

**RABBEINU
CHAIM
HALEVI**

Expositions on the Rambam

Outlined and elucidated by Natan Slifkin

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RABBEINU CHAIM HALEVI

EXPOSITIONS ON THE RAMBAM

Preface

Rabbi Chaim HaLevi Soloveitchik of Brisk (1853-1918) was part of the famous “Brisker Soloveitchik” family that included his father Rabbi Yosef Dov Soloveitchik (the Beis HaLevi) and his son Rabbi Yitzchak Zev Soloveitchik (the Brisker Rav). Apart from his role in the famous Volozhiner yeshivah, he became renowned for his collection of expositions on the Rambam. These discourses were masterpieces of subtly profound examination. They defined the technique of analysis variously known as “the Brisker *derech*,” “the *Litvisher derech*” or “Reb Chaim’s *derech*,” that would be used for generations to come. But perhaps even more remarkable was the style in which the work was written. Reb Chaim revised the manuscript countless times for accuracy and conciseness until it approached the degree of precision formerly seen only in the works of the Rishonim.

Some people have said that “Reb Chaim,” as the work is commonly known, cannot be adequately translated into English. To be sure, an English translation lacks the conciseness of the original that can indeed only be attained with *Lashon HaKodesh*. But there are certain advantages to using English. R’ Yehudah Ibn Tibbon, in his introduction to his translation of *Chovos HaLevavos*, writes that there used to be many more words of *Lashon HaKodesh* which were subsequently forgotten over the ages. Nowadays, all that we have are those words which are found in *Tenach*. Therefore, there simply are not enough words of *Lashon HaKodesh* around today for all purposes. It is partly for this reason, he writes, that many *seforim* over the ages have been written in languages other than *Lashon HaKodesh*. For many purposes, we just don’t have enough *Lashon HaKodesh* words left in our vocabulary. Thus, an English elucidation allows us to explain Reb Chaim with greater precision as to his intent (although this in itself limits the translation to being only the translator’s understanding of Reb Chaim’s intent). I

also believe that it is precisely the greater number of words needed to describe a concept in English that assists the modern student.

I would like to express my sincere thanks are also due to the various *chavrusas* with whom I studied Reb Chaim, especially Rabbi Yaakov Benzaquen.

I outlined and elucidated these sections of Reb Chaim for myself alone. After doing so, it seemed that other people might find the material useful, and I decided to disseminate them in this format. But they remain essentially my own notes, and thus no guarantee is given as to their accuracy. In some places I have footnoted difficulties that I had with certain sentences. I would greatly welcome any corrections or suggestions that people can offer.

Natan Slifkin

Jerusalem 5758

RABBEINU CHAIM HALEVI

EXPOSITIONS ON THE RAMBAM

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“SIN OR BE KILLED”

Hilchos Yesoday HaTorah, Perek 5, Halachah 1

Reb Chaim’s first exposition explores the rule that one must allow oneself to be killed rather than commit certain sins, analyzing if this would apply to a sin committed passively. This is a stereotypical exposition of Reb Chaim: taking a simple set of principles, and analyzing them with incredible thoroughness. The structure of this piece is straightforward, but the lines of reasoning involved are extremely profound, and require much digestion to be fully understood. Some give-and-take with another person on this exposition is especially beneficial. All in all, it is an excellent piece with which to begin learning Reb Chaim’s technique.

“SIN OR BE KILLED”

Hilchos Yesoday HaTorah, Perek 5, Halachah 1

OUTLINE

Rambam

Rule: Transgress rather than die.

Three exceptions: 1) Idolatry 2) forbidden relationships 3) murder.

Gemara

Reasons for exceptions: 1) Verse 2) verse 3) reason.

Qualification: In public, die for any commandment.

Question: Wasn't Esther in public?

Answer One: Esther was passive.

Answer Two: It was not imposed as a threat to Torah.

Tosafos

Question: Ask instead that Esther should have died to avoid forbidden relationships?

Answer: Transferral of exemption when passive, from murder to forbidden relationships.

Reb Chaim

Observation: Rambam argues. Holds no exemption.

Question: On what basis does he argue?

Answer One: He holds that the exempting factor is not applicable.

Answer Two: as follows:

Question on Tosafos: There is no comparison.

Answer for Tosafos: Only comparing re: reason.

Distinction: between two understandings of reason.

Support: For the second understanding.

Resolution: Rambam has the second understanding. Cases are not parallel. No exemption.

“SIN OR BE KILLED”

Hilchos Yesoday HaTorah, Perek 5, Halachah 1

ELUCIDATION

Rambam

Sefer Mada, Hilchos Yesoday HaTorah, Perek 5, Halachah 1:

Rule: Transgress rather than die.

“When a non-Jew comes and forces a Jew to transgress one of the commandments in the Torah or otherwise the non-Jew will kill him, the Jew should commit the transgression rather than be killed. As it is said, ‘*Guard my statutes and my ordinances, that man shall perform them, and he shall live through them,*’ (Vayikra 18:5) — he shall live through them, and not die through them.”

Three exceptions: 1) Idolatry 2) forbidden relationships 3) murder.

“This is only with regard to commandments other than those concerning idolatry, forbidden relationships, and murder. But with these three sins, if the non-Jew tells him to transgress one of them or be killed, the Jew should be killed rather than transgress them.”

Gemara

Sanhedrin 74a:

Reasons for exceptions: 1) Verse 2) verse 3) reason.

“Rabbi Yochanan said in the name of Rabbi Shimon ben Yehotzaddok: It was agreed upon and concluded in the attic of the house of Nitzeh in Lod that with all sins in the Torah, if it is told to a man to transgress them if he wants to avoid being killed, he should transgress them, and not be killed. This is except for idolatry, forbidden relationships, and murder:

Idolatry — in accordance with Rabbi Eliezer, as it is learned in a Baraisah: Rabbi Eliezer says, And you shall love Hashem your G-d with all your heart, with all your soul, and with all your resources...

Forbidden relationships and murder — in accordance with Rebbi, as it is learned in a Baraisah: Rebbi says, “*For as when a man rises over his friend and slaughters his soul, so shall be this matter*” — We compare the case of the

betrothed girl (who is forbidden from having relationships with another man) to the case of the murderer. Just as in the case of murder, one should be killed rather than transgress the prohibition of murder, so too in the case of the betrothed girl, she should be killed rather than transgress the prohibition of forbidden relationships.

In the case of the murderer itself, how do we know the rule? From reason... who says that your blood is redder? Perhaps that person's blood is redder." I.e., how do you know that your life is more precious to Hashem? Perhaps the other person's life is more precious. Therefore, one cannot kill the person, even at the cost of one's own life.

Qualification: In public, die for any commandment.

"This was only said with regard to a situation occurring in private. But in a public situation, then even for a minor commandment one should be killed rather than transgress it."

Question: Wasn't Esther in public?

"But wasn't Esther in public?" Why, then, did she not give up her life rather than marry Achashverosh?

Answer One: Esther was passive.

"Abayey said: Esther was passive (lit., nondescript land)." *She* did not commit any sin; she was merely a tool for Achashverosh's desires.

Answer Two: It was not imposed as a threat to Torah.

"Rava said: If it is for their own pleasure, it is different." Achashverosh did not intend to draw Esther away from Judaism — he didn't even know she was Jewish. He was doing this only to satisfy his desires. Esther's involvement therefore did not represent such a great desecration of Hashem's name as to require her to give up her life.

Tosafos

Sanhedrin 74b, s.v. "veha Esther b'farhesiya":

Question: Ask instead that Esther should have died to avoid forbidden relationships?

Why ask that Esther was in public? Surely it is preferable to ask the more fundamental and obvious question that this was a sin of forbidden relationships, for which one is required to give one's life regardless of whether it is in private or

in public? (We know that it was a case of forbidden relationships as the verse states, “*As I was lost from my father’s house, so too I shall be lost from you,*” i.e., she was betrothed already.)

Answer: Transferral of exemption when passive, from murder to forbidden relationships.

With regard to the problem here of forbidden relationships, everyone would agree that she would *not* have to give up her life, as the exemption of passivity would certainly apply to this.

This is because the rule that one must be killed rather than be involved in forbidden relationships is learned from the rule that one must be killed rather than commit murder. Now, the potential murderer himself would only be required to give up his life in a case where he is being forced to *actively* kill the other person. But he is not required to do so in a case where he is not being made to actively do anything. For example, if he is going to be thrown on top of a child to thereby crush him, it is reasonable that he should not be required to give up his life rather than do this. Since he is committing no action, he is entitled to say, “On the contrary, why do you say that the other person’s blood is redder, perhaps my blood is redder.”

This exemption of passivity would undoubtedly transfer to the case of forbidden relationships.

Reb Chaim

Observation: Rambam argues. Holds no exemption.

Rambam, who made a blanket rule of giving up one’s life, and did not mention any exemption in a situation of passivity, seems to argue on this. He seems to hold that in all situations of forbidden relationships¹ one should be killed rather than transgress the prohibition.

(With regard to Tosafos’s question as to why the Gemara did not ask that Esther was in the category of forbidden relationships, there is a dispute amongst the Rishonim, as is explained in the Ba’al Ha’Maor and Milchamos. They state that Esther was not in the category of forbidden relationships at all, as that section of the Gemara is of the opinion that she was single, or that relationships with a non-

¹ And presumably murder too — why doesn’t Reb Chaim mention this?

Jew do not come under the category of forbidden relationships, as is the opinion of Rabbeinu Tam in Tosafos there.)

Question: On what basis does he argue?

Tosafos has clearly established from the case of murder that where one would be only passively committing the transgression, one would not be required to forfeit one's life. How can Rambam argue on this? How can he rule that in all situations, one is required to forfeit one's life?

Answer One: He holds that the exempting factor is not applicable.

We can answer that in the case of murder itself, that which passive murder has a different rule to active murder is not due to any relative stringency of active murder. Rather, it is based on a unique feature of murder itself. The two lives are of equal value, and one must *therefore* take a passive course of action. He is effectively being faced with deciding between two murders, and his only option is to make no choice at all, and to refrain from taking any action. Passivity is not a cause for the ruling — it is the result. Now, this is not relevant to forbidden relationships, that we should say that his saving of his life is of equal importance to withholding himself from forbidden relationships. Since we do learn from the case of the murderer the fundamental rule that the prohibition is not pushed aside for the sake of saving one's own life, of course this results in passivity and active participation being equal, and in all cases one will have to be killed rather than transgress the prohibition.

Answer Two: As follows:

Question on Tosafos: There is no comparison.

How can the case of a betrothed girl be compared to the person who is thrown onto a child and crushes him? In that case, he did not commit an act of murder *at all*. He was not in any sense involved in the sin of murder. He was nothing more than a stone or stick in the hands of the *murderer* who threw him — for the one who threw this person is the real murderer! Surely that is why he is not required to give up his life.

Whereas, in the case of a betrothed girl, even though she was not actively participating in creating the sin, nevertheless she has certainly been *involved* in the sin of forbidden relationships, and it would be well justified to say that she should be killed rather than transgress!

Answer for Tosafos: Only comparing re: reason.

It seems that the intent of Tosafos is as follows. The ruling that one should be killed in the case of forced murder is based on the reasoning of “Who says that your blood is redder? Perhaps that person’s blood is redder.” That is the only relevant factor. His not having the status of murderer at all is not relevant to the rule.

Therefore, even if we were to come up with a case where the person would have the *status* of a murderer, as long as he was not actively participating, he would also not be required to give up his life. (Such a case is impossible in practice, as whenever one is just the tool for murder, one does not attain the status of murderer, as explained above. Nevertheless, we will work with this case for the purposes of this discussion.) For, since he is not, he is entitled to say, “On the contrary, why do you say that the other person’s blood is redder? Perhaps my blood is redder!”

And if so, the same will be true for the case of a betrothed girl, which is learned from the case of the murderer. Even if she is involved in an act of forbidden relationships, since she is not actively participating, there will be no rule of being killed rather than transgress.

Distinction: between two understandings of reason.

However, the case of the murderer itself requires understanding with regard to this. For in fact, one can explain the reasoning of “Why do you consider your blood to be redder, perhaps his blood is redder” in two ways:

We could say that since there are two equal lives at stake, therefore of course the ruling is that one must adopt a passive *course of action*. Faced with being a passive tool of murder, one should therefore offer no resistance to this, rather than cause oneself to be killed. If one were faced with having to actively perform such a thing, one should be killed rather than do so.

Alternatively, we could say that since their lives are equal, of course *the prohibition of murder is not pushed aside* for the sake of saving one’s own life. There is therefore no distinction to be made between active or passive murder — in all cases there will be no pushing aside of the

prohibition of murder.² Of course, the ruling will be to die rather than transgress in all situations. Even with murder itself, if there were to be the impossible case of passive action together with a status of murderer, we would also say that since their lives are equal, and the other person's life is not pushed aside because of this one's trying to save his own life, he will have to be killed rather than commit murder. (And not as we stated for Tosafos above).

Support: For the second understanding.

It would seem that the second understanding is correct, based on the Gemara (*Bava Metzia* 62a). It discusses the case of two travelers, only one of whom has a water canteen. If they both drink, they both die; if one drinks, he can survive. Rabbi Akiva rules that since it states, "*And your brother shall live with you,*" your life precedes the life of your friend.

Even though in that case he is being passive, and furthermore, it isn't really murder at all, only the preservation of life, nevertheless we still need the verse of, "*And your brother shall live with you,*" to be able to rule that one's own life takes precedence. Only in such a case do we say that one's own life takes precedence. But with murder, where there is no such verse, in all situations one must die rather than transgress, even if it is passive and one is not performing an action, as long as there is a status of murder (and not where one is being used as a human projectile).

Resolution: Rambam has the second understanding. Cases are not parallel. No exemption.

According to this second understanding, the Rambam ruled well that with forbidden relationships, one should die rather than transgress in all situations, even where one is being passive. For this is true in the case of murder, and so it will also be true for forbidden relationships, which is learned from it. There will never be any pushing aside of the transgression, and in all cases the rule will be to die rather than transgress, even in a situation where one is only being passively involved, as we have explained.

² Isn't there a prohibition of murdering himself, too? Why doesn't Reb Chaim take this into consideration?

In other words, no exemption of passivity can be learned from murder, as that is not a parallel case. Where he is thrown onto a child, he does not possess the status of murderer at all. If he were to have the status of murderer, he would indeed be required to let himself be killed rather than do this, and passivity would not be an exemption.³

³ What is Tosafos's understanding of "who says your blood is redder..."? Seemingly, it is the first of the two possibilities offered (as Rambam is the second). If so, how can the exemption transfer to forbidden relationships — in answer #1 for Rambam, we pointed out that this line of reasoning is unique to murder?

FOCUS DURING PRAYER

Hilchos Tefillah, Perek 4, Halachah 1

Reb Chaim's second exposition explores the laws of focus during prayer. ("Kavana" is being translated as "focus" rather than the usual "concentration" — it is based on the word "lekaven," "to direct.") This piece is based around a single distinction that he draws between two types of focus. Although it is a relatively straightforward exposition, the conclusions that he draws with regard to the requisite focus during prayer are extremely strict. However, we generally do not follow these conclusions for the purposes of halachah; the Chazon Ish even states that it is impossible to attain this level of focus.

Key Phrases:

Focus — כוונה

The act of prayer itself — עצם מעשה התפילה

The meaning of the words — פירוש הדברים

FOCUS DURING PRAYER

Hilchos Tefillah, Perek 4, Halachah 1

OUTLINE

Rambam-1

- a) Focus is required during prayer (*shemonah esrei*).
- b) Prayer without focus is not prayer.
- c) If one prays without focus, one must pray again with focus.
- d) If a person's mind is unsettled, he should not pray.

Rambam-2

- e) If one prays without focus, one must pray again with focus.
- f) If one did have focus during the first blessing, one need not repeat the prayer.

Reb Chaim

Question: Rambam-1 implies that focus is essential for all of prayer, but Rambam-2 implies that it is only essential for the first blessing?

Answer: as follows:

Distinction: between focus on the meaning of the words, and on one's state.

Resolution: Rambam-1 is referring to focus on state. Rambam-2 is referring to focus on words.

Clarification: Focus on state required by two obligations.

Question: Why did Rambam-2 omit rules b) and d)?

Answer: as follows:

Distinction: between distinctions of focus and of obligations.

Distinction-1: between focus on state and on words.

Distinction-2: between obligation of focus on state, and obligation of focus on words.

Resolution: Rambam-1 is referring to the obligation of the focus on state. Rambam-2 is referring to the obligation of the focus on words.

Rationale: for this distinction.

FOCUS DURING PRAYER

Hilchos Tefillah, Perek 4, Halachah 1

ELUCIDATION

Rambam-1

Hilchos Tefillah, Perek 4, Halachah 1:

a) Focus is required during prayer.

Halachah 15:

b) Prayer without focus is not prayer.

c) If one prays without focus, one must pray again with focus.

d) If a person's mind is unsettled, he should not pray.

Rambam-2

Perek 10, Halachah 1:

e) If one prays without focus, one must pray again with focus.

f) If one did have focus during the first blessing, one need not repeat the prayer.

Reb Chaim

Question: Rambam-1 implies that focus is essential for all of prayer, but Rambam-2 implies that it is only essential for the first blessing?

Answer: as follows:

Distinction: between focus on the meaning of the words, and on one's state.

There are two types of focus that are required of a person for prayer:

1. Focus on the *meaning of the words* that he is saying.
2. Focus on the *state of his standing before Hashem*, as Rambam states in *Perek 4, Halachah 16*: "What is focus? That he should clear his heart

from all other thoughts, and visualize himself as standing before the Divine Presence.”

Resolution: Rambam-1 is referring to focus on state. Rambam-2 is referring to focus on words.

The focus on his state of standing before Hashem is certainly not a supplementary law of focus. It is essential to the very act of prayer itself. If a person does not see himself as standing before Hashem, he simply has not been involved in prayer at all. Therefore, this type of focus is imperative to the entire prayer. If, for any part of the prayer, he did not have this focus, it is as though he has not prayed at all. This is the focus to which Rambam-1 was referring.

Rambam-2, on the other hand, was referring to focus on the meaning of the words. In a situation where the person was aware that he was standing in prayer before Hashem, but did not understand the meaning of the words, a different ruling applies. For focus on the meaning of the words is a supplementary ruling to the requirement of prayer. This ruling was not made imperative to the entire prayer, as we find in the Gemara: “One who prays should have focus for all the blessings, and if he is not able to do so, he should have focus for at least one of them. Rabbi Chiyya, in the name of Rav Safra, in the name of one of the Rabbi’s house, said: Namely, in the blessing of ‘forefathers’ (the first blessing).” (*Berachos* 34b)

Clarification: Focus on state required by two obligations.

In truth, the requirement for focus on the state of standing before Hashem is required for two separate reasons.

First, as we discussed above, that otherwise he just has not been involved in an act of prayer at all.

Second, due to the general rule that *mitzvos* require focus. Again, this is imperative for the entire prayer; *mitzvos* require intent for the complete *mitzvah*, not just for part of it.

Therefore, Rambam-1, which ruled that focus on one’s state of standing before Hashem is imperative for the entire prayer, is based on two reasons.

Question: Why did Rambam-2 omit rules b) and d)?

Both Rambams stated the rule that if one prayed without focus one must pray again with focus. But Rambam-2 did not mention two other rules stated by Rambam-1: that prayer without focus is not prayer, and that one should estimate if one is able to focus for prayer before deciding to pray. Why did he not mention these two rulings here too? Even if focus on the meaning of the words is not essential post facto, perhaps a priori it is required in order to pray?

Answer: as follows:

Distinction: between distinctions of focus and of obligations.

Distinction-1: between focus on state and on words.

There is the concept of focus of the state of standing before Hashem, as required by the act of prayer and by the rule that *mitzvos* require focus.

There is also the concept of focus of the meaning of the words.

Distinction-2: between obligation of focus on state, and obligation of focus on words.

There is an *obligation* to focus on the act of standing before Hashem, as per the requirement for all *mitzvos* that there must be focus. (There is no obligation from the point of view of the *mitzvah* of prayer; this type of focus is the very act of prayer itself, and is not “required” by it.⁴)

There is also an *obligation* to focus on the meaning of the words; this is an obligation unique to prayer.

Essentially, these two obligations do not require each other.

Resolution: Rambam-1 is referring to the obligation of the focus of state. Rambam-2 is referring to the obligation of the focus of words.

If a person does not see himself as standing before Hashem,⁵ he has effectively not been involved in prayer at all. It is to this that Rambam-1 was referring when he stated that “prayer without focus is not prayer.” Additionally, and as Rambam states, if a person does not think that he can summon this type of focus, he should not pray.

⁴ This is my own idea, trying to account for why R' Chaim does not mention this obligation.

⁵ Reb Chaim states “or does not have the standard rule of *kavana*” — isn't this the same thing?

However, the obligation to focus on the meaning of the words is a specific and supplementary obligation of prayer. Therefore, we rule that even if he cannot summon this focus, he is still obligated to pray as much as there is an obligation of any *mitzvah*.

Rationale: for this distinction.

All of this, states Reb Chaim, would hold true even if we could not see any rationale behind it. But perhaps we can find a rationale anyway.

The Rambam's position on prayer is that it is Biblically-required. Even those opinions that argue and hold that it is only Rabbinically-required only state this with regard to the obligation of prayer; but the manner in which one should pray once one has decided to do so is certainly prescribed by the Torah.

Therefore, since it is a universal Biblical principle that one must be aware of what one is doing to be considered as though one has done it, and it is also a universal Biblical principle that *mitzvos* require focus, if one is not able to focus on standing before Hashem, one should not pray.

However, the rule of focusing on the meaning of the words, which is specific to prayer, is only an enactment of the Rabbanim. Therefore, if one is not able to focus on the meaning of the words, one should still pray, since from a Biblical perspective one has performed the act of prayer simply by focusing on one's state of standing before Hashem.

The only rule resulting from the Rabbinical requirement of focus on the meaning of the words is that if one was able to have this focus but did not do so, one must pray again with this focus. That is why Rambam-2 only brought this rule, as we have explained.

OBLIGATORY AND VOLUNTARY PRAYER

Hilchos Tefillah, Perek 10, Halachah 6

Reb Chaim's second exposition is less typical of his approach. It involves several sections of Gemara on which numerous disputes are based. Merely holding all of the source material in one's mind while studying this exposition is quite a challenge. Several reviews of the material will probably be needed to attain even a basic clarity in the exposition.

Key Phrases:

Focus — כוונה

The act of prayer itself — עצם מעשה התפילה

The meaning of the words — פירוש הדברים

OBLIGATORY AND VOLUNTARY PRAYER

Hilchos Tefillah, Perek 10, Halachah 6

OUTLINE

Rambam

Rule: If a person was praying, and suddenly remembered that he had already prayed, he should stop praying immediately, even if he is in the middle of a blessing.

Qualification: If he is praying Maariv, he should not stop; as Maariv is only prayed originally on the understanding that it is not obligatory.

Ra'avad

Disagrees: seemingly with the second statement.

Kesef Mishneh

Explains Ra'avad: Since Maariv has been subsequently accepted as obligatory, one must in this case stop praying, even in the middle of a blessing.

Reb Chaim

Explains Rambam: Maariv is still voluntary, but it has become obligatory to say this voluntary prayer.

Application #1:

Rif: Originally, Maariv was voluntary, but once one had begun praying it, the rest became obligatory.

Rambam disagrees.

Resolution: Rambam holds that Maariv is voluntary in its essence.

Application #2:

Rambam: makes rulings in certain cases, explicitly based on the reasoning that Maariv is always voluntary.

Ra'avad disagrees: with these rulings.

Resolution: Rambam's position is as we have explained. Ra'avad's position is based on the Rif, that once one begins to pray Maariv, it becomes obligatory.

Explains Ra'avad (based on Gemara):

R' Yehudah, citing Shmuel: If a person has already prayed, but happens across a congregation, he should pray again with them, provided he is able to add a new aspect to his prayer.

R' Yochanan: "If only a person could pray all day long!" (Seemingly disagreeing with requirement stated above.)

Dispute: between Rif and Rashi (in explaining this):

Rif qualifies R' Yochanan: He was only referring to a person who will add a new aspect each time.

Rashi disagrees: holds that R' Yehudah, citing Shmuel, and R' Yochanan are arguing.

Dispute: between Rambam and Ra'avad:

Rambam: rules that voluntary prayers require new aspects.

Ra'avad: disagrees.

Resolution: Rambam holds like Rif. Ra'avad holds like Rashi.

Clarification: of Ra'avad's dispute with Rif: Ra'avad holds that a prayer begun as an obligation can revert to being voluntary.

Clarification: of original dispute of Ra'avad with Rambam: Ra'avad is arguing with the first statement. He holds that he can revert to voluntary prayer, and need not add new aspect.

OBLIGATORY AND VOLUNTARY PRAYER

Hilchos Tefillah, Perek 10, Halachah 6

ELUCIDATION

Rambam

Rule: If a person was praying, and suddenly remembered that he had already prayed, he should stop praying immediately, even if he is in the middle of a blessing.

Although one may pray voluntarily any number of times, an obligatory prayer may only be said once. Thus, if a person remembers that he had already prayed, he must stop praying.

Qualification: If he is praying Maariv, he should not stop; as Maariv is only prayed originally on the understanding that it is not obligatory.

Since Maariv is anyway a voluntary prayer (as per the Gemara in *Berachos 27b*), he can proceed to convert this into a general voluntary prayer.

Ra'avad

Disagrees: seemingly with the second statement.

Ra'avad simply states, "This is not a comfortable ruling." He does not say whether he is referring to Rambam's basic rule or to the qualification that Rambam gave. It is reasonable to assume that he is only disagreeing with the qualification; we generally prefer to minimize the areas of disagreement, and to make them as specific as possible.

Kesef Mishneh

Explains Ra'avad: Since Maariv has been subsequently accepted as obligatory, one must in this case stop praying, even in the middle of a blessing.

Ra'avad is of the opinion that since, subsequent to the time of the Gemara, it has been accepted as a universal obligation to pray Maariv, it is now the same as any other obligatory prayer. Hence, if one remembers that one has already prayed, one must not continue this prayer; there is no way of subsequently making it into a general voluntary prayer.

Reb Chaim

Explains Rambam: Maariv is still voluntary, but it has become obligatory to say this voluntary prayer.

Rambam does not agree with this. He is of the opinion that a voluntary prayer can never merge with an obligatory prayer. The obligation to pray, or lack thereof, relates to the very nature of the prayer itself. Two such entirely different types of prayer cannot become one. If Maariv were to now be considered as an obligatory prayer, it would be impossible to convert it to a voluntary prayer in the middle, if one realized that one had already prayed.

But, in fact, Maariv is still a voluntary prayer in essence. All that has happened is that people accepted it upon themselves as an obligation to pray it. (This is a rather difficult statement to understand initially. It seems to mean as follows: The prayer itself is not of a binding nature. The prayer itself has the intent of a voluntary prayer. However, from the point of view of the person, it has become incumbent to pray Maariv. It is not that the prayer must be said; rather, man must pray it.)

Therefore, Rambam ruled that since Maariv is still a voluntary prayer in essence, if a person remembers that he has already prayed, he can continue the prayer as a general voluntary prayer. It is only the other prayers, which are obligatory in their very essence, which one cannot, while praying them, convert them to general voluntary prayers.

Application #1:

Rif: Originally, Maariv was voluntary, but once one had begun praying it, it became obligatory. Nowadays, it is accepted as obligatory from the outset.

The Rif (19a לדפי) comments on the Gemara's ruling that Maariv is voluntary (which was true for that period alone). He states that even in that period, once one had begun to pray Maariv, the rest of that prayer became obligatory in nature (and thus if one makes a mistake, one must repeat the prayer). The Rif also mentions that even according to the opinion that it was voluntary, it was still a mitzvah; and nowadays, people have accepted it as obligatory.

Rambam: only mentions the second point.

Rambam (*Perek* 1) only mentions that Maariv was formerly voluntary, and has since been accepted as an obligation. He does not say, as did the Rif, that in the first era, once one began praying Maariv it transformed into an obligatory prayer.

Resolution: Rambam holds that Maariv is voluntary in its essence.

Rambam's omission of this statement is consistent with our understanding of his position. For such a transformation into an obligatory prayer would mean that the prayer itself was fundamentally different from a voluntary prayer. Again, we see Rambam holding that Maariv is voluntary in essence and cannot be transformed into an obligatory prayer.

Application #2:

Rambam: makes rulings in certain cases, explicitly based on the reasoning that Maariv is always voluntary.

In *Perek* 3, Rambam rules as follows:

- Although Maariv is voluntary, the designated time for one who prays it is from the beginning of the night until daybreak.
- If one prays a prayer before its designated time, one has not fulfilled one's obligation, and one must pray again when the correct time arrives.
- One may pray the Maariv of Shabbos on the eve of Shabbos, even before sunset, since the prayer is anyway voluntary.

Ra'avad disagrees: with the last ruling.

Ra'avad comments that one should not pray Maariv earlier except under pressing circumstances.

Resolution: Rambam's position is as we have explained. Ra'avad's position is based on the Rif, that Maariv can and has become obligatory.

We see explicitly in Rambam that Maariv is voluntary in essence, even once one has begun praying it (in the era when it was voluntary), and even nowadays (when it is obligatory). For if it becomes obligatory once one has begun to pray it, Rambam could not rule that one may pray Maariv on the eve of Shabbos before its designated time. This is in line

with his ruling that Maariv can be transformed into a voluntary prayer, since it is voluntary on nature anyway.

Ra'avad, on the other hand, holds like the aforementioned Rif, that Maariv is not necessarily a voluntary prayer but can (in the era when it was voluntary) and has (nowadays) become an obligatory prayer. Hence, it has the rules of an obligatory prayer and should not be recited before its designated time.

Reb Chaim explains Ra'avad (based on Gemara):

Reb Chaim now proceeds to explain the position of the Ra'avad in the original case of our discussion. First, he brings a Gemara (*Berachos* 21a):

“R' Yehudah, citing Shmuel: If a person has already prayed, but happens across a congregation, he should pray again with them, provided he is able to add a new aspect to his prayer.”

A voluntary prayer must differ from an obligatory prayer. Hence, one should insert a new aspect, such as a new request, into the prayer.

“R' Yochanan: ‘If only a person could pray all day long!’ (Seemingly disagreeing with requirement stated above.)”

R' Yochanan seems to be saying that it would be desirable if people were able to pray all day long, and it does not matter if they insert a new aspect into their additional prayers.

Dispute: between Rif and Rashi (in explaining this):

Rif qualifies R' Yochanan: He was only referring to a person who will add a new aspect each time.

The Rif states that there is no disagreement between them. R' Yochanan only meant that it would be desirable for people to pray all day *with* the insertion of new aspects each time.

Rashi disagrees: holds that R' Yehudah, citing Shmuel, and R' Yochanan are arguing.

It is clear that Rashi, however, holds there is a disagreement. He cites the Ba'al Halachos Gedolos, ruling as follows:

- If a person is unsure if he has already prayed, he can follow R' Yochanan's statement, and prays again without inserting a new aspect.

- If a person has certainly already prayed, he must follow R' Yehudah, citing Shmuel, and may only pray again if he inserts a new aspect.

Clearly, Rashi holds that R' Yochanan does not require the insertion of a new aspect in a voluntary prayer.

Dispute: between Rambam and Ra'avad:

In *Perek 1*, there is a ruling of Rambam, with an objection by the Ra'avad, which we will see to be related to the aforementioned dispute between Rif and Rashi.

Rambam: rules that voluntary prayers require new aspects.

Rambam rules that one may not decrease from the number of prayers that were instituted; however, one may add on to them. Those prayers that one chooses to add are like *nedavah* offerings, hence one must add a new aspect to them.

Ra'avad: disagrees.

Ra'avad disagrees, stating that one need not add new aspects to voluntary prayers.

Resolution: Rambam holds like Rif. Ra'avad holds like Rashi.

Rambam holds like the Rif, that all agree that a voluntary prayer requires a new aspect.

Ra'avad holds like Rashi, ruling in accordance with R' Yochanan that one need not insert a new aspect in a voluntary prayer.

Clarification: of Ra'avad's dispute with Rif: Ra'avad holds that a prayer begun as an obligation can revert to being voluntary.

In the Gemara, Shmuel also states that if a person has begun praying, but suddenly remembers that he has already prayed, he should stop praying immediately, even in the middle of a blessing.

The Rif determines that there are two rules implied in Shmuel's statement:

1. If one cannot insert a new aspect into one's prayer, one should not pray.

2. Even if one can insert a new aspect, but if the prayer was begun as an obligatory prayer, it cannot be transformed into a voluntary prayer, and one must therefore stop praying.

We can perhaps say that Ra'avad agrees that Shmuel is implying the first rule, that a new aspect is required for a voluntary prayer (and not as we suggested earlier), but not that he is implying the second. Ra'avad holds that even if one began praying with the intent of praying an obligatory prayer, as long as the prayer was not in fact obligatory, one can transform the prayer into a voluntary prayer, provided that one inserts a new aspect. Ra'avad explains this statement of Shmuel to be in accordance with his other ruling that a new aspect is required for a voluntary prayer. This ruling, that one should stop praying immediately, is based on one of two possibilities. It might be because it is talking about a person who cannot insert a new aspect. Alternatively, it is because Shmuel holds that since the prayer was begun with the intent of it being an obligatory prayer, this means one is simply incapable of adding a new aspect, as the original intent was that there should be nothing new about this prayer. Either way, there is no inherent problem with an obligatory prayer being transformed into a voluntary prayer.

Clarification: of original dispute of Ra'avad with Rambam: Ra'avad is arguing with the first statement. He holds that he can revert to voluntary prayer, and need not add new aspect.

According to all this, we can say that the Ra'avad was in fact arguing with the basic ruling of the Rambam — that if one remembers that one has already prayed, one should cease praying. The Ra'avad holds that this would only hold true according to Shmuel, who requires a new aspect to be inserted, which is impossible here (as explained in the previous paragraph). But we rule in accordance with R' Yochanan, who does not require the insertion of a new aspect in a voluntary prayer. Therefore, even if one began praying with the intent of it being an obligatory prayer, one can simply transform it into a voluntary prayer, without inserting a new aspect.

PREPARING PARCHMENT

Hilchos Tefillin, Perek 1, Halachah 11

This exposition deals with preparing and dressing parchment for use with Sifrei Torah, Tefillin and Mezuzos; specifically, whether or not these processes must be done with the intent of creating these holy objects. It is extremely complicated. The first half is a far-ranging exploration of different source material and opinions, which is slightly atypical of Reb Chaim, but is a necessary prerequisite for the second half. In the second half, there are superb analyses of the concepts involved, with Reb Chaim's classical approach of continually refining the understanding of the subject until a satisfactory result is obtained.

Key Phrases:

- Designation is relevant — הזמנה מילתא היא
Dressing (parchment) with intent — עיבוד לשמה
Actual sanctity — עצם קדושה
Vehicles for sanctity — תשמישי קדושה

Self-generated sanctity — קדושתה מעצמותה

PREPARING PARCHMENT

Hilchos Tefillin, Perek 1, Halachah 11

OUTLINE

PART ONE: Laws, concepts, and questions

Rambam

Rules: The parchment of a Sefer Torah and of Tefillin must be dressed with intent.

Exception: The parchment of a Mezuzah does not require dressing with intent.

Gemara: Sources

Yerushalmi: Mezuzah: A hide that was dressed for an amulet may be used for a Mezuzah; R' Shimon ben Gamliel forbids this.

Bavli: Sefer Torah: Parchment for a Sefer Torah requires dressing with intent.

Reb Chaim

Question #1: Surely there should be no difference between a Sefer Torah and a Mezuzah. In which case, the Yerushalmi and Bavli are arguing. So how can Rambam rule in accordance with both?

Gemara: Issues

Dispute: if designation is relevant.

Abayey: designation is relevant, as learned from the Slaughtered Calf.

Rava: designation is not usually relevant; the Slaughtered Calf has "intrinsic sanctity," and is therefore different.

Proof: that designation is not relevant, question against Abayey.

Solution: It is a Tannaic dispute.

Tanna Kamma: Tefillin boxes may be made from hide which was not dressed with intent.

R' Shimon ben Gamliel: They must be dressed with intent.

Resolution: Former holds designation is not relevant. Latter holds designation is relevant.

Rambam

Rules: Tefillin boxes do not need to be dressed with intent.

Presumed basis: As per Rava; designation is not relevant.

Reb Chaim

Question: Why does Rambam rule that Tefillin straps require dressing with intent, if designation is not relevant?

Answer: The boxes do not require dressing at all; that is why they do not require intent. The straps, which do require dressing, require intent.

Question #2: If this is the reason, why did the Gemara attribute it to designation being relevant?

PART TWO: Examination of interplay between requirement of intent and relevance of designation.

Reb Chaim: Examination of Rambam's rule that straps require dressing with intent, even though designation is not relevant; relates to dispute of Rishonim.

Question: Why does Sefer Torah require dressing with intent, if designation is not relevant?

Tosafos answers: On the contrary; *Since* designation is not relevant, (i.e., inadequate), *therefore* dressing *is* required with intent.

Baal HaMaor answers: Parchment possesses actual sanctity and therefore requires dressing with intent. Tefillin boxes and straps are only vehicles for the actual sanctity, and since designation is not relevant, they do not have to be dressed with intent.

Adaptation of Baal HaMaor: based on his principle that items possessing actual sanctity require dressing with intent, but differing in that Tefillin also possess actual sanctity: According to Rava, the Tanna Kamma and R' Shimon ben Gamliel are not arguing about

the relevance of designation, but rather about the need for intent. The ruling with Sefer Torah is simply based on R' Shimon ben Gamliel's ruling that articles possessing actual sanctity require dressing with intent, and has nothing to do with designation.

PART THREE: Explanation of Rambam, based on Baal HaMaor

Examination: of validity of Baal HaMaor's distinction between actual sanctity and vehicles for sanctity.

Question: Surely all parts of Tefillin possess actual sanctity?

Solution: Yes, but the sanctity of the boxes only stems from the sanctity of the parchments. Therefore, the requirement for dressing with intent will depend upon the issue of the relevance of designation.

Question on Baal HaMaor: We see from the Gemara that the boxes do indeed possess actual sanctity. So, again, why should Sefer Torah have a different ruling to Tefillin boxes?

Question on our adaptation of Baal HaMaor: We see from the Gemara that the Tanna Kamma and R' Shimon ben Gamliel are certainly arguing about relevance of designation!

Explanation of Rambam's position: Rambam holds like Baal HaMaor insofar as that for items of actual sanctity, designation is certainly relevant; he differs in that he holds that Tefillin are also in this category. However, this is only with regard to preparation processes which are essential. Other processes will depend on the dispute as to whether designation is relevant.

Answer to Question #2: The reasoning of Rambam and the Gemara is identical: *Because* dressing is not essential, *therefore* the concept of designation being irrelevant can come into play.

Objection to this explanation: We see from the Gemara that the rule for Tefillin boxes does indeed depend on the dispute as to whether designation is relevant.

New explanation of Rambam's position:

Distinction: Dressing is a preparation that relates to the intrinsic nature of the item. It must therefore be performed with intent (and there will be a distinction between actual sanctity and vehicles for sanctity). Other types of designation relate only to the extrinsic status of the item (E.g. whether it

is Tefillin for the head or hand). They will depend on whether or not designation requires intent.

Resolution: The Gemara is discussing regular designation, which depends on the dispute as to if designation is relevant. Rambam is discussing the procedure of dressing, which relates to the intrinsic sanctity of Tefillin, and since Rambam holds of Baal HaMaor's distinction between actual and vehicles for sanctity, and Tefillin possess actual sanctity, this will require intent.

PART FOUR: Explanation of Rambam, based on Tosafos / Ramban that no difference between actual sanctity and vehicles for it.

Reb Chaim:

Clarification #1: Ramban explains that the Slaughtered Calf has self-generated sanctity, whereas the sanctity of parchment only stems from the writing on it. Thus, parchment is effectively the same as vehicles for sanctity in that designation is irrelevant.

Clarification #2: The Slaughtered Calf is already at its final status of sanctity as soon as the process begins. Scrolls are only potential for the final item, and designation is a relevant concept.

Question: Based on the above, why should dressing for a Sefer Torah automatically require intent? It should be like dressing Tefillin boxes, which depends on the dispute as to whether designation is relevant!

Distinction: The concept of designation means that the future status of sanctity *already* rests on the item at every *preparation* stage, which will all require to *be* performed with intent. But the concept of holy items requiring preparation with intent means for the sanctity to land now, at the *finished* stage, the processes on the "checklist" must all *have been* performed entirely with intent.

Qualification: Only those processes which are essential to the final product are on this checklist of processes which must have been performed with intent.

Answer to Question #2: The reasoning of Rambam and the Gemara is identical: Because dressing is not essential to creating Tefillin

boxes, it cannot create the problem of not having been made with intent. Only the issue of designation will be relevant.

Answer to Question #1:

Principle: The requirement of dressing parchment before it can be used applies to all types of scrolls.

Query: Is dressing the parchment of Sifrei Torah, Tefillin and Mezuzos just this standard requirement, or is it a special requirement of these holy items?

Proof for second way: We see that there are laws as to the specific types of parchment used.

Disproof, Reinstatement of query: Dressing is an entirely different issue to the types of parchment used.

Resolution: For Sefer Torah, dressing is a special rule, and must be done with intent. For Mezuzah, it is just the standard requirement of dressing, as it is learned from Sotah.

Contrast: between Tosafos and Rambam

Tosafos: learns Mezuzah from Sefer Torah, not from Sotah, as they are both items of sanctity.

Rambam, however, has reason to learn Mezuzah from Sotah. The *gezeirah shavah* relates to the status of Mezuzah, such as whether it is a requirement of the person or of the house, and whether it applies for all generations, and it does not relate to the sanctity of the writing.

WRITING HASHEM'S NAME
Hilchos Tefillin, Perek 1, Halachah 15

This exposition of Reb Chaim is long and complex. It involves several intricate calculations covering different disputes. Between all this, there is a profound analysis of the requirements involved in the writing of Hashem's Name.

Key Phrases:

Dressing (parchment) with intent — עיבוד לשמה

For his own motives — על דעת עצמו

(Mention of) Hashem's Name — אזכרה

Technically excluded — מופקעין מדינא

WRITING HASHEM'S NAME
Hilchos Tefillin, Perek 1, Halachah 15

OUTLINE

Rambam

Rambam's position can be described as follows:

Rule: Sefer Torah, Tefillin and Mezuzah do not need to be written with intent.

Qualification: Hashem's Name must be written with intent, otherwise it is invalid.

Reb Chaim, part I

Question: We see in the Gemara, discussing the opinion that a non-Jew cannot write a Sefer Torah, that if dressing requires intent (and thus rules Rambam), then all the more so does writing require intent!

Distinction: between dressing, which for the application of sanctity depends on intent to link it with the final purpose, and writing, the purpose of which is manifest in the action itself, and thereby receives sanctity.

Answer: Writing need only manifest purpose for sanctity. A Jew does this without thought of intent. But there is a law that a non-Jew's action cannot manifest purpose for sanctity. Thus, for a Jew, the fact that the dressing must be done with intent does not imply that the writing must be done with intent.

Question: We see in the Rambam that the problem is with the thought of the non-Jew ("He works for his own motives"), not with his action!

Answer: The meaning of "He works for his own motives" is that his actions cannot manifest purpose for sanctity and thereby be considered to possess intent.

Support: We see the same with *get*.

Reb Chaim, part II: proves this answer from a Gemara:

Gemara: According to the opinion that writing need not be done with intent, a Sefer Torah can be written by a non-Jew.

Question: Surely Hashem's Name must be written with intent?

Answer:

Rule: A Sefer Torah written by a heretic must be burned. If it was written by a non-Jew, it should be buried.

Question: Shouldn't that of a non-Jew also be burned?

Answer:

Distinction: between the intent of writing a Sefer Torah and of writing Hashem's Name.

Resolution: When a non-Jew writes Hashem's Name, it is actually a Name.

⇒ A sefer Torah written by a non-Jew must be buried, as Hashem's Name has been written as such, and therefore has sanctity.

⇒ If a Jew supervises to ensure that Hashem's Name is written as such, then the non-Jew can write a Sefer Torah.

Question: Surely we still require that Hashem's Name be written with intent for its sanctity, which a non-Jew cannot do?

Answer: This is not necessarily so; it relates to a dispute, and can be satisfactorily accounted for according to either opinion.

According to the Tur, the Name of Hashem need only be written with awareness that it is what it is.

According to the Smag, there is an added requirement that it be written with intent for its sanctity.

Application: of this dispute to the opinion in the Gemara that a Sefer Torah can be written by a non-Jew:

Tur: Hashem's Name needs only to be written as being Hashem's Name.

Smag: The concept of writing Hashem's Name with intent for its sanctity is no different to the concept of writing the rest of a Sefer Torah with intent for its sanctity, which this opinion deems to be unnecessary.

Conclusion: All this only works according to our explanation in the principle of "he works for his own motives" (and therefore supports it)

— that it is a law ruling that his actions cannot manifest purpose for sanctity, and does not refer to his intent.

WRITING HASHEM'S NAME

Hilchos Tefillin, Perek 1, Halachah 15

ELUCIDATION

Rambam

Rambam's position can be described as follows:

Rule: Sefer Torah, Tefillin and Mezuzah do not need to be written with intent.

Qualification: Hashem's Name must be written with intent, otherwise it is invalid.

What Rambam actually states is this: "One who writes a Sefer Torah, Tefillin or Mezuzah, and at the time of writing does not have [the correct] intent, and he wrote Hashem's Name without intent — it is invalid." But Reb Chaim notes that the clear implication of this is that the rest of the Sefer Torah does not need to be written with intent. Similarly, later in *perek* 10, when Rambam lists all the things that invalidate a Sefer Torah, he only mentions writing Hashem's Name without the proper intent, and does not mention writing the rest of the Sefer Torah without the proper intent. We see therefore that Rambam holds that the sanctity of a Sefer Torah is acquired even if it was written without proper intent.

Reb Chaim, part I

Question: We see in the Gemara, discussing the opinion that a non-Jew cannot write a Sefer Torah, that if dressing requires intent (and thus rules Rambam), then all the more so does writing require intent!

The Gemara in *Gittin* 45b relates the story of a non-Jew in the town of Tzidon who wrote Sifrei Torah, the purchase of which was permitted by Rabban Shimon ben Gamliel. Now, a non-Jew is not considered to be able to write a Sefer Torah with the intent of producing an item of sanctity. Asks the Gemara: Does Rabban Shimon ben Gamliel only require that the dressing of the parchment must be done with correct intent (which it proves to be the case), but not the writing itself? The Gemara concludes that according to Rabban Shimon ben Gamliel's view that the parchment must be dressed with proper intent, then the writing must certainly be

done with proper intent; the story in question concerned not a non-Jew, but rather a convert who had returned to his old ways.

Rambam in *perek* 1, *halachah* 11 (and also in *perek* 10) rules that the parchment of a Sefer Torah and Tefillin must be dressed with proper intent. If so, then surely according to the logic of the Gemara it is all the more important that the writing be done with proper intent. How can Rambam here rule otherwise?

Distinction: between dressing, which for the application of sanctity depends on intent to link it with the final purpose, and writing, the purpose of which is manifest in the action itself, and thereby receives sanctity.

There is an essential distinction to be drawn between dressing parchment and writing. The writing itself is what causes a sheet of parchment to become a Sefer Torah. It is for this reason that Rambam does not require the writing to be done with intent of producing an item of sanctity. In other words, usually the act has to be linked to the final goal through one's intent. But the writing is itself the final goal; no linkage is required. The writing automatically acquires the sanctity of a Sefer Torah. (*Stama liShman ka'i*, says Reb Chaim, which seems to mean not that it is presumed to have been actually done with proper intent, but that without any formal mental intent it is nevertheless effectively considered to have been done with proper intent.⁶)

The dressing of the parchment is a different matter. Dressing the parchment does not transform it into a Sefer Torah; it is only a preparatory stage. It therefore needs the correct intent in order to link it to its final status and thereby enable the process to acquire sanctity.

Answer: Writing need only manifest purpose for sanctity. A Jew does this without thought of intent. But there is a law that a non-Jew's action cannot manifest purpose for sanctity. Thus, for a Jew, the fact that the dressing must be done with intent does not imply that the writing must be done with intent.

We can now understand the Gemara according to Rambam. That which the Gemara states that the actions of a non-Jew do not fall under the category of actions done with proper intent is not because the non-Jew is not thinking the correct thoughts. Rather, it is because a non-Jew is technically excluded from the

⁶ Perhaps it would be more accurate to write that "it is nevertheless considered to have been effectively done with proper intent." I am not sure where the word "effectively" should be placed.

very concept of doing something with proper intent. For such is the law of a non-Jew — that his actions cannot receive a status of having been done with proper intent, because anyone who does not possess the sanctity of the Jewish people cannot create the sanctity of a Sefer Torah.

This is what lies behind the Gemara's question of, "Does Rabban Shimon ben Gamliel only require that the dressing of the parchment must be done with correct intent (which it proves to be the case), but not the writing itself?" For a non-Jew is technically excluded from the category of actions done with proper intent. Therefore we cannot apply *stama liShman ka'i*, that without any formal mental intent it is nevertheless effectively considered to have been done with proper intent, since his actions cannot receive the status of having been done with intent. Writing and dressing parchment are thus equal as far as the non-Jew is concerned; in fact, with writing there is an even greater degree of proper intent required, since writing is the main part of producing a Sefer Torah. Therefore the Gemara is of the view that if the dressing must be done with intent, the writing must also (and all the more so) be done with proper intent — as far as a non-Jew is concerned. But it is true that for a Jew, writing has an advantage over dressing the parchment in that the principle of *stama liShman ka'i* can be applied such that he need not have any formal mental intent. Thus, for a Jew, it does not follow that since the dressing must be done with intent, therefore the writing must be done with intent.

Rambam, who ruled that a Sefer Torah written by a non-Jew is invalid because of the verse *u'keshartem u'kesavtem* (from the adjacency of which we learn that only those who are commanded in tying Tefillin and suchlike may write them), and that the writing of a Sefer Torah, Tefillin or Mezuzah can only be done by a Jew, clearly holds that with writing we apply the principle of *stama liShman ka'i*. Therefore he does not rule that writing a Sefer Torah must be done with formal mental intent, and instead only mentions that Hashem's Name must be written with proper intent, which is a separate rule to which we cannot apply *stama liShman ka'i*.

Tosafos there questions the Gemara's assumption that if dressing must be done with intent and therefore cannot be done by a non-Jew then all the more so is that the case with writing — for perhaps writing is different because *stama liShman ka'i*, which Tosafos takes to mean that it is presumed to have actually been done with proper intent. Tosafos remains with this difficulty, it must therefore be understood as we have explained, that the non-Jew is technically excluded from

the category of actions done with proper intent, and therefore *stama liShman ka'i*, which means that without any formal mental intent it is nevertheless effectively considered to have been done with proper intent, cannot be applied.

Question: We see in the Rambam that the problem is with the thought of the non-Jew (“He works for his own motives”), not with his action!

We now have a difficulty from Rambam in *perek 1, halachah 11*, which states as follows: “The parchment of a Sefer Torah or of Tefillin must be dressed with correct intent. If it was dressed without correct intent, they are invalid. Therefore, if a non-Jew dressed the parchment, they are invalid; even if one told the non-Jew to dress this skin for the purpose of a Sefer Torah or Tefillin, they are invalid, as a non-Jew works for his own motives, not for the motives of the one who hires his services.” Here we see that Rambam attributes the Sefer Torah being invalid to the fact that the non-Jew has his own motives in writing it and therefore does not write it with the correct intent; were the situation to be otherwise, his dressing of the parchment would be valid. This seems to explicitly show that the actions of a non-Jew are not technically excluded from the category of actions done with proper intent. It is only that practically speaking, he will not have the correct intent.

Answer: The meaning of “He works for his own motives” is that his actions cannot manifest purpose for sanctity and thereby be considered to possess intent.

It seems that the Rambam's principle of “he works for his own motives” is not an invalidation based on a practical assessment of what goes on in his mind, but is instead a technical principle. Since a non-Jew has no connection to the essential concept of Sifrei Torah, Tefillin and Mezuzos, he is also excluded from the concept of preparing them with correct intent. Even if he were to prepare them with the intent of producing an item of sanctity, it would be of no help whatsoever. He *effectively* “works for his own motives.” The only solution would be if his actions could be considered to be attributed to the motives of a Jew. Then his actions would be considered to have been done with proper intent, and it would not matter that we consider his actions to be essentially excluded from the category of actions performed with proper intent, since the dressing is only a preparatory stage.⁷ If his actions could be linked to the motives of a Jew, that

⁷ I do not understand what Reb Chaim means with this last phrase.

would suffice for the requirement of intent for dressing parchment. Thus, Rambam's principle of "he works for his own motives" means precisely that his actions are technically excluded from the category of actions performed with proper intent, and cannot be linked to the motives of a Jew. Rambam is now well understood in accordance with all that we have explained so far.

Support: We see the same with *get*.

The *Gaon* Reb Shlomo Zalman has pointed out that this principle is also to be found in the Gemara of *Gittin* 23, which rules that a non-Jew may not write a *get* because he works for his own motives. This is not because of an assessment of his motives, but rather a technical exclusion. For Rambam in *Hilchos Gerushin* 3:15 rules that a Jew who desecrates the Shabbos is judged like a non-Jew with regard to this matter. Now, if the invalidation of a non-Jew's writing of a *get* was due to an assessment of his motives, how could any parallel be drawn to a Jew who desecrates Shabbos? There is surely no comparison to be made regarding their motivation or lack thereof! So it must be that the non-Jew's actions are excluded on a purely technical basis. And this is precisely as we explained — that the principle of "he works for his own motives" is a technical principle meaning that his actions cannot be attributed to the motives of the Jew. The implications of this for *gittin* are clear, for without there being considered to have been an instruction from the husband, the *get* is not considered to have been written for the correct purpose. But this also applies here, as we have written — that without the non-Jew's actions being attributed to the instructions of a Jew, his actions are technically excluded from the concept of actions performed with proper intent, as we explained.

This concludes the first section of this exposition. The purpose has been to provide a new meaning of Rambam's principle that "a non-Jew works for his own motives." The next section seeks to prove this interpretation by demonstrating that it is essential in order to make sense of a certain piece of Gemara.

Reb Chaim, part II: proves this answer from a Gemara:

Gemara: According to the opinion that writing need not be done with intent, a Sefer Torah can be written by a non-Jew.

The Gemara in *Gittin* 45b cites an opinion that a Sefer Torah which was written by a non-Jew may be used. The Gemara establishes that this only holds according to the opinion that the writing need not be done with proper intent.

Question: Surely Hashem's Name must be written with intent?

We see clearly elsewhere (*Gittin* 20a and 54b) that it is universally acknowledged that Hashem's Name must be written with intent. How, then, can a Sefer Torah written by a non-Jew be valid, seeing as Hashem's Name certainly wasn't written with proper intent?

Answer:

Rule: A Sefer Torah written by a heretic must be burned. If it was written by a non-Jew, it should be buried.

The Gemara there further states: "R' Nachman said: A Sefer Torah written by a heretic must be burned; if it was written by a non-Jew, it should be buried." Rambam in *Hilchos Yesodot HaTorah* 6:8 gives the reason why a Sefer Torah written by a heretic must be burned — because he does not believe in Hashem's existence and therefore writes His Name without proper intent.

Question: Shouldn't that of a non-Jew also be burned?

According to that which we have explained for Rambam, that a non-Jew is not in the category of performing actions with proper intent and all of his actions are technically excluded from the category of actions performed with intent, then why should a Sefer Torah written by a non-Jew be buried and not burned like that of a heretic? Surely Hashem's Name was not written with proper intent?

Answer:

Distinction: between the intent of writing a Sefer Torah and of writing Hashem's Name.

The aforementioned Rambam actually writes as follows: "A Sefer Torah written by a heretic must be burned, including Hashem's Name that is written in it, because the heretic does not believe in the sanctity of the Name and he did not write it with proper intent; rather, he thinks that it is just like any other word, and since he thinks this way, the Name does not have sanctity." We see that the writing of Hashem's Name with intent for its sanctity is not the standard rule of

doing things with intent, which is in fact an superimposed rule on the writing. Rather, the concept of the sanctity of Hashem's Name relates to the actual writing itself — was it written as the Name of the Creator, or merely as a word like any other. If it was written as Hashem's Name, then it takes on sanctity, and the Scriptural prohibition against burning items of sanctity (לא תעשון כן לה' אלוהיכם) applies to it. (It is only if it was written by a heretic, who does not write it as the Name of Hashem at all, that it gains no sanctity.) But there is no superimposed rule of writing it with proper intent being applied here.

Resolution: When a non-Jew writes Hashem's Name, it is actually a Name.

We can now well understand why a Sefer Torah written by a non-Jew must be buried and not burned. Granted, the his actions are technically excluded from the category of actions performed with intent. But he still writes Hashem's Name as Hashem's Name. This relates to the laws of the very writing itself, and it does not matter if it was written by a Jew or a non-Jew. Thus, the prohibition against burning items of sanctity applies to a Sefer Torah written by a non-Jew, and it must be buried.

⇒ A Sefer Torah written by a non-Jew must be buried, as Hashem's Name has been written as such and has sanctity.

It is only the rule of writing the rest of the Sefer Torah with the proper intent, which is a superimposed rule on the act of writing, that a non-Jew (who lacks the sanctity of a Jew) is excluded from, and his actions do not fall in the category of actions done with proper intent.

⇒ If a Jew supervises to ensure that Hashem's Name is written as such, then the non-Jew can write a Sefer Torah.

We can now well understand the Gemara that validates a Sefer Torah written by a non-Jew according to the opinion the writing need not be done with proper intent. There is no difficulty with the fact that Hashem's Name must be written with proper intent. For the Gemara is referring to a case where a Jew is directing the non-Jew and instructs him to write Hashem's Name with proper intent. Now, since a non-Jew works for his own motives, his intent is his own, and not under the direction of the Jew. Thus, his writing would not create the sanctity of a Sefer

Torah and would be invalid — were in not for the fact that the Gemara is working according to the view that the writing need not be done with proper intent. However, with regard to the unique rule of writing Hashem's Name with intent, a non-Jew's intent is also valid. Thus, if a Jew directs him to write Hashem's Name with proper intent, his Sefer Torah is valid.

Question: Surely we still require that Hashem's Name be written with intent for its sanctity, which a non-Jew cannot do?

Everything that we have said with regard to the intent of writing Hashem's Name only applies vis-a-vis the prohibition against burning items of sanctity, due to the explanation that since he writes it with the awareness that he is writing Hashem's Name, it attains sanctity and there is a prohibition against burning it. But we still need to account for the precondition of the writing, that it be done with proper intent. For it is not adequate that the Name attains sanctity from the fact of it having been written as the Name of Hashem; it must also have been written with the correct intent. Thus, a precondition of the Sefer Torah is that the Names are written with the intent of the sanctity of the Name. In which case, we still have a difficulty with the Gemara that states that we may use a Sefer Torah written by a non-Jew since writing need not be done with intent — surely the intent for the sanctity of Hashem's Name is lacking, as the actions of a non-Jew are excluded from the category of actions done with proper intent!

Answer: This is not necessarily so; it relates to a dispute, and can be satisfactorily accounted for according to either opinion.

According to the Tur, the Name of Hashem need only be written with awareness that it is what it is.

The Tur in *Yoreh De'ah* 274 rules that a scribe, upon beginning to write a Sefer Torah, must make an oral declaration that he is writing it with intent of the sanctity of a Sefer Torah. He further rules in *siman* 276 that each time the scribe reaches Hashem's Name, he must make mentally note that he is writing it with intent of the sanctity of Hashem's Name. The question is asked, why does the original writing of the Sefer Torah require an oral declaration, while for the writing of Hashem's Name a mental note suffices? (See Beis Yosef and Taz there.) However, we can well understand it. The requirement of writing the Sefer Torah with intent is a new and supplementary rule of intent (as learned from *piggul*), and therefore requires an oral declaration. The requirement of writing

Hashem's Name with intent, on the other hand, simply means that it must be written as Hashem's Name. All it means is that he must know what he is doing; it is not a supplementary rule of intent. Thus, a mental note suffices.

According to the Smag, there is an added requirement that it be written with intent for its sanctity.

The Smag (Sefer Mitzvos HaGadol) and Sefer HaTerumah rule that he must also make an oral declaration of intent each time he writes Hashem's Name. We see that they hold that the requirement of intent for writing Hashem's Name is similar to the requirement of intent for writing a Sefer Torah — they are both supplementary rules of intent, and therefore require an oral declaration.

Application: of this dispute to the opinion in the Gemara that a Sefer Torah can be written by a non-Jew:

Tur: Hashem's Name needs only to be written as being Hashem's Name.

According to the Tur, the Gemara can be explained quite simply. The only requirement is that Hashem's Name must be written as such, and this is satisfactorily ensured by having a Jew supervise the non-Jew.

Smag: The concept of writing Hashem's Name with intent for its sanctity is no different to the concept of writing the rest of a Sefer Torah with intent for its sanctity, which this opinion deems to be unnecessary.

Even according to the Smag and Sefer HaTerumah, the Gemara can be understood. The requirement of writing Hashem's Name with intent has two quite distinct elements. The first element is the requirement that the Name be written as Hashem's Name, which is satisfactorily performed by the non-Jew under the supervision of a Jew. The second element is that Hashem's Name be written with intent for the sanctity of the Name. Now, this is identical in nature to the concept that the Sefer Torah as a whole must be written with intent for its sanctity. According to this opinion in the Gemara, such types of intent are not required.

Conclusion: All this only works according to our explanation in the principle of "he works for his own motives" (and therefore supports it) — that it is a law ruling that his actions cannot manifest purpose for sanctity, and does not refer to his intent.

This explanation of the Gemara only works if we say that it is on a strictly technical basis that we exclude a non-Jew's actions from the category of actions performed with proper intent. Only then can we distinguish between the intent of writing the Sefer Torah as a whole and the intent of writing Hashem's Name (as Hashem's Name). But if we say that the problem of intent with the non-Jew is because, practically speaking, he is not likely to be thinking the correct intent, and the problem is with his thoughts, then no such distinction can be drawn between the different types of intent. Both types will be equally inapplicable to a non-Jew. In which case, we will be left with our original difficulty: the Gemara states that a Sefer Torah written by a non-Jew is acceptable according to the opinion that writing need not be done with intent, yet surely all agree that Hashem's Name must be written with intent. Therefore, the only way of understanding the Gemara is as we have explained — that the actions of a non-Jew are technically excluded from the category of actions performed with proper intent, and that which we say that “he works for his own motives” means that for technical reasons, his actions cannot accept the direction of a Jew. According to this, we can well distinguish between the general rule of intent (which a non-Jew cannot fulfill) to the rule of intent for writing Hashem's Name as Hashem's Name (which a non-Jew can fulfill). Thus, all that we have said is proved and explained from the Gemara, and the Rambam's opinion is well understood, as we have written.

SIZE AND DIMENSIONS

Hilchos Shabbos, Perek 17, Halachah 12–13

This exposition is deceptively short. It hinges on a single concept that some may find extremely difficult to grasp. Even one who does grasp it instantly should take time to “internalise” the explanation. At the end, I have added a note about the parallels between Reb Chaim’s explanation and a certain mathematical oddity; some may find this to be beneficial in understanding the exposition.

Key Phrases:

Its measurement has been cut short — כתותי מכתת שיעוריה

SIZE AND DIMENSIONS

Hilchos Shabbos, Perek 17, Halachah 12–13

OUTLINE & ELUCIDATION

Rambam

Rule: A pillar (for use as a dividing wall between different domains) may be made out of anything, even something from which benefit is forbidden. Making a pillar out of an idol or an *asherah* (a tree used for idolatrous purposes) is permitted, since the thickness of a pillar need only be the slightest amount. The height of the pillar must not be less than ten *tefachim*, but its width and thickness may be the slightest amount.

Rule: A cross-beam may be made from anything except from an *asherah*, since a beam has a required measurement of width. The width of the beam must not be less than a *tefach*, though its thickness may be of the slightest amount.

An *asherah* (or other idol) is totally forbidden for any type of benefit. It is thus considered, in legal terms, to possess no dimension — its “measurement has been cut short.” Thus, for a beam, which is required to possess a dimension, an *asherah* cannot be used. A pillar, on the other hand, is not required to possess any dimension, and thus an *asherah* may be used.

Ra'avad

Disagrees with rule concerning pillar: The pillar has a required measurement of ten *tefachim* of height (and therefore cannot be made from an *asherah*).

Both the pillar and the beam are required to possess one dimension — height for the pillar, and width for the beam. That the beam is not required to possess any degree of thickness does not affect its required measurement of width ruling out the use of an *asherah*. The same should be true for a pillar — even though it has no required degree of thickness, it does have a required measurement of height, and it should thus be unacceptable to use an *asherah*.

Reb Chaim

Explains Rambam:

Clarification: of principle of “measurement being cut short.”

According to both Rambam and Ra’avad, the principle of an *asherah* being considered to possess no measurement does not mean that there is effectively nothing present. If this were so, how could a pillar be made out of an *asherah*, if there is nothing there? Rather, it means only that it possesses no *quantifiable* measurement. But there is still considered to be *some* matter present.

Application: of this principle to the pillar.

Based on this, if we look at the ten *tefachim* in which there is a pillar, we see as follows. Although the entire ten *tefachim* of space does have a pillar within it, the pillar itself possesses no dimension.

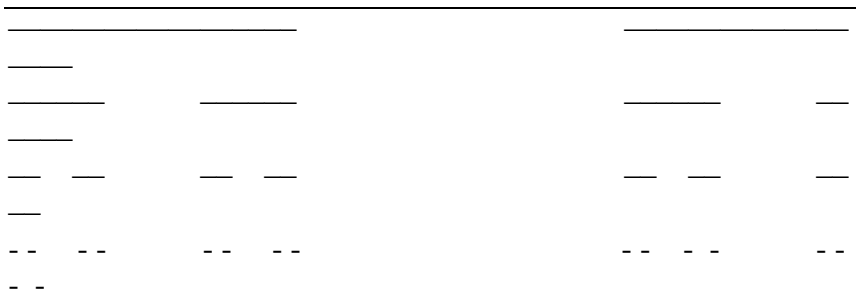
Resolution: The ruling for a pillar is a rule concerning the space that it fills. The ruling for a beam, however, is a rule about the beam itself.

There is a rule that a division between a private domain and another domain is required to be ten *tefachim* in height. Rambam does not understand this to be a required measurement for the dividing body. Rather, it is a measurement for the space which must be filled — that is to say, ten *tefachim* of air space must have something in it.

Thus, an *asherah* can be used for a pillar. Although it has no degree of size, there is something there, and that suffices to fill a space of ten *tefachim*. In other words, although it is not a ten-*tefach* pillar, it does fill a ten *tefach* space.

For a beam, on the other hand, the requirement is not that it should fill a particular space. Rather, it is required to be a one-*tefach* beam. Thus, an *asherah* may not be used for a beam, since it does not possess the required measurement, as “its measurement has been cut short,” as we have explained.

In this exposition we see a concept very similar to the abstract mathematical construction known as the Cantor set. Begin with a line; remove the middle third; then remove the middle third of the remaining segments; and so on. It looks like this:



... and so on, ad infinitum. The Cantor set is the dust of points that remains. They are infinitely many, but their total length is zero. This is similar to the pillar — although the ten *tefach* airspace is entirely filled with the pillar, the pillar itself does not possess any size.

TWO DAYS OF YOM TOV

Hilchos Yom Tov, Perek 6, Halachah 11–15

This exposition, although short, is nevertheless quite difficult to fully grasp. It presents subtle differences in perspective to be taken with two seemingly identical cases.

Key Phrases:

Doubtful status — ספק

The case of the egg — גולד

The case of the stipulation — הכנה

TWO DAYS OF YOM TOV

Hilchos Yom Tov, Perek 6, Halachah 11–15

OUTLINE & ELUCIDATION

Rambam #1

Hilchos Yom Tov, Perek 6, Halachos 11–15:

Rule: If the two days of yom tov fell on Thursday and Friday, one should prepare an *eruv tavshilin* on Wednesday. If one forgot to do so, one should prepare an *eruv tavshilin* on the first day of yom tov and stipulate as follows: “If today is yom tov and tomorrow is a weekday, then tomorrow I shall cook and bake for Shabbos and there is no need of anything; and if today is a weekday and tomorrow is yom tov, then this *eruv* should permit me to bake and cook tomorrow on yom tov for Shabbos.”

Rule: A similar stipulation can be made if he has before him two piles of *tevel*. On the first day of yom tov he says, “If today is a weekday, then this should be *terumah* for that; and if today is holy, then my words are nothing.” He then designates it as *termuah* and puts it aside. On the next day, he does the same. Then he can put aside the pile which he designated as *terumah* and eat the other.

Qualification: All of this only applied in the days when the Beis Din of Eretz Yisrael would sanctify the months according to eyewitness testimony, and those who resided outside of Eretz Yisrael would observe two days of yom tov in order to remove themselves from doubt, since they did not know which day the Beis Din of Eretz Yisrael had sanctified. But today, when the residents of Eretz Yisrael rely on calculations to sanctify the months, the second day of yom tov does not serve to remove one from doubt but is observed only due to custom. Therefore I say that nowadays a person may not make an *eruv* based on a stipulation, but may only make an *eruv* on the eve of yom tov.

Rambam #2

Perek 1, Halachah 24:

Rule: With regard to the two days of yom tov observed in the Diaspora — if an egg was laid on one of those days, it is permitted on the other day.

This is based on the dispute between Rav and Rav Assi in Beitzah 4b, with Rambam ruling in accordance with Rav that the egg is permitted.

Reb Chaim

Asks on Rambam: These two rulings imply contradictory positions as to the status of the two days of yom tov!

The ruling of Rambam #2 is based on considering the two days of yom tov as each being of doubtful status. But Rambam #1 stated that nowadays the second day of yom tov is observed out of custom, not doubt! Surely this means that the egg should be forbidden!

Answer #1: A different perspective is to be taken in each case.

Examination: of the status of the two days of yom tov.

The rule of observing two days of yom tov in the Diaspora does not mean that they are both observed as definite yom tov. Even though we now possess a fixed calendar, they are treated as having doubtful status, since such was the original decree and the custom remains for us.

However, this is only true for the second day of yom tov. It is only for that day that we can say that it is to be treated as having doubtful status. But with regard to the first day of yom tov, since we now know with certainty that it is the correct day of yom tov as prescribed by the Torah, it is clearly to be treated as having a definite status of yom tov with no aspect of doubt whatsoever.

Distinction: between considering the two days together and separately.

We must now distinguish between two perspectives on yom tov. If we consider the first day of yom tov by itself, then it is obviously to be treated as definite yom tov. But if we consider it in conjunction with the second day, then each is to be considered as having doubtful status.

Resolution

With regard to the egg: The prohibition of eating the egg can only be created if the two days are considered in conjunction and treated as one. The prohibition is that that which is born on yom tov cannot be consumed on yom tov. It could only be implemented if both days, when considered together, were to be given a status of definitely being yom tov. Such is not the case; when considering the two days together, we see that only one day could definitely be yom tov. Thus, the egg is permitted on the other day.

With regard to making stipulations: Now, it is true that if one of the two days is a weekday, it is definitely permissible to cook on the second day for Shabbos, either (if that day is really yom tov) because of the *eruv tavshilin*, or (if that day is really a weekday) because there is no prohibition on cooking. A similar “in either case” can be said for *tevel*. However, in truth, the two days are to be treated as separate cases. Each day must be considered in turn and separately, as to whether that day is yom tov. The permission to cook is not produced from the joint perspective that “one of the days must be a weekday,” but rather from a perspective taken on each day separately. This may well boil down to an interdependence between the two days, but since the essential rule is based on treating each day in turn, we must consider the first day by itself, in which case it is clearly to be considered as definite yom tov. By implication, the second day cannot be considered as a doubtful day, but rather as a new instituted yom tov which is a regular yom tov for all purposes.

Qualification: All of this works only according to a particular understanding in Rambam.

All of this works only if we say that even nowadays, the second day has the status of a doubtful day, and it is the first day’s status as definite yom tov that prevents the stipulation from functioning. However, it could well be that Rambam holds that it is the second day that prevents the stipulation from functioning. Even though we treat the second day as *safek yom tov* due to custom, we know that it is not really a *safek*. It is only *treated* as *safek*. Thus, the stipulation, which only works in cases of genuine uncertainty, cannot function. Furthermore, since it is with certainty that we treat the second day as a *safek*, it is essentially a case of certainty, and no stipulation is feasible.

Question: According to the other understanding, the question returns.

If so, we again have a difficulty with the egg. It is not as though there is genuine doubt; rather, we are simply treating the two days as being a case of doubt. How, then, can we permit the egg to be eaten?⁸

Now, Ra'avad and the Maggid Mishneh learn according to Rambam that it is the first day which prevents the stipulation from working. Thus, the original answer that we presented for Rambam will work well. But can we also understand Rambam according to this new way of understanding, that it is the second day that causes the problem?

Answer #2

It would appear that we can also explain Rambam according to this understanding. Granted, it is not a case of genuine doubt, and therefore even our treatment of it as a case of *safek* has an aspect of certainty to it. However, we still follow the original decree to say that each day is separately made into a yom tov. We do not call it a two-day yom tov, but rather two separate days of yom tov. Thus, it is feasible to distinguish between the stipulation and the egg. To forbid the egg would mean declaring it a unit of a two-day yom tov, and such is not the case. Whereas the stipulation is not feasible because we lack a genuine uncertainty regarding the status of the second day.

⁸ Reb Chaim says that this is only a “slight” difficulty; I do not know why this is so.

LIABILITY FOR CHAMETZ

Hilchos Chametz U'Matzah, Perek 1, Halachah 13

This exposition is short and very straightforward. It deals with useful general concepts, such as that a negative prohibition is not punishable if it is linked to a positive commandment which rectifies it. It also includes a classical person/object (גברא/חפצא) distinction, i.e., exploring if the subject of the rule is the person performing the mitzvah, or the object on which the mitzvah is performed.

Key Phrases:

תשביתו — (The mitzvah of) destroying (*chametz*)

A negative commandment which is linked to a positive one — לאו הניתק לעשה

השבתו בכל דבר — Destruction by any means

איסור עשה — Negative-oriented positive mitzvah

LIABILITY FOR *CHAMETZ*

Hilchos Chametz U'Matzah, Perek 1, Halachah 13

OUTLINE & ELUCIDATION

Rambam

Rule: A person only receives lashes for the prohibition of possessing or seeing *chametz* if he bought the *chametz* on Pesach, or if he caused some food that he already had to become *chametz* — i.e., he performed an action.

But if he had *chametz* before Pesach, and failed to destroy it when Pesach arrived, then although he has transgressed two prohibitions, he is not punishable in the Torah by lashes, since he performed no action.

The Commentaries:

Question: How can a person ever receive lashes for the prohibitions of seeing and owning *chametz*? The Gemara says that they are prohibitions which are linked to the positive commandment of destroying *chametz*, and so are not punishable with lashes?

Reb Chaim:

Cites Tur: According to R' Yehudah, who holds that the mitzvah of destroying *chametz* is to do so by burning it, the ashes are permitted for use.

According to the Rabbanan, who hold that *chametz* is to be destroyed by any means, then if it is burned, the ashes are forbidden.

R' Akiva Eiger asks:

Tosafos explained why the ashes are permitted when it is burned; namely, because the mitzvah is to burn it, and once it has been burned, the mitzvah has been fulfilled. If it is buried, however, the mitzvah was not to bury it, per se; it was just a way of disposing of it. The ashes are therefore forbidden.

With *chametz*, the mitzvah of destroying it has been fulfilled with burning it, so all should agree that the ashes are permitted!

R'Chaim answers for the Tur:

The mitzvah of destroying it cannot be compared to the mitzvah of burning it. The mitzvah of destroying applies to the *owners*, that they should not possess any *chametz*. The mitzvah of burning applies to the *chametz*, that it must be burned.

For the purposes of permitting the remnants of the item for usage on the grounds that the mitzvah has been performed, it must be that the mitzvah applied to the item itself.

Thus, it is only with burning, where the mitzvah applied to the item itself, that the ashes become permitted once the mitzvah has been performed.

R'Chaim answers for Rambam:

We can now understand why there are lashes for the prohibition of owning or seeing *chametz*, and it is not considered to be linked to the mitzvah of destroying *chametz*. For Rambam holds that the mitzvah of destroying *chametz* is only that the *person* must not possess *chametz*, and is therefore a “negative-oriented positive mitzvah.” However, if the mitzvah were to be burning it, then the prohibition would indeed be linked to it. Even if that opinion would hold that it forbids a person from owning it, nevertheless, since it *also* includes a mitzvah of destroying the *chametz*, it creates the linkage, and there would be no lashes.

The Gemara which stated that they are linked was going according to R'Yehudah, who holds that the mitzvah is to burn it. Rambam, however, was ruling according to the Rabbanim, that the mitzvah of destroying *chametz* is fulfilled through any means.

VALIDATING & ANNULLING OATHS
Hilchos Nedarim, Perek 13, Halachah 22

This exposition of Reb Chaim explores the procedures of validating and annulling oaths. In a similar way as he did in the very first exposition, Reb Chaim explores the application of principles to situations which are impossible in practice, for the purpose of determining the true extent of their application. Then, with his classical method of finely distinguishing between two understandings of a principle, he shows how that which appears to be a difficulty with Rambam is in fact a different understanding of the principles involved.

Key Phrases:

Validation — הקמה
Annulment — הפרה
Implementation — חלות

VALIDATING & ANNULING OATHS
Hilchos Nedarim, Perek 13, Halachah 22

OUTLINE & ELUCIDATION

Rambam

Rule: If a husband says to his wife simultaneously that he is validating and annulling her oath, it is validated.

Source Gemara

Rava: Any two procedures which cannot follow each other sequentially, cannot function simultaneously either.

Reb Chaim

Cites Ran's Question: This principle means that both procedures are ineffectual. So the oath should not be validated either!

Answer:

Examination of annulments and validations

The reason why a validation cannot follow an annulment is not due to any special strength of the annulment over the validation. Rather, once the oath has been annulled, there is simply nothing left to work with. Supposing there were still to be an oath around, the validation would indeed work.

The reason why an annulment cannot follow a validation, on the other hand, is because the validation has a special power which blocks the annulment.

Application to Rava's principle

Rava's principle deals with procedures which cannot follow each other from a legal point of view. But there is no *legal* reason why validation cannot follow annulment; it is merely impossible in practice. Thus, Rava's principle would not apply, and validation ought not to be any

weaker when applied simultaneously to annulment than when applied after it.

On the other hand, there is a legal reason why annulment cannot follow validation; namely, because the validation blocks it from happening. Thus, Rava's principle would indeed apply, and since annulment does not work when applied after validation, it does not work when applied at the same time either.

Hence, Rambam ruled that the annulment is ineffective while the validation holds.

Explanation of dispute between Rambam and Ran:

Further examination of Rava's principle

There are two ways of understanding the principle of "any two procedures which cannot follow each other sequentially cannot function simultaneously either."

It could mean that we require two sequential procedures to *simultaneously* be implemented, and if they cannot do this, then even when they are performed simultaneously they do not work. That is to say, since they are *mutually exclusive* procedures, and they cannot be *simultaneously* implemented, therefore when they are performed simultaneously they cancel each other out.

Alternatively, we could explain that the principle applies only where the first procedure in its implementation *prevents* the second one from being implemented. But if that is not the situation, and they can both be implemented if performed sequentially, it doesn't matter if the procedures themselves are mutually exclusive. Therefore, if they are both applied simultaneously, one of them will be implemented and it will carry the force of both of them.

Application to oaths

With regard to validation and annulment of oaths, we said that annulment is not considered something that *prevents* the validation from being implemented. Even after an annulment, the validation would still be able to be implemented supposing there were to be an oath for it to work with.

However, validation and annulment are certainly *mutually exclusive*, and they cannot be simultaneously applied. Thus, if we require that they should be able to simultaneously be implemented, these would not meet this criteria, and Rava's principle of "any two procedures which cannot follow each other sequentially cannot function simultaneously either" would apply, such that both procedures would not work.

Resolution

Rambam holds that the criteria of "two procedures not being able to follow sequentially" refers only to a situation where one procedure prevents the other from being implemented. Here, an annulment does not prevent a validation (except from a practical perspective), but a validation does prevent an annulment. Therefore, the validation will function, and the annulment will not function.

The Ran, on the other hand, holds that even if they could theoretically follow sequentially, but nevertheless are mutually exclusive and cannot apply simultaneously, they fall under the category of "two procedures which cannot follow sequentially," and since validation and annulment are mutually exclusive, they cancel each other out, as we explained.

THE REBELLIOUS SON
Hilchos Mamrim, Perek 7, Halachah 7

This exposition, the final part of Reb Chaim's work, deals with the ben sorer u'morer, the rebellious son who receives lashes and is ultimately sentenced to death. Such a status can only be obtained by a boy above the age of thirteen but before full physical maturity. The exposition deals with a seeming discrepancy in the Rambam between his age requiring double-checking only for execution but not for lashes. It is a quintessential exposition of Reb Chaim, continually refining the understanding of the subject in an ever more subtle manner until a satisfactory result is obtained.

Key Phrases:

Change in legal verdict — שינוי בדין

THE REBELLIOUS SON

Hilchos Mamrim, Perek 7, Halachah 7

OUTLINE AND ELUCIDATION

Rambam

The procedure of *ben sorer u'morer*:

Stage 1: He steals, buys meat and wine, and eats it after being warned. He is brought to a beis din of three for *malkus*.

Stage 2: He steals again. He is brought to a beis din of 23. He is checked that he is still not fully mature, and then sentenced to death by stoning.

Kesef Mishnah, Maggid Mishneh

Question:

Why is his maturity only checked before his execution? Surely the *malkus* is also contingent on his being the specified age! Why should his legal status be changeable only with regard to the death penalty?

Reb Chaim

Source material: For the criteria of maturity.

Sanhedrin 71a: If the *ben sorer u'morer* escapes before the verdict has been passed, and is recaptured only after he has matured, he is exempt from execution.

Distinguishes: between requirements for execution and *malkus*

The requirements that the *ben sorer u'morer* is not mature, nor a father, etc., were set with regard to the death penalty, which is entirely based on his status as *ben sorer u'morer*. It is only if he acquires this status, in accordance with these criteria, that he receives the death penalty.

Malkus, on the other hand, is incurred because of “*Velo sochelu al hadam.*” It is not based on his status of *ben sorer u'morer*, and therefore does not innately hinge upon the various criteria. It is true that if he is not a *ben sorer u'morer* then he does not come under the category of this prohibition, but the prohibition itself is independent of the criteria of *ben sorer u'morer*.

Resolution:

A changed legal status is only possible with the death penalty, which is solely dependent on these very criteria. But the penalty of *malkus* stands alone; the criteria of *ben sorer u'morer* served only to bring him into the category of this prohibition in the first place. Thus, it does not matter if he subsequently does not match the criteria.

Question: We see that the *malkus* is indeed contingent on his status!

The Gemara originally suggests that since the *ben sorer u'morer* is executed because of what his future is destined to be, it should also be applicable to a minor (under 13). Now, a verdict of execution can only take place if there has previously been *malkus*. Under the usual rules of *malkus*, it cannot be given to a minor. Thus, if we are to consider the possibility that a minor will become a *ben sorer u'morer*, the *malkus* that he would receive would be innate to the rules of *ben sorer u'morer*!

Further resolution:

It is true that the *malkus* is contingent on the status of *ben sorer u'morer*. But it is not in the same way as with the death penalty. The death penalty is contingent on his being an *essential ben sorer u'morer*; i.e., he must match the criteria, and this results in his being called a *ben sorer u'morer*. *Malkus*, on other hand, requires him to be the *ben sorer u'morer* who receives the death penalty, which is now only parenthetically noted to refer to a person who meets the various criteria.

Illustration of Rambam's position:

The principle that a change of legal status causes a change in the verdict is only ever found with regard to the death penalty. We see this in the Gemara, which asks why a change in status does not exempt him if it takes place after the verdict. The Gemara answers that once the verdict has been passed, he is effectively dead anyway; stoning him now is just tidying it up. Were it not for this concept of being effectively dead, the verdict would indeed be revoked. Now, with *malkus*, there is clearly no concept of being effectively lashed. So if a change of status were to cause a change in the verdict of *malkus*, it would do this even after the verdict had been passed. Rambam would therefore have to mention this, as it contains this *chiddush*, that it exempts him from *malkus* even if the verdict has already been passed. Since he does not mention any such rule, we see that there is no concept of a change in status resulting in a change of verdict for *malkus*, and as we have written.