though Raban Shimon ben Gamliel maintains that it is celebrated in the second Adar, it is clear from the Gemara that this is only due to an overriding factor of linking the two redemptions together, not because he does not recognize the principle of *ain maavirin*. Barring that concern, *all* would agree that we would celebrate Purim in the first Adar.

This question on Tosafos' position in Zevachim is pointed out by none other than their colleagues in Tosafos to Megilah.⁸

A similar question may be raised regarding the bringing of the Omer barley offering. The Mishna⁹ states that the barley for the offering should be cut from the field that is nearest to Jerusalem. In providing the basis for this ruling, the Gemara¹⁰ explains that it is based on the principle of *ain maavirin al hamitzvos*!

Here, too, we see the Gemara invoking the principle when it comes to determining the correct place to perform a mitzvah, all of which constitutes more trouble for the Tosafos in Zevachim.

At any rate, as far as the Tosafos in Megilah are concerned, it is clear that the principle of *ain maavirin* does indeed apply to determining where and when to perform a mitzvah.

- Which section of the Gemara that we have seen will need to be resolved according to Tosafos in Megilah?

⁷ Megilah 6b

⁸ s.v. *mistaber*

⁹ Menachos 64b

¹⁰ *Ibid*

We saw that the Gemara in Zevachim requires a special lesson from the pasuk to tell us where the leftover blood of the inner chatos is sprinkled. If the principle of ain maavirin applies to the performance of a single mitzvah, then that lesson seems completely redundant – we could have derived it ourselves based in this principle!

6. *Ain Maavirin*: Static or Dynamic?

In answer to this question, Tosafos in Megilah quotes Rabbeinu Yehuda as saying that even after we invoke ain maavirin, the pasuk which teaches us to pour the blood on the west side is not redundant. The reason is, if we did not have the pasuk, and we were basing ourselves entirely on the principle of ain maavirin, we would have said that in the event that the kohen did not pour the blood on the west side, but rather walked past it to the south side, then he would be able to pour the blood on that side. It is to this end that the pasuk comes and designates the west side as the *exclusive* location for pouring the blood, so that even if the kohen walked past it, he would need to return and pour on the west side.

- This answer requires explanation. If ain maavirin tells us that the kohen needs to pour the blood on the west side, why would we think that this would not be necessary if he has already walked past it?

The explanation is as follows. Ain maavirin tells us not to bypass the nearest opportunity to fulfill a mitzvah. That being the case, then in the event that a person did in fact bypass the first location and moved to the second, *the second location* has now become the nearest opportunity, and it is there that he should now fulfill the mitzvah. Why? Because: of the very principle of ain maavirin al hamitzvos; for to move back from the second location would constitute bypassing *another* opportunity! Hence we need the pasuk to fix the location at the west, regardless of whether or not the kohen has walked past it.¹¹

It is interesting to see this aspect of ain maavirin in practice. We have mentioned that although ideally one should first put on ones talis and then tefilin, if one encountered the tefilin first, he should put them on first because of ain maavirin.

- What if a person accidentally picked up their tefilin first, and then put them down again and picked up their tallis?

The Mishna Brura¹² notes that in this case he would put on his tallis first. The reason why he initially should have given precedence to the tefilin is because, having picked it up, it became ‘the mitzvah at hand’ which ain maavirin states one may not bypass. Once he has nonetheless put it down and picked up the talis, it is the talis which has now become the mitzvah at hand, and ain maavirin states that it should be put on first.

7. Two tracks within *Ain Maavirin*

¹¹ Cf Turei Even to Megilah loc. cit.

¹² 25:5

The remaining question that needs to be dealt with is how will Tosafos in Zevachim respond to the proof furnished by Tosafos in Megilah [= from Purim in a leap year] that ain maavirin also applies within one mitzvah? An explanation of this matter can be found in the Machatzis Hashekel, and indeed it will serve as a basis to open up our sugya of ain maavirin

The Machatzis Hashekel¹³ explains that whereas we will say ain maavirin even with regards to one mitzvah, nonetheless this idea can be overridden by an argument to perform the mitzvah at a later juncture. When it comes to two mitzvos, however, ain maavirin will require performing the first mitzvah regardless of any argument that may be advanced to give the second mitzvah precedence.

It seems from the Machatzis Hashekel that this principle actually has different strengths when applied to these two planes. This should be most puzzling. How can it be that the same principle will be stronger in one setting than in the other?

The answer may be that these are not two applications of the same principle, but rather they are two separate principles...

What is the source for the idea of ain maavirin al hamitzvos?

- a. Rashi¹⁴ identifies the source as the drasha based on the Torah's instruction¹⁵ to guard matzos from becoming chametz, which is expounded by the Rabbis¹⁶ as being a reference to all mitzvos: "a mitzvah that comes to your hand, do not forfeit the opportunity".
 - b. The Rambam in his commentary to Pirkei Avos¹⁷ says that one never really knows the reward for any particular mitzvah. It is for this reason that the Rabbis said ain maavirin – one does not bypass a mitzvah to do another.¹⁸
- Would the above explanations be applicable in both settings that we have discussed this principle?

The explanation of the Rambam clearly only relates to bypassing one mitzvah for another. It is there that we say one cannot really know the rewards for either mitzvah. In the case of one mitzvah, it is the same mitzvah that will be performed later on.

The explanation of Rashi could be applied to both situations. There is an ongoing value of not forgoing an opportunity to perform a mitzvah. This will be relevant equally

¹³ To Magen Avraham Orach Chaim 147:11

¹⁴ Yoma 33a s.v.ain

¹⁵ Shemos 12:17

¹⁶ Mechilta to the above pasuk, quoted in Rashi's commentary there

¹⁷ Chapter 2 Mishna 1

¹⁸ This explanation is also to be found in the commentary of the Ran to Moed Katan 9a

whether one is deciding to perform the mitzvah at hand or a different mitzvah, or whether deciding to perform any given mitzvah now or later.

Returning to the Machatzis Hashekel, it is possible that we consider *both* sources to be valid, with each one operating in a different setting. This means that:

- a. Between two mitzvos the principle is based on one's lack of knowledge regarding the comparative reward of two different mitzvos [Rambam]
- b. Within one mitzvah, it is based on not forgoing an opportunity to perform a mitzvah [Rashi]

This is why it may be more correct to speak, not of applying this principle to two different settings, but rather of *two separate principles*.

It is fascinating to point out in this regard, that although we have seen the Gemara use the expression 'ain maavirin al hamitzvos' in both settings, it has only ever mentioned its author – Reish Lakish – by name in one of those two settings, namely, when choosing between two mitzvos. While explaining why the kohen first cleans the inner mizbeach, and then the menorah, the Gemara said “as Reish Lakish says ain maavirin etc”. However, when the Gemara mentioned this concept with regards the question of which Adar to celebrate Purim in, or where to bring the Omer from, it used the words 'ain maavirin', but did not attribute this principle to Reish Lakish.

Why not?

Because when dealing within one mitzvah, the idea of ain maavirin is *not the principle of Reish Lakish!* Rather, it is a different concern that will yield the somewhat analogous result of acting upon the first opportunity.

8. Life According to Tosafos in Zevachim

- Having potentially identified two distinct principles of ain maavirin, what are the implications for accepting a counter-argument to forego the first opportunity?

When it comes to two mitzvos, we will not be inclined to hear such an argument, for the fact remains that we do not know if even after the argument the second mitzvah will be greater than the first.

With regards to choosing when to perform the same mitzvah, we would be more inclined to hear an argument to perform it at a later juncture if that delay that will lead to an enhanced performance. We need not be deterred by the fact that we do not know the relative values of different mitzvos, for even later on it will be the same mitzvah! All we need to hear is an argument that will override the value of performing this mitzvah at the first available opportunity.

This explains to us the distinction made by the Machatzis Hashekel, that when it comes to performing one mitzvah we would give weight to considerations which would recommend delaying, but not when it comes to choosing between two mitzvos. Actually, these words of the Machatzis Hashekel were said in explanation of an answer given by Tosafos in a *third* place. Tosafos in Yoma¹⁹ initially present their answer in an identical manner to Tosafos in Zevachim, i.e. that Reish Lakish's principle of ain maavirin only applies when choosing between two mitzvos, and then conclude with the following words: "but within one mitzvah [= pouring the blood on the mizbeach], we would not apply this principle [of ain maavirin], rather we would have performed the mitzvah in the way it is more commonly performed [*tadir*]."²⁰

- Are these words not self-contradictory? If there is no concept of ain maavirin within one mitzvah, then it is irrelevant whether or not there exists a *counter-argument* to pour the blood on the south side. It should be sufficient to say that there is *no argument* for pouring it on the west side in order to understand why we require a pasuk to tell us to do so!

The implication is: since we are dealing with one mitzvah, there may well exist a concept of ain maavirin, but it will feature in a way which allow other considerations to override it; in this instance, that of *tadir*. This is contrary to our approach when dealing with two separate mitzvos, There we would apply Reish Lakish's principle regardless of counter-arguments for relinquishing the mitzvah at hand.

8. Free for a Day

The time for saying kiddush levana, the bracha recited over the moon, is roughly from the third day of the month until the fifteenth. The ideal time to say the bracha is on motzai Shabbos. What if someone sees the moon during the middle of the week? Should he seize the opportunity to say the bracha then, or should he wait until motzai shabbos when he will be able to perform the mitzvah in an enhanced manner? The Terumas Hadeshen²¹ rules that as long as there is no risk of losing the mitzvah completely to cloudy weather on subsequent evenings, it is preferable to wait until motzai Shabbos and say the bracha then.

In a famous teshuva of the Radvaz²², he responds to a question sent by someone who was imprisoned by the local authorities, where he lacked the wherewithal to perform any mitzvos. He was informed that he would be given leave from prison for one day, and his question was: which day should he choose? Should it perhaps be Purim which would allow him to fulfill the mitzvah of hearing the Megilah, or perhaps some other auspicious

¹⁹ 33a s.v. ain

²⁰ there exists a halachic value of giving primacy to a mitzvah which is performed more commonly than its counterpart. This idea is known as *tadir* [frequency, see Zevachim 90a]. In our case, the south side of the mizbeach has blood poured on it more frequently, for the majority of korbanos, are offered on the outer mizbeach, and their leftover blood is poured on the south side.

²¹ Resp. 35, see Shulchan Aruch Orach Chaim 426:2

²² Vol 4 resp. 1,087

day? The response of the Radvaz was: get out as soon as you can! Do not wait for a special day, for in the meanwhile there are mitzvos that you could be performing today.

- Are these two rulings in any way compatible one with the other?

The Chacham Tzvi²³ demonstrates that there is no discord between these two rulings. The Radvaz was dealing with someone who was considering foregoing mitzvos that he could do now for the sake of *other* ‘bigger’ mitzvos later on. To this he replied that one cannot make such calculations, rather one should take the first opportunity.

The Terumas Hadeshen, on the other hand, was considering the question of what is the best way to perform *the same mitzvah*. In that instance, it is possible to factor in other consideration which may enhance the performance of that mitzvah later on.

Essentially, the Chacham Tzvi has utilized the same distinction that we saw formulated in the Machatzis Hashekel.

²³ Resp. 106