YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Contemporary Halakha**

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Dedicated in memory of Rabbi Jack Sable z”l and

Ambassador Yehuda Avner z”l,

by Debbie and David Sable

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**Shiur #02: When are the *Tefillin* Worn (*Zman Mitzvat Tefillin*)**

This week we will discuss the proper time for the mitzva of *tefillin*, and at which times one is not permitted to wear *tefillin*.

***Tefillin* at Night**

 The Talmud (*Menachot* 36a-b) cites a debate regarding whether the Torah permits one to wear *tefillin* during the night. R. Yossi HaGelili interprets a verse found in a section of the Torah which deals with the *korban pesach* and *tefillin*, and teaches:

It was taught “And you shall observe this ordinance in its season, from year [*mi-yamim*] to year” (*Shemot* 13:10): days [*yamim*] and not during the nights; “from year” [*mi-yamim*] but not on all days, excluding Shabbat and Festivals.

The Talmud later cites those who maintain that one who wears *tefillin* at night violates a positive commandment, or even a negative commandment.

Why does R. Yossi HaGelili exclude the night from the mitzva of *tefillin*? Are *tefillin* only worn during the day just as other *mitzvot*, such as *lulav*, are only fulfilled during the day, or does R. Yossi HaGelili maintain that there is a deeper reason to exclude nighttime from the mitzva of *tefillin* specifically? R. Soloveitchik suggested that since wearing *tefillin* requires an extra level of sanctity, which may be reflected by the two *berakhot* said (by some) upon donning *tefillin* and which is apparent in the higher level of mental consciousness and physical cleanliness required, the mitzva of *tefillin* may simply be incompatible with the nighttime.

 R. Akiva disagrees with R. Yossi HaGelili and interprets the verse as referring only to the *korban pesach*, in which case there is no evidence that nighttime is excluded from the mitzva of *tefillin*.

 The *Rishonim* disagree regarding which opinion to follow. The Rambam (*Hilkhot Tefillin* 4:10 - 11) rules in accordance with R. Yossi HaGelili, and writes:

The time for wearing *tefillin* is the day and not the night, as [*Shemot* 13:10] states: "And you shall observe this statute in its appointed time, from day to day." "This statute" refers to the mitzva of *tefillin*…

A person who puts on *tefillin* after sunset transgresses a Scriptural prohibition, as [implied by *Shemot* 13:10]: "And you shall observe this statute... from day to day."

However, most *Rishonim* (see, for example, Rosh *Hilkhot Tefillin* 17) disagree and maintain that night is considered to be “*zman tefillin*.”

The *Shulchan Arukh* (OC 30:2) rules in accordance with the Rosh, and rules:

One is prohibited to put *tefillin* on at night since he may forget [that he has them on] and sleep in them.

In other words, while nighttime is considered to be *zman tefillin*, one must not wear the *tefillin* at night because of a concern that one may sleep in them, which the Talmud elsewhere (*Shabbat* 130a) teaches is problematic: *tefillin* require one to maintain a “*guf naki*” (a clean body), and therefore one may not sleep, or flatulate, while wearing *tefillin*.

 Must one remove his *tefillin* at night? The Talmud (*Menachot* 36a) teaches:

And until when does one wear them? Until the sun sets. R. Yaakov says: Until traffic in the marketplace ceases. And the Rabbis say: Until the time of sleep. And the Rabbis concede to R. Yaakov that if one removed them to go out to the bathroom, or to enter the bathhouse, and the sun set, one does not don them again.

The Talmud implies that while one may not put his *tefillin* on at night, he may continue to wear them after it is dark.

Furthermore, the Talmud teaches that one is permitted to wear *tefillin* at night in order to protect them. In this context, the Gemara relates:

And Rabbi Elazar says: And [although it is prohibited to don phylacteries at night], if one does so in order to safeguard them [from theft and the like], it is permitted. And Ravina said: I was sitting before Rav Ashi and it grew dark, and he donned phylacteries. And I said to him: Does the Master need to safeguard them? And he said to me: Yes. But I saw that his intention in donning them was not that he needed to safeguard them; rather, Rav Ashi holds: This is the halakha, that night is an appropriate time for phylacteries, but a public ruling is not issued to that effect.

This passage implies that although one may not put on one’s *tefillin* at night, they need not be removed immediately at sunset. However, one should not explicitly say that he is intentionally wearing his *tefillin* after dark, apparently so others will not infer that it is permitted to put on *tefillin* after dark.

 The Talmud (*Menachot* 36a) discusses a scenario in which one might put *tefillin* on at night.

The Sages taught with regard to phylacteries: From when does one recite a blessing over them? From when the time arrives to don them. How so? If one is rising early to leave his home to travel on the road and is afraid lest his phylacteries become lost during the journey, he dons them [even at night, despite the fact that this is not the proper time for the mitzva of phylacteries]. And when the time for their mitzva arrives, in the morning, he touches them and recites a blessing over them.

The Gemara relates that if necessary, one may don his *tefillin* while it is still night, although he does not say the blessing until the morning, upon “touching” them.

 The *Rishonim* relate to this passage in light of the broader question regarding whether nighttime is “*zman tefillin.*” The *Beit Yosef*, for example, notes that the Rambam omits this passage, and explains that this is due to his insistence that nighttime is not “*zman tefillin*.” Rabbeinu Peretz (*Hagahot Semak*), however, offers the opposite reading: This passage is in accordance with the view which maintains that nighttime is not “*zman tefillin*,” and that is why a blessing is not recited until the morning.

 Most *Rishonim* rule in accordance with this passage, and based upon a textual variant, write that even one who is not concerned that his *tefillin* may be lost may act accordingly. Therefore, it is common practice in some areas, during the winter months, to don *tefillin* before daylight, and then, when “their time comes” (see below), to touch the *tefillin* and recite the blessings.

***Tefillin* in the Morning**

 The Talmud (*Berakhot* 9b) cites numerous opinions regarding the earliest time that one may recite the *Keri’at Shema*. The Gemara concludes:

And *Acherim* say: When one can see another person from a distance of four *amot* and recognize him. Rav Huna said: The halakha is in accordance with *Acherim*. Abaye said: Regarding the time from which one may don phylacteries, a mitzva incumbent only by day, the halakha is in accordance with *Acherim*.

The Talmud Yerushalmi (*Berakhot* 1:2) explains that *Acherim* refer to recognizing a person whom one sees occasionally. Based on this passage, the *Shulchan Arukh* (30:1) rules that one may don *tefillin* “at the time when one can see a friend with whom he is slightly acquainted (*ragil imo ketzat*) from four *amot* away and recognize him.”

The *Acharonim* have difficulty assessing the time at which “one can recognize” (“*mi she-yakir*”). Furthermore, seemingly this time should change depending on the time of year and one's location. The authorities in *Eretz Yisrael*, for example, cite a number of customs. Rav Ovadya Yosef (*Yechaveh Da'at* 2:8) rules that one may say *Shema* and put on *tefillin* 66 minutes before sunrise, while other customs in Jerusalem range between 50 and 60 minutes. Two recent halakhic compendiums on *tefilla*, *Ishei Yisrael* and *Tefilla Ke-Hilkhata*, both define "*mi she-yakir*" as about 50 minutes before sunrise. Rav Moshe Feinstein (*Igrot Moshe* OC 4:6) writes that he estimates "*mi she-yakir*" at about 35-40 minutes before sunrise (in New York).

***Tefillin* on Shabbat and Yom Tov**

 The Talmud (*Menachot* 36b) as mentioned above, teaches that *tefillin* are not worn on Shabbat. R. Yossi HaGelili derives the exclusion of Shabbat from the phrase “*mi-yamim.*” The Gemara adds, however, that R. Akiva offers a different source.

Rabbi Akiva says: One might have thought that a person should don phylacteries on *Shabbatot* and Festivals. To counter this, the verse states: “And it shall be a sign for you on your arm, and for a remembrance between your eyes [so that God’s law shall be in your mouth; for with a strong-arm God brought you out of Egypt]” (*Shemot* 13:9). [This teaches that the obligation to don phylacteries applies when the Jewish people] require a sign [to assert their status as God’s nation, i.e., during the week]. This serves to exclude *Shabbatot* and Festivals, as they themselves are signs [of the Jewish people’s status as God’s nation and a remembrance of the exodus from Egypt. Consequently, no further sign is required on these days.]

This derivation is based on a different verse (*Shemot* 31:13), which describes Shabbat as an “*ot*” (sign) between God and the Jewish people.

 The *Rishonim* debate whether *tefillin* are therefore considered to be *muktze*, i.e., whether one may not move them on Shabbat. This may depend upon whether one is permitted to wear *tefillin* on Shabbat, despite the lack of obligation to do so. *Tosafot* (*Beitza* 15a, *s.v. hakhi)* write that there is no prohibition of wearing *tefillin* on Shabbat. The *Beit Yosef* (31), however, cites the *Midrash Ne’elam*, which does prohibit wearing *tefillin* on Shabbat.

 The *Shulchan Arukh* (31:1) rules that it is prohibited to wear *tefillin* on Shabbat. This leads many to the conclusion that *tefillin* are *muktze* on Shabbat. The *Mishna Berura* (31:1) places *tefillin* in the category of *keli* *she-melakhto le’issur* (an object whose primary purpose is forbidden on Shabbat); as such, it may be moved in order to use it (for a permitted use) or its place, but not to protect it. He adds that some are lenient and permit moving the *tefillin* so they will not be damaged or stolen.

 One should preferably remove the *tefillin* from his *tallit* bag before Shabbat, but if he forgot, he may remove the *tallit* while avoiding directly moving the *tefillin*.

***Tefillin* on *Chol Ha-Mo’ed***

 The *Rishonim* debate whether one must wear *tefillin* on *Chol Ha-mo’ed*.

The Talmud (*Mo’ed Katan* 19a) teaches that one may write *tefillin* on *Chol Ha-mo’ed* “for oneself.” Some *Rishonim* infer that, since one is permitted to write *tefillin*, this must be because one must wear *tefillin* on *Chol Ha-mo’ed*. Indeed, the Yerushalmi (*Mo’ed Katan* 3:4) adds that one may write *tefillin* “in order to wear them.” Although one might suggest that these passages were authored by those who require that one wear *tefillin* even on Shabbat and Yom Tov, some *Rishonim* (Mordekhai, *Hilkhot Tefillin*, p. 13; Rosh, *Hilkhot Tefillin* 16; *Or Zaru’a* 1:589) argue that one should wear *tefillin* on *Chol Ha-mo’ed* just as one wears *tefillin* on a weekday, even according to the view that *tefillin* are not worn on Shabbat. They explain that unlike Shabbat, the unique aspects of *Chol Ha-mo’ed* – the *issur melakha*, the prohibition of eating *chametz*, and the obligation to sit in the *sukka* – do not constitute an “*ot*” that would obviate the need for *tefillin*.

Other *Rishonim*, however, including the *Behag* (cited by *Tosafot* *Mo’ed Katan* 19a, *s.v. Rabbi Yossi*), the Ri (cited by *Hagahot Maimoniyot*, *Hilkhot Tefillin* 4:1), and the Rashba (*Teshuvot* 1:690), explain that one should not wear *tefillin* on *Chol Ha-mo’ed* because *Chol Ha-mo’ed* does constitute an “*ot*.” Interestingly, however, they disagree as to which aspect serves as the *ot* – whether it is the prohibition of *melakha* or the *mitzvot* of *sukka* and *matza*, which apply during *Chol Ha-mo’ed* as well.

Some *Rishonim* (Ritva *Eiruvin* 96a, *Smak* 153, and *Tur* 31), uncertain whether one should wear *tefillin* on *Chol Ha-mo’ed* or not, argue that one should wear *tefillin* without a blessing.

 R. Yosef Karo records in his *Beit Yosef* (*Orach Chaim* 31) that Sephardic Jews originally wore *tefillin* on *Chol Ha-mo’ed*, until they discovered a Kabbalistic passage in the *Midrash Ne’elam* that prohibits this practice. He rules accordingly in the *Shulchan Arukh* (*Orach Chaim* 31:2). The Rema, however, rules in accordance with the *Tur*’s father (the Rosh) that one must wear *tefillin* on *Chol Ha-mo’ed* and quietly recite the blessing. The *Taz* (*Orach Chaim* 31:2) recommends wearing *tefillin* without a blessing on *Chol Ha-mo’ed* (see also *Mishna Berura* 31:8 and *Arukh Ha-Shulchan* OC 31:4, who concur).

 Sephardic Jews do not wear *tefillin* on *Chol Ha-mo’ed*, in accordance with the *Shulchan Arukh*. Many Ashkenazim do wear *tefillin* on *Chol Ha-mo’ed*, following the position of the Rema, although they do not generally recite the *berakhot*, as cited above. The Vilna Gaon (*Bi’ur Ha-Gra* OC 31; *Ma’ase Rav* 174), however, ruled that one should not wear *tefillin* on *Chol Ha-mo’ed*, and this position became increasingly popular in Lithuania, as recorded by the *Arukh Ha-Shulchan*. Similarly, R. Soloveitchik records (*Shiurim Le-Zekher Abba Mari*, vol. 1, p. 109) that his father, and grandfather, R. Chaim Soloveitchik, following the custom of the Vilna Gaon and of the Volozhin Yeshiva, rejected the long-standing Ashkenazic practice and did not wear *tefillin* on *Chol Ha-mo’ed*. He explains that it is not the *issur melakha* that precludes *tefillin* on *Chol Ha-mo’ed*, but rather the *kedushat ha-yom* (sanctity of the day). Therefore, just as one does not put on *tefillin* on Shabbat and Yom Tov, one does not put on *tefillin* on *Chol Ha-mo’ed*. Interestingly, this is also the practice of many Chassidim, based on the ruling of the Ari *z”l* (see *Kaf Ha-chaim* 31:6). This became the standard practice of all Jews in *Eretz Yisrael*.

 Next week we will continue our discussion of the laws of *tefillin*.