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Exceptions to the Rule

The *Mishnah* had stated: Any positive *mitzvah* that time causes, men are obligated, but women are exempt. However, any positive *mitzvah* that time does not cause, men and women are obligated.

The *Gemora* cites a *Baraisa*: What are positive *mitzvos* that are caused by time? They are: *sukkah*, *lulav*, *shofar*, *tzitzis* and *tefillin*. What are positive *mitzvos* that are not caused by time? They are: *mezuzah*, *maakeh* (building a fence on a roof), returning a lost object and sending away a mother bird before taking the chicks or the eggs.

The *Gemora* asks: Is it a rule that women are always exempt from *mitzvos* that time causes? We see that women are obligated to rejoice on Yom Tov and to go to *hakhel* (gathering on Sukkos after every shemita)! Additionally, we see that women are exempt from learning Torah (though they must learn how to keep the laws), procreation, and redeeming a first born child, though these *mitzvos* are not caused by time!?

Rabbi Yochanan says: We cannot derive something is always true based on a stated rule, even if the stated rule gives exceptions (meaning that there could always be other exceptions as well). This is apparent from the *Mishnah* that states that one can use any type of food or drink for an *eiruvei chatzeiros* or *shitufei mevo’os* (ways to be permitted to carry on Shabbos in certain areas that would otherwise be prohibited to carry in), besides water and salt. Is this all? Isn’t it true that various types of

mushrooms may also not be used? Rather we see that one should not assume rules stated are without further exceptions, even when exceptions to the rule are explicitly stated. (33b3 – 34a2)

The Source That They Are Exempt

The *Gemora* asks: What is the source of the rule that women are exempt from *mitzvos* that are caused by time?

The *Gemora* answers: We derive this from *tefillin*. Just as *tefillin* is a *mitzvah* that women are exempt from and it is caused by time (for there is no *mitzvah* to wear *tefillin* by night and on Shabbos and Yom Tov), so too, women are exempt from all *mitzvos* that are caused by time. The fact that women are exempt from *tefillin* is derived from the fact that they are exempt from studying Torah. Just as women are exempt from studying Torah, so too, they are exempt from putting on *tefillin*.

The *Gemora* asks: Why don’t we compare *tefillin* to *mezuzah* (which women must perform)?

The *Gemora* answers: *Tefillin* and Torah study are mentioned together both in the first and second portion of *Shema*. *Tefillin* and *mezuzah* are only mentioned together in the first part, not the second (where *tefillin* is mentioned before studying Torah, and only then *mezuzah* is mentioned).



The *Gemora* asks: Why don't we compare *mezuzah* to the study of Torah and say that women are exempt from *mezuzah*?

The *Gemora* answers: It is not sensible, as the verse reads, "In order to lengthen your days." Do men need life, but women do not?! [Obviously, it applies to women as well.]

The *Gemora* asks: *Sukkah* is a *mitzvah* with a set time, as the verse states, "You should sit in a *sukkah* for seven days." However, we only know women are exempt because the verse states, "The citizen," implying women are exempt. This teaching implies that without this verse, we would think they are obligated! [Why would we think they are obligated if it is a *mitzvah* caused by time?]

Abaye answers: We would think they are obligated because the verse states, "In *sukkos* they should live." This implies just as he would normally live, together with his wife. [This is why the verse was necessary.]

Rava answers: We would think that we would derive from *Pesach* that just as women are obligated to eat *matzah* on the first night of *Pesach*, so too, they are obligated to eat in a *sukkah* (at least on the first night). This is why the verse was necessary.

The *Gemora* asks: The *mitzvah* to go to the Beis Hamikdash on the three festivals is a *mitzvah* caused by time, yet we require the verse of "your males," to exclude females. Why do we require this verse?

The *Gemora* answers: We would think that we should derive this *mitzvah* from the *gezeirah shavah* of "appearing," "appearing" from *hakhel*, where women are in fact obligated to appear.

The *Gemora* asks: Instead of deriving from *tefillin* that they are exempt, we should derive from the *mitzvah* of

rejoicing on *Yom Tov* that they are obligated (in *mitzvos* that are caused by time)!

Abaye answers: The woman's obligation of rejoicing is that her husband should make her happy (it is not really her obligation).

The *Gemora* asks: What about a widow?

The *Gemora* answers: Whomever she resides with should make her happy.

The *Gemora* asks: Why don't we derive that she is obligated (in all *mitzvos* caused by time) from *hakhel*?

The *Gemora* answers: *Matzah* and *hakhel* are two verses that are both stating a message, indicating to us that we should not teach that message to other *mitzvos*.

The *Gemora* asks: If so, why don't we similarly state that *tefillin* and the *mitzvah* to go to the Beis Hamikdash on the festivals cannot be derived from to teach that women are exempt *mitzvos* caused by time?

The *Gemora* answers: The Torah needed to say that women are exempt by both of these *mitzvos*. If it would only teach that they are exempt from *tefillin*, we would think that we should derive that they are obligated to go to the Beis Hamikdash on the festivals as they are obligated to attend *hakhel*! This is why the verse regarding this topic was necessary. If it would not teach us that they are exempt from *tefillin*, we would think that we should derive they are obligated from *mezuzah*. This is why the teaching is necessary by *tefillin* as well. [If the verses are necessary, we cannot say that they were written in order to tell us not to derive from here.]

The *Gemora* asks: If so, we similarly need both verses regarding *matzah* and *hakhel*! If the Torah would say that women are obligated in *hakhel* but not *matzah*, we would



think that we should derive they are exempt from *matzah* just as they are exempt from *sukkah*! However, why didn't the Torah say the obligation of *matzah*, and from there let us derive that they are obligated in *hakhel*? I would think that if children are obligated to be brought to *hakhel*, women are certainly obligated in *hakhel*! This teaches us that the Torah's statement that women are obligated in (*matzah and*) *hakhel* shows that we should not derive that they are obligated in other *mitzvos* caused by time.

The *Gemora* asks: This is understandable according to those opinions that hold that we do not derive from two *mitzvos* where the same rule is stated. However, according to the opinions that we do derive from such a source, why don't we derive that women are obligated in *mitzvos* that are caused by time? Additionally, how do we know that they are obligated in *mitzvos* that are not caused by time?

The *Gemora* answers: We derive this from fearing one's parents (*which she is obligated to do*). Just as she is obligated to fear her parents, so too, she is obligated to perform all *mitzvos* that are not caused by time.

The *Gemora* asks: Why don't we derive that she is exempt from these *mitzvos*, just as she is exempt from Torah study?

The *Gemora* answers: This is because Torah study and procreation are two *mitzvos* where the same rule is stated, and we therefore do not derive this rule applies to other *mitzvos*. (34a2 – 34b3)

INSIGHTS TO THE DAF

Freeing a Partial Slave

The *Mishnah* in *Gittin* (41a) had stated: Someone who is half-slave and half-free man (*he was owned by two*

partners, and one of them emancipated him), he works for his master one day and for himself one day; these are the words of Beis Hillel. Beis Shamai, however, says: You have created a solution for the master (*for he does not lose out through this division*), but you have not solved anything for the slave. He may not marry a slavewoman, for he is half-free. He cannot marry a free woman for he is half-slave. If you will say that such a person should refrain from marrying, that cannot be, for the world was created for the purpose of propagation, as it is written: *He did not create it to be desolate; He formed it to be inhabited*. Rather, to benefit the public (*this slave*), we force his master to make him a free man, and the slave writes a document for his value. Beis Hillel later retracted and ruled in accordance with Beis Shamai.

The commentators ask: How can we force the master to free the slave? Isn't there a prohibition against emancipating a slave?

The Kli Chemdah answers this question based upon the Avudraham, who says that a woman is exempt from *mitzvos* which have a time element to them, because she is pledged to her husband at these times. So too, it can be said with respect to a half-slave half-free man. Since he is partially a free man, he is obligated to observe all the *mitzvos*. Therefore, at the times where he is responsible to serve his master, he cannot do so completely, for he is obligated in *mitzvos*. Consequently, the master will anyway not be able to fulfill the *mitzvah* of working the slave forever; therefore, there is no prohibition against freeing him.

DAILY MASHAL

The Holy Admor of Ostrovitz gives another reason for the hair being spun while still attached to the animal. He says it is because of the halacha, "kol mitzvas assei shehazman gromo noshim p'turos" (gemara Brochos 20b), women are exempt from positive *mitzvos* which are time bound.

Because the building of the Mishkon may not be done on Shabbos, it is considered a timebound mitzvoh. Therefore, the women were at a disadvantage, since their helping to create the Mishkon was only voluntary, while the men's was obligatory. That which was created as an obligation is preferable to that which is voluntary (gemara Kidushin 31a). By showing that their creations could be made in this unusual manner, which is a "shinnuy," done in an unusual manner, it was shown that it could be done without a Torah level desecration of Shabbos, making it a non-time-bound mitzvoh, making it obligatory even on the women.

R' Tzvi Akiva Fleisher has two difficulties in understanding this.

A mitzvoh which requires that something be done once seems to not be time bound. Time bound means that theoretically a mitzvoh could be done at all times but the Torah limits it to a specific time. For example, we could have been instructed to eat matzo every night and day of the year. Once Hashem limited it to Pesach night, it became timebound. Theoretically, building the Mishkon did not have the possibility of being a continuous mitzvoh, since once it would be completed, there would be nothing more to do.

The overriding Shabbos does not give it the status of "zman gromo." It is a full time mitzvoh which has something more powerful pushing it aside, but not by virtue of its being timebound.

A proof for either of these two points might come from the Shaagas Aryeh (responsa #34) who questions if a woman has the mitzvoh of writing a Sefer Torah. Nowhere in his responsa does he point out that since writing the Sefer Torah on Shabbos is prohibited, it therefore becomes a timebound mitzvoh, excluding women from the obligation to write one.

He heard a taped lecture by Rabbi Y. Bernstein z"l who quoted Horav L. Gurewitz zt"l as saying that a communal mitzvoh is not subject to the guidelines of a timebound mitzvoh. This would also put the building of the Mishkon beyond the scope of "mitzvas assei shehazman gromo." Any clarification of the issues raised here would be appreciated.