YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

This shiur is dedicated to the refua sheleima of our alumnus

Rabbi Daniel ben Miriam Chaya Rut Beller.

**Shiur #18: The Prohibition for an *Avel* to Wear *Tefillin***

Several *gemarot* (*Berakhot* 11, *Ketuvot* 6 and *Sukka* 25) cite a statement of Rav identifying the one *mitzva* that an *avel* (mourner) is excused from – the *mitzva* of *tefillin*. In a famous passage in *Sefer Yechezkel* (chapter 24), *Hashem* instructs the prophet to deliberately demonstrate that he is not adhering to the rules of mourning. He is instructed to wear his “*pe’er*,” literally “magnificence,” a reference to *tefillin*. Cleary, the implication is, that while HE is allowed to don his *tefillin*, other mourners may not. What makes *tefillin* unique in that it is the only *mitzva* from which an *avel* is excused? An *onen*, who is preoccupied with attending to the burial of the deceased, is excused from *mitzvot* based on the principle of *osek be-mitzva patur min ha-mitzva*. But why should an *avel* be excused from *tefillin* if he is fundamentally obligated to perform all other *mitzvot*?

The simple approach suggests that *tefillin*, unlike other *mitzvot*,interrupts the *mitzva* of *aveilut* and is therefore forbidden. Since an *avel* must exhibit mourning, he may not wear *tefillin*, which create a “majestic” experience of *pe’er*. Typically, the *Chakhamim* can suspend a *mitzva de-oraita*. In this case, to generate *aveilut* (a Rabbinic institution), they ordered the suspension of the mitzva of *tefillin*. This is the position of the Tosafot Rabbenu Yechiel in his comments to *Mo’ed Katan* (21a).

Several comments of Rashi suggest a different concern: *Tefillin* is not suspended merely to allow an *avel* to preserve the mentality of mourning and prevent the experience of *pe’er*. Only SIMCHA is forbidden for an *avel*, not feeling grand or magnificent. In fact, the grandeur of *tefillin* is spiritual in nature and should not constitute a clash with *aveilut*. Instead, the *avel* is excused from *tefillin* because he cannot ACHIEVE the requisite experience of *pe’er* central to *tefillin* performance. In an earlier [*shiur [Maintaining Tefillin Awareness]*](http://etzion.org.il/en/maintaining-tefillin-awareness), we discussed the mental/emotional layer of *tefillin* as essential to the *mitzva* performance. In addition to mere mechanical donning, *tefillin* demands a corresponding inner state of expanded religious consciousness. Since the *avel* is incapable of achieving that state, he is excused from *tefillin*. As Rashi summarizes (*Berakhot* 11a), “Since an *avel* is dejected and rolling in his personal [emotional] dust, he cannot achieve [the state] of *pe’er*.” Similar sentiments are voiced by Tosafot in *Mo’ed Katan* (21a).

Apparently, the exemption of *tefillin* is derived from the word *pe’er*, and not the general instructions delivered to Yechezkel. As *tefillin* are referred to as *pe’er*, this inner feeling is central to the *mitzva* performance. Since an *avel* is incapable of achieving *pe’er*, he is excused from the *mitzva*.

Rashi in *Ketuvot* (6b) augments this idea by asserting that not only is an *avel* EXEMPTED from the mitzva of *tefillin*, he is also FORBIDDEN from performing it. The unique *kedusha* of *tefillin* mandates mental and emotional focus, and a dejected *avel* spoils the *kedusha* of *tefillin*. Either way Rashi maintains that the suspension of *tefillin* for an *avel* is not based on the laws prohibiting an *avel* from experiencing or expressing joy or magnificence. Instead, they stem form a unique hazard that the *avel* poses to the *Tefillin*.

Several interesting *nafka minot* emerge from this debate. Typically, the “term” of an *avel* is truncated based on the principle of *miktzat ha-yom ke-kulo* – expressing *aveilut* for a part of the day is equivalent to expressing it the entire day. Most famously, the “*shiva”* seven-day *aveilut* period concludes a few minutes into the seventh day, after part of the day has been experienced as an *avel*. Does this principle apply to an *avel* and *tefillin*? In other words, is the prohibition to wear *tefillin* limited to the early part of the day based upon the rule of *miktzat ha-yom ke-kulo*?

The *gemara* in *Mo’ed Katan* (21a) cites a *machloket* between R. Eliezer and R. Yehoshua regarding whether an *avel* is prohibited to wear *tefillin* for two days of his *aveilut* or for three days. Commenting on the Rif, who limits the prohibition to one day, the Rosh claims that the Rif agrees with R. Yehoshua that - fundamentally - the prohibition lasts two days, but since the principle of *miktzat ha-yom ke-kulo* truncates the second day, practically speaking, *tefillin* may be worn on the second day and are only forbidden on the first day. Other *Rishonim* (see the Ran in *Sukka*) do not assume that Rif implements *miktzat ha-yom ke-kulo* regarding this prohibition. Perhaps they disagree about the NATURE of the prohibition. If the prohibition stems from *aveilut* concerns – not to disrupt the mourning with the magnificence of *tefillin* – perhaps the classic rule of *miktzat ha-yom* should apply, as it does to all *aveilut* practices. If, however, *tefillin* is suspended because the *avel*, in his state of dejection, cannot achieve the necessary experience of *tefillin*, we would not apply the *aveilut*-based principle of *miktzat ha-yom ke-kulo*.

A second important question surrounds *tefillin* for an *avel* who is not suffering the despair typically associated with the first days of *aveilut*. Tosafot (*Moed Katan* 21a) claim that *tefillin* may be worn on *Tisha Be-Av*, whereas the Rosh in *Ta’anit* cites the Maharam Mi-Rotenburg, who forbade this. Perhaps the debate surrounds the nature of the *tefillin* exemption for an *avel*. If the *tefillin* are viewed as a disrupter of *aveilut* and forbidden similar to other *aveilut* disruptions, the prohibition should apply to *Tisha Be-Av*; all the classic prohibitions of personal *aveilut* apply on *Tisha Be-Av*. Alternatively, if an *avel* is exempt from *tefillin* in order to protect *tefillin* from his sorrowful impact, perhaps the *Tisha* *Be-Av* experience does not present that danger. Since *Tisha Be-Av* constitutes collective mourning and is also based on remote events, perhaps *Tisha Be-av* does not instigate the experience of dreadful sorrow which threatens the *tefillin*. Even though a Jew’s halakhic status on *Tisha Be-Av* mirrors that of an actual *avel*, his EMOTIONAL state isn’t as tumultuous, and *tefillin* therefore do not have to be protected.

A similar question arises regarding a *shmu’a kerova*, the state of *aveilut* upon receiving information about a recent death and burial. Halakha demands the launch of classic *aveilut* in this case, but the issue of this *avel* wearing *tefillin* is debated (see the Beit Yosef, *Yoreh Deah 320*). An *avel* responding to a report of death may be obligated to obey the classic rules of *aveilut*, but he may not experience the raw pain and dejection of a classic *avel* who experiences the death and burial firsthand. If an *avel* is prohibited from wearing *tefillin* as an expression of elegance that disrupts his *aveilut,* perhaps this person should also be forbidden to wear *tefillin*. Alternatively, perhaps his mourning is not as intense and therefore does not endanger *tefillin* in the manner that a classic *avel* does, and he may therefore be obligated to wear *tefillin*.

A similar question arises in a third scenario, in which a person passes on Yom Tov and the entire *aveilut* is delayed until after Yom Tov. Should an *avel* wear *tefillin* when the *aveilut* begins after the *chag*? Most authorities maintain that he should (see Pri Megadim 548), but at least one opinion claims that he should not (see *Kenesset* *Ha-Gedola*, *Yoreh De’ah* 388). These positions may also be debating whether *tefillin* is prohibited for an *avel* so as not to disrupt his *aveilut* or in order to protect the *tefillin*. When the *aveilut* commences after Yom Tov, the full intensity of the first day of *aveilut* emerges. However, the PERSONAL sorrow and dejection of the mourner may not be as potent given the time delay.

Interestingly, this question of why *tefillin* are suspended for an *avel* may help solve an intriguing linguistic issue. The original statement of Rav claimed that an *avel* is *chayav* in every *mitzva* except for *tefillin*. Many question the sweeping generalization that an *avel* is obligated in every *mitzva*, since he is forbidden from studying Torah. Assuming that an *avel* does not wear *tefillin* for *tefillin-*related reasons (and not to protect the integrity of the *avel*’s mourning), the distinction between Torah and *tefillin* is clear. An *avel* is ALWAYS obligated to study Torah, but to protect his *aveilut* from intrusions of Torah-based *simcha*, he is excused from Torah study. There is no INTERNAL reason that he is EXEMPT from Torah. His *aveilut* responsibilities simply override his *mitzva* to study Torah. By contrast, an *avel* is EXCLUDED from *tefillin* because he cannot possibly attain *pe’er* and cannot preserve that status. He is truly EXCUSED from the *mitzva* of *tefillin*. His exemption is not an OVERRIDE, but rather an INTERNAL EXCEPTION. The statement that an *avel* is obligated in every *mitzva* – including Torah - but with the exception of *tefillin* – makes sense if gauged at a fundamental and not a practical level.