

First Come, First Observed

Ha'osek Bemitzva Patur min Hamitzva

Question: I was attending the *chuppah* of a close family friend a couple of weeks ago, when I realized that, unfortunately, I had forgotten to *daven mincha* beforehand. As there were only fifteen minutes left in which to do so, I left the *chuppah* and went to *daven*. I related this to someone later that evening. He remarked that seeing as I was involved in the *mitzva* of *hachnasas kallah*, I had no obligation to relinquish that *mitzva* in order to *daven mincha*.¹ After I heard that, I began to wonder if I had in fact even fulfilled the *mitzva* of *mincha*. According to what he was saying, I had no obligation to *daven* at that point!

1. The Source

Regardless of what modern advertising would have us believe, it is impossible to do everything at once. In Torah living, one may be involved in one *mitzva* when the opportunity to do another arises. How should one respond? The rule regarding these situations is *ha'osek bemitzva patur min hamitzva* – one who is involved in one *mitzva* is exempt from another *mitzva*. The source of this ruling² is the *shema*,³ where the Torah commands us to read the words of *shema*, “*beshivtecha bevaisecha uvelechtech baderech*” (when you sit in your house and when you walk on the way). This implies that the obligation to recite the *shema* is on a person who is involved in his own pursuits. One who is involved in a *mitzva* (*osek bemitzva*), however, is exempt.⁴ All other *mitzvos* follow this same rule derived from *shema*.

2. “What If I Can Do Both?”

Just how far does this exemption go? How “involved” in the first *mitzva* does one need to be in order to be exempt from the second? The Tosafos⁵ makes an important qualification based on one of the classic examples of this principle found in the Talmud. The Gemara⁶ states that one who is guarding a lost object is considered to be *osek bemitzva* and is thus exempt from performing other *mitzvos*. By way of example, if someone approached him for *tzedakah* at that time, he would not be obligated to give him money. The Gemara comments on this particular exemption and says it is uncommon. Now, asks the Tosafos,

¹ See Halichos Shlomo Tefillah chap. 13 sec. 7.

² Brachos 11a.

³ Devarim 6:7.

⁴ The Gemara there adds that the final *kaf* at the ends of the words *beshivtecha* and *uvelechtech* indicate that the person is at home or traveling for his *own* purposes. See there for an explanation as to why the Torah taught this lesson through both of these words.

⁵ Bava Kama 56b s.v. *behahi*.

⁶ Nedarim 33b.

why should this be considered uncommon? A person might guard a lost object for days or weeks before the owner is tracked down and the object returned. Is it so uncommon that during all that time someone will approach him for *tzedakah*?

The Tosafos concludes from the above statement that just having the lost object in one's possession (or *tefillin* on one's head or a *tallis* on his body, etc.) is not enough to exempt him from another *mitzva*, even though one is fulfilling a *mitzva* at the time. Rather, one is only exempt when his involvement in the *mitzva* would make it *impossible* to do the second one without compromising the performance of the first *mitzva*. An example where involvement would be encompassing enough to preclude doing something else at the same time would be when one is actually putting on *tallis* and *tefillin* or actively taking care of a lost object (e.g., airing it out). With this in mind, we can well understand the Gemara saying that to be exempted from *tzedakah* due to looking after a lost object is indeed uncommon.

It is interesting to note that the *pasuk* which is the source of this exemption does not seem to make any such qualifications; it merely states that if one is involved in one *mitzva* he is exempt from another. Perhaps the Tosafos understands that the fact that the Torah chose the *mitzva* of *shema* as the archetypical case for this principle teaches us its parameters. Reading the *shema* requires intent and concentration, and is thus the classic example of a *mitzva* which cannot be performed without interrupting the first one.

3. The Ohr Zarua

Taking issue with the Tosafos on this very basic question is the Ohr Zarua.⁷ He understands that the Torah exempts one who is *osek bemitzva* from doing another *mitzva* even when he can do both! The *very involvement* in the first *mitzva* is itself grounds for exemption from doing another. He proceeds to verify his position by posing a very simple question: If indeed the exemption only applies when one cannot perform both *mitzvos* at once, why does the Torah need to teach this principle *at all*? If the exemption only applies when one can't do both, essentially all the *pasuk* is saying is not to interrupt the first *mitzva* in order to do the second. Why would one think that he should do so? Why would it seem reasonable to stop doing one *mitzva* in order to do another? Rather, it must be that the reason we need a verse to teach this exemption is because it is actually teaching us that when one is involved with a *mitzva*, he is exempt from a second *mitzva* even if he *can* do both.

This understanding is also shared by the Ran.⁸ The Ran, though, does conclude by saying that if one can perform the second *mitzva* without any extra exertion *whatsoever*, he should do so.⁹ However, if the second *mitzva* requires any exertion which would detract the focus from the *mitzva* he is already doing, he is exempt.

⁷ Vol. 2 sec. 299.

⁸ Succah 25a.

⁹ See Biur Halacha 38:8 s.v. *im*, who discusses whether this is merely a recommendation of the Ran, or an actual *hal*, *achic* obligation.

4. The Ritva's Response

Now, it should be noted that a response to the very striking question of the Ohr Zarua mentioned above is forthcoming from the camp of the Tosafos. The Ritva,¹⁰ like the Tosafos, takes it as a given that one is only exempt from the second *mitzva* if he cannot do both at once. He then proceeds to ask the Ohr Zarua's question: If so, then why do we need a lesson from the verse about this principle? The Ritva answers that without the verse one may have thought that there are times when one *should* interrupt the first *mitzva* in order to perform the second one, such as when the time for the second one is about to expire (e.g., reading the *shema*) while the first one can still be performed afterwards. Perhaps in a case like this one should set aside the first *mitzva* and then come back to it after performing the second one. To that end, the Torah teaches us that one does not set aside the *mitzva* which he is involved with in order to do another one, even under these circumstances. That said, if one does not need to set aside the first one in order to do the second, he is obligated in both, as the Tosafos said.

And so, the Ritva has responded to the question of the Ohr Zarua. We now need to consider how the Ohr Zarua would respond to the question which led the Tosafos to this conclusion:

- Think back to the Tosafos's question about how a situation where one would be exempt from *tzedakah* due to guarding a lost object could be called "uncommon." How might the Ran or the Ohr Zarua respond to this?

Even the Ran and the Ohr Zarua require one to be actively *involved* (*osek*) in the first *mitzva* in order to be exempt from the second, albeit not to the degree that he can't do both *mitzvos*, for example, airing out the lost object as opposed to merely having it in his possession. The airing out of a lost object or the like requires a minimal amount of time relative to the time it spends sitting in one's house. For a poor person to choose that time specifically to solicit our guardian for *tzedakah* would indeed be uncommon.

And so, there is a *machlokes Rishonim* regarding the scope of the exemption for one already involved in a *mitzva*. Interestingly, the Rema¹¹ rules like the Ohr Zarua and the Ran, that one is exempt from the second *mitzva* even if he can do both, if doing the second *mitzva* would require any extra exertion.

5. How *Patur* is "Patur?"

Having discussed how involved one needs to be in the first *mitzva* in order to be exempt from the second, let us now consider how exempt he actually is.

¹⁰ Succah 25a.

¹¹ Orach Chaim 38:8.

The *halacha* states that if a person misses one of the three daily *tefillos* due to *oness* (forces beyond his control), he is able (and obligated) to “make it up” by *davening* the next *tefillah* twice, e.g., *maariv* twice if he missed *mincha*. The Shulchan Aruch¹² rules that an *onein*,¹³ who missed a *tefillah* on account of his close relative’s burial not having yet taken place, is not required to *daven* twice after the burial. Due to his status as an *onein*, he was entirely exempt from *tefillah* during that time and there is nothing to make up!

Commenting on this *halacha*, the Drisha¹⁴ notes, “The same is true for one who is involved in a *mitzva* and thus misses a *tefillah*. He is not required to make it up, for he too was exempt at the time.” This ruling is concurred with by the Magen Avraham¹⁵ and *paskened* (codified) by the Mishna Berura.¹⁶

The Taz,¹⁷ however, takes strong exception to this assertion of the Drisha, commenting, “Saying that one who is involved in one *mitzva* is *patur* from doing another does not mean to say that he is *categorically exempt* from other *mitzvos* at that time! It means that being involved in one *mitzva* renders him *unable* to fulfill the other one, no different than if he was physically prevented from *davening* by forces beyond his control. It is ultimately a form of *oness*. And like anyone who was prevented from *davening* due to *oness*, he should make it up in the subsequent *tefillah*.”

We have before us a most fundamental dispute regarding the relationship of our protagonist towards other *mitzvos*, and, indeed, of the meaning of the word *patur* in this context. According to the Drisha, *patur* means he has no obligation *at all* regarding other *mitzvos*. In the view of the Taz, however, he is still obligated, but his involvement in the first *mitzva* renders him unable to fulfill those obligations due to *oness*.¹⁸

6. Matchmaking

Having seen two opinions among the *Rishonim* as to the level of involvement required to exempt one from other *mitzvos*, and two opinions among the *Acharonim* regarding the extent to which he is *patur*, we find ourselves on the threshold of a most important question:

¹² Yoreh Deah 341:1.

¹³ One who has suffered the loss of a close family member is called an *onein* prior to the burial and is exempted from all positive *mitzvos* during that time.

¹⁴ Commentary on the Tur *ibid*.

¹⁵ Orach Chaim 93 sec. 5.

¹⁶ *Ibid.* sec. 8.

¹⁷ Yoreh Deah 341 sec. 5.

¹⁸ It may be worth noting that whereas there are indeed two possible meanings of the word *patur*, when we consult the source of this principle in the Torah (mentioned above sec. 1), we see that the Torah never exempted a person who is involved in a *mitzva* from reading *shema*. Rather, it only obligated a person in *shema* if they are *not* involved in a *mitzva*! This would seem to be more in line with the Drisha’s understanding that one who is *osek bemitzva* has no obligation regarding other *mitzvos*.

- Does there seem to be any correlation between these two disputes? Would an opinion on the first question affect the opinion on the second?

It would seem that these two disputes are actually two sides of the same coin.

Let us begin with the Ohr Zarua. According to him, one is exempt from the second *mitzva* even if he is able to do both. If that is the case, then his exemption is not in the category of *oness*, where he couldn't have done it. In reality, he *could* have done the second *mitzva*, except the Torah says he doesn't have to. This is a fundamental exemption from the obligation altogether. The Ohr Zarua would thus seem to be aligned with the Drisha.

The Tosafos, on the other hand, does not consider one to be exempt from the second *mitzva* unless he *can't* do it while performing the first one. His involvement in the first *mitzva per se* does not exempt him from doing any other *mitzva* that he could perform alongside it. It is only when it is impossible that he is considered exempt. This sounds like an *oness*-type exemption, as expressed by the Taz.

However...

If we weigh the matter further, we will see that this last equation is not necessarily true. For it is possible that even if we say that one is only exempt from other *mitzvos* if he cannot do them together with the first, it is a statement about the *parameters* of this principle, i.e., the conditions necessary for it to be invoked. Once those conditions exist, however, it is entirely possible that the exemption from those other *mitzvos* is *absolute*, as per the Drisha.

Evidence that this may be true can be drawn from the words of the Ritva quoted above, (section 4) which state that when one is involved in a *mitzva*, he need not interrupt even for a *mitzva* whose time is limited, "since he is exempt from the other *mitzva*, it is considered for him as a matter of *reshus* (mundane matter), and it is forbidden to abandon a *mitzva* for a matter of *reshus*."

- How do these words of the Ritva shed light on our question?

We saw above that the Ritva concurs with the Tosafos's position that one is only exempt from other *mitzvos* if he *could not* perform them together with the first. That said, the Ritva expresses the lesson derived from the *pasuk* to mean that in that case those other *mitzvos* are considered like matters of *reshus*, i.e., his exemption from them is *absolute*!

7. If One Did the "Other *Mitzva*" Anyway

Regarding one who is involved in a *mitzva* and thus *patur* from doing other *mitzvos*, e.g., reading the *shema*, the Mishna Berura writes:¹⁹

“Nonetheless, if he interrupted and read the *shema*, he has certainly fulfilled his obligation, for he is not completely *patur* from reading *shema*. Rather, he is involved in another *mitzva*.”

- Consider these words of the Mishna Berura. What difficulty do they present in light of the position he took in an aforementioned question?

Here the Mishna Berura states that the one involved in a *mitzva* is not really *patur* from other *mitzvos*. The reason he doesn't have to do them is because he is involved in the first *mitzva*. This sounds like the view of the Taz. However, regarding the question of whether or not he would have to make up a *tefillah* that he missed, the Mishna Berura only mentioned the opinion which says that he does not. This is the opinion of the Drisha, who argues with the Taz on this point!

Let us see if another comment of the Mishna Berura will shed light on the matter...

Regarding the *mitzva* of eating matzah on *Seder* night, the Shulchan Aruch writes:

“If one ate a *kezayis* of matzah while temporarily deranged and subsequently recovered, he is obligated to eat after his recovery, for the original eating was at a time when he was *patur* from all *mitzvos*.”²⁰

We see here that any act a person does while exempt from a *mitzva* does not allow him to fulfill his obligation.

On these words the Mishna Berura comments,²¹ “This would not be the case if he was looking after a lost article, even though he is also exempt at that time from all other *mitzvos* [even if he was able to perform both of them were he to exert himself]. If he were to eat matzah during that time, he has fulfilled his obligation, for he is a [*halachically* capable] person, just that the Torah did not obligate him [in *mitzvos*] because he is involved in a different *mitzva*.”

Once again, we see that the Mishna Berura is of the opinion that one who is *osek bemitzva* can fulfill his obligation regarding other *mitzvos* during the time that he is exempt from them.

- How might these words of the Mishna Berura help us understand his position on the status of one who is “involved in a *mitzva*?”

¹⁹ 70:18.

²⁰ Orach Chaim 475:5.

²¹ Shaar Hatziyun ibid. sec. 39.

8. Obligation and Fulfillment

Every *mitzva* consists of two aspects – obligation and fulfillment. A person has an obligation to do certain *mitzvos*. When he performs the *mitzva*, he fulfills his obligation. The question is: Is it possible for a person to fulfill a *mitzva* without fulfilling his obligation?

This sounds impossible. But a simple example might be a situation where a person *has no* obligation, yet performs the *mitzva* anyway. Has he accomplished anything?

Women are exempt from time-bound *mitzvos* (such as *shofar*, *lulav*, etc.), but nonetheless make a point of performing them (and, according to Ashkenazi custom, also make a *bracha* on their performance). This fact indicates that a *mitzva* has been fulfilled on some level. It is true that we say, “greater is the one who is commanded and does, than the one who is not commanded and does,” but fundamentally, a *mitzva* has been fulfilled.

When the Shulchan Aruch disqualifies the performance of a *mitzva* done by a mentally incompetent person, it is not because he had no obligation in that particular *mitzva*. Rather, it is because his *halachic* state *as a person* renders him incapable of performing *any mitzva* in a viable way. One who is involved in a *mitzva*, by contrast, may be completely exempt from other *mitzvos* – as is evidenced by the fact that he does not have to make up missed *tefillos* – but he is a *halachically* capable person! Any *mitzvos* that he does during that time, even though he is exempt from them, are considered to have been fulfilled. When he subsequently regains his obligations in other *mitzvos*, he will not be obligated to fulfill *this mitzva*, for he has already fulfilled it.

Returning to our opening question, we may say, based on the above analysis, that even if the person attending the *chuppah* was exempt from *davening mincha* at that time on account of being *osek bemitzva*, if he nevertheless interrupted in order to *daven*, he would indeed fulfill the *mitzva*.²²

²² For further discussions on the exemption of *osek bemitzva*, see Kehilos Yaakov Brachos sec.15 and Mishnas Yaavetz Orach Chaim sec. 65.