

3 Tammuz 5773
June 11, 2013



Eiruv Daf 95

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamah of

Tzvi Gershon Ben Yoel (Harvey Felsen) o”h

May the studying of the Daf Notes be a zechus for his neshamah and may his soul find peace in Gan Eden and be bound up in the Bond of life

Rav and Rava may hold that we say “*pi tikra*” on four sides, but not regarding *sukkah*.

The *Gemora* quotes the argument of Rav and Shmuel regarding a roof and four walls. Rav says the area is considered to have walls using the rule of “*pi tikra yored v’sosem*,” (a roof is considered as if it extends downwards to form a wall) while Shmuel does not say this when there is not even one real wall. Abaye and Rava similarly argue whether or not this is a valid *sukkah* if the roof is made of *s’chach*.

The *Gemora* says that Shmuel would clearly hold like Rava who says the *sukkah* is invalid. However, the *Gemora* says that Rav may also hold like Rava. It is possible that Rav only said that we consider it as if there are walls there regarding *Shabbos*, where any plain wall is fine. However, Rav might agree that “*pi tikra*” cannot be used to fulfill the amount of walls required for a *sukkah*.

The *Gemora* concludes that Shmuel ruled in one case like Rabbi Yehudah, and in one case like Rabbi Yosi.

The *Mishna* (94a) discussed a case where a private domain loses two walls on *Shabbos*, and each wall is open to a public domain. Rabbi Yehudah says that such an area is obviously forbidden to carry in on future *Shabbos*, but it is permitted to carry in on this *Shabbos*. This is because it started off *Shabbos* being permitted. Rabbi Yosi argues that just as it is forbidden in the future, it is also forbidden on this *Shabbos*.

The *Gemora* is unsure how Shmuel ruled regarding this case. After much discussion, the *Gemora* concludes that if the private domain is open to a *karmelis*, the law follows Rabbi Yehudah. If it is open to a public domain, it follows Rabbi Yosi.

The *Mishna* discusses the law in a case where a structure is built atop the roof of two houses on opposite sides of the public domain.

The case is where the structure, be it a bridge or a house built atop of two houses on the opposite sides of a public domain, hovers over the public domain. Does the area below it become a private domain? The reason it should be a private domain is that there are two walls (*the front of each house*) on either side of it, and it would seem that we should say “*pi tikra*” to consider it as there are two more walls present. This is indeed the opinion of Rabbi Yehudah. However, the *Chachamim* argue that being that a public domain runs through it, it is not a private domain.

The *Gemora* points out that Rabbi Yehudah’s opinion does not require “*pi tikra*.”

It is clear from the second case in the *Mishna*, where Rabbi Yehudah says that one can make an *eiruv* in an alleyway that is open on two sides to the public domain with two walls on opposite sides, that Rabbi Yehudah holds two walls creates a private domain according to Torah law. The *Rabbanan* required more walls, fulfilled

by a *lechi* or *korah*. In other words, even without “*pi tikra*” in the first case, Rabbi Yehudah would still hold that an *eiruv* could be made.

WE SHALL RETURN TO YOU, KOL GAGOS

If a person finds *tefillin* in the public domain on *Shabbos*, there is an argument in the *Mishna* regarding how he can bring them to safety.

The first opinion in the *Mishna* is that he should wear them one set at a time into the city. [*In other words, he should put the shel rosh on his head and the shel yad on his arm, and in this fashion carry them to safety. This is not considered carrying, but rather as if he is wearing them.*] Rabban Gamliel holds that he may do so while wearing two pairs at a time. This applies to old ones, but in the case of new ones, he is exempt (*from bringing them to safety*). [*This is because they might be amulets and not tefillin; the Rabbis therefore did not want to take the risk that the finder will desecrate the Shabbos by wearing them in a public domain.*] If he found them arranged in pairs or tied up in bundles, he shall wait with them until it is dark, and then bring them in. In a time of danger, however, he shall cover them and proceed on his way. Rabbi Shimon said: He shall pass them to his fellow and his fellow shall pass them to his fellow, and so on, until the outermost courtyard (*of the city*) is reached. The same procedure is to be followed in the case of a child of his (*who was born in a field*), he passes him to his fellow and his fellow passes him to his fellow, and so on, even though they are as many as a hundred men. Rabbi Yehudah ruled: A man may pass a barrel to his fellow and his fellow may pass it to his fellow even beyond the *Shabbos* limit. They, however, said to him: This must not go further than the feet of its owner.

The *Gemora* asks: Only one pair at a time, but not more!? Must it then be assumed that we learned here an anonymous *Mishna* that is not in agreement with Rabbi Meir? For if it were to be maintained that it was in

agreement with Rabbi Meir, it can be asked: Didn't he say that a man may put on all the clothes that he can put on and he may wrap himself in all things that he can wrap around himself? For we learned in a *Mishna*: And to there (*to a courtyard near the burning fire*), he may carry out all the utensils he is in the habit of using, and he may put on all the clothes that he is able to put on and he may wrap himself in all things that he can wrap around himself.

The *Gemora* cites a proof that that anonymous *Mishna* represents the view of Rabbi Meir, since in connection with that it was stated in a *braisa*: He may put on clothes and carry them out, and there remove them, and then he may again put on clothes and carry them out and remove them, and so on, even all day long; these are the words of Rabbi Meir.

Rava replied: It may be said to be in agreement even with Rabbi Meir, for there the Rabbis have allowed a procedure similar to one's habit of dressing on a weekday and here as well they have allowed a procedure similar to one's way of wearing *tefillin* on a weekday. There, where on a weekday a man can wear as many clothes as he desires, the Rabbis have permitted him to do so also for the purpose of saving; but here, where even on a weekday a man may wear only one pair but no more, he was for the purpose of saving he was also permitted to wear only one pair but no more.

The *Mishna* had stated: Rabban Gamliel holds that he may do so while wearing two pairs at a time.

The *Gemora* asks: What is the view he upholds: If he holds that *Shabbos* is a time for wearing *tefillin*, a man should be permitted to wear only one pair but no more; and if he holds that *Shabbos* is not a time for *tefillin*, but that for the purpose of saving them the Rabbis have permitted him to wear them in the manner of an attire, why shouldn't he be permitted to wear even more than one pair?

The *Gemora* answers: The fact is that he holds that *Shabbos* is not a time for the wearing of *tefillin*, but when the Rabbis have permitted to wear them in the manner of an attire for the purpose of saving, they limited that to the spot prescribed for the position of the *tefillin*.

The *Gemora* asks: If so, shouldn't one pair only be allowed, but not more?

Rav Shmuel bar Rav Yitzchak says: There is enough area on the head for two pairs of *tefillin*.

The *Gemora* asks: This is a satisfactory explanation regarding those of the head; what explanation, however, can be given in respect of those of the hand?

The *Gemora* answers: The same as that which Rav Huna gave, for Rav Huna explained: Sometimes a man comes from the field with his bundle on his head when he removes them from his head and binds them on his arm.

The *Gemora* asks: It might still be contended that Rav Huna only intended that they should not be treated with disrespect; did he, however, say that it was the proper manner of wearing them like that?

The *Gemora* answers: The explanation rather is this: Just as Rav Shmuel bar Rav Yitzchak stated that there is room enough on the head for laying two *tefillin*, so we may here also submit that there is room enough on the hand for laying two *tefillin*.

A *braisa* was taught in Menashe's Academy: *On your arm* refers to the biceps muscle (*this is where the arm tefillin shall be placed*). *Between your eyes* refers to the *kadkod* (*this is where the head tefillin shall be placed*). In Rabbi Yannai's Academy, they explained this to mean the place where the skull of an infant is soft (*the fontanel*).

The *Gemora* asks: Must it be assumed that they differ on the principle of Rav Shmuel bar Rav Yitzchak, as the first *Tanna* (of the *Mishna*) disagrees with the view of Rav Shmuel bar Rav Yitzchak (*and therefore, he allows only one pair at a time*), while Rabban Gamliel upholds it?

The *Gemora* answers: No, all may hold the view of Rav Shmuel bar Rav Yitzchak, but the point at issue between them is whether the *Shabbos* is a time for *tefillin*, as the first *Tanna* maintains that *Shabbos* is a time for *tefillin*, while Rabban Gamliel maintains that *Shabbos* is not a time for *tefillin*.

And if you prefer I might reply that all agree that the *Shabbos* is a time for *tefillin*, but here the point at issue between them is whether the performance of a *mitzvah* requires intention, as the first *Tanna* holds that in order to discharge the obligation of a *mitzvah*, intention is not necessary (*and therefore, if a man puts on tefillin he automatically performs the mitzvah; consequently he may wear only one pair at a time, for should he wear more than one pair, whatever his intention, he would be transgressing the prohibition against adding to the commandments*), while Rabban Gamliel holds that intention is necessary (*and therefore it is possible to wear two pairs of tefillin as ornaments without transgressing the prohibition against adding to the commandments*).

And if you prefer I might reply that all agree that the discharge of the obligation of a *mitzvah*, requires no intention, but here it is the question of transgressing against the injunction of 'you shall not add' that is at issue between them, as the first *Tanna* holds that in order to commit a transgression against the injunction of 'you shall not add,' no intention is necessary, while Rabban Gamliel holds that in order to commit a transgression against the injunction of 'you shall not add,' intention is necessary.

And if you prefer I might reply: If the view had been adopted that *Shabbos* is a time for *tefillin* all would have agreed that intention is unnecessary either in respect of transgression or in respect of discharging the *mitzvah*, but the point at issue between them here is with reference to the transgression when a *mitzvah* is performed not at its proper time. The first *Tanna* holds that no intention is required, while Rabban Gamliel holds that to commit a transgression when a *mitzvah* is performed not at its proper time, intention is necessary.

The *Gemora* asks: But if so, shouldn't even one pair be forbidden according to Rabbi Meir? And furthermore, shouldn't a man who sleeps on the eighth day (*Shmini Atzeres*) be flogged?

Rather, it is perfectly clear that the proper explanation is the one originally given.

INSIGHTS TO THE DAF

Pi Tikra

The *Gemora* quotes the argument of Rav and Shmuel regarding a roof and four walls. Rav says the area is considered to have walls using the rule of "*pi tikra*," while Shmuel does not say this when there is not even one real wall. Abaye and Rava similarly argue whether or not this is a valid *sukkah* if the roof is made of *s'chach*. The *Gemora* says that even Abaye admits that Shmuel would clearly hold like Rava who says the *sukkah* is invalid.

The *Ritva* and others ask that if Shmuel says "*pi tikra*" for three walls but not for four walls, why doesn't it count as a valid *sukkah*? Being that a *sukkah* really only needs two walls and a *tefach*, shouldn't even Shmuel admit that we would say "*pi tikra*" here?

Rashi explains that being that Shmuel holds regarding the regular area it would not be good for *Shabbos*, even though the intent was to make such a structure, certainly

it would not be good for *sukkah*, as the area was not made to be a *sukkah*. This is a reason why it should not form *sukkah* walls at all. However, the *Ritva* is not satisfied with Rashi's answer.

The *Sfas Emes* answers that when Shmuel says "*pi tikra*" works for three walls, he means that this is only when there is one real wall, not that it can only work for three walls (as the *Ritva* seems to have assumed). Accordingly, even for *sukkah* there are no walls with "*pi tikra*" unless one real wall is present.

Mitzvos Require Intent

The *Gemara* discusses the well-known *machlokes* whether *mitzvos* require intent. That is to say, if a person performs the action of the mitzva, such as blowing shofar, without intention of doing so for the sake of the mitzva, but rather to play a tune, does he fulfill his obligation? (See *Rosh Hashanah* 28a).

Since this question was not resolved in the *Gemara* or *Poskim*, we must fulfill both opinions. Therefore, if a person performed a mitzva without intent, he must perform it again (in accordance with the opinion that mitzvos do require intent), but he may not recite another beracha (according to the second opinion it would be a beracha levatala, since he already fulfilled the mitzva) (*Shulchan Aruch* O.C. 60:4, *Mishna Berura* s.k. 10, see *Biur Halacha*).

From where do we know that mitzvos require intent?

The *Acharonim* ask according to the opinion that mitzvos do require intent, is this requirement of Torah origin or of Rabbinic origin? The *Imrei Bina* (O.C. 14) poses this question over the course of a teshuva, which begins with the title, "From where did our Sages derive the principle that mitzvos require intent?"

Bal tosif for two pairs of tefillin: Our own sugya would seem to be a clear proof that according to the opinion that mitzvos require intent, this is a Torah-based

condition, and not merely Rabbinic. In our Gemara, R' Shimon ben Gamliel says that if a person wears two pairs of tefillin without intending to fulfill a mitzva, he does not transgress *bal tosif*, (the prohibition against performing a mitzva beyond its specified constraints). In this case, the stringency of "mitzvos require intent" produces a leniency. Since he has not fulfilled the mitzva of tefillin, he cannot be accused of performing a mitzva beyond its constraints. Were we to assume that "mitzvos require intent" is only a Rabbinic condition, this would mean that one did fulfill his obligation according to Torah law, and therefore transgresses *bal tosif* for the second pair of tefillin. Therefore, we must conclude that "mitzvos require intent" is a Torah-based condition.

The Sages have authority to invalidate a mitzva: The Imrei Bina challenges this conclusion. He cites proofs that the Sages have authority to attach conditions or stringencies to mitzvos. They may even stipulate that when these conditions are not met, even according to Torah law the mitzvos are invalid. The Gemara refers to this authority as "the ability to uproot aspects of the Torah" (see Yevamos 89b). For example, according to Torah law one may fulfill the mitzva of eating in a sukkah, although the table he eats from is outside the sukkah. The Sages prohibited this, out of concern that a person may be drawn after his table, and come to eat outside the sukkah. Tosefos (Sukka 3a) writes that if a person transgresses this Rabbinic prohibition, he has not fulfilled a mitzva of sukkah at all, even according to Torah law. The Rabbinic stipulation can render the Torah mitzva invalid.

The same can be said of "mitzvos require intent." Even if we were to assume that this stipulation is only Rabbinic, it may still render the mitzva of tefillin invalid according to Torah law. In the case of R' Shimon ben Gamliel and the two pairs of tefillin, lack of intent would invalidate the mitzva entirely, and thus prevent the transgression of *bal tosif*.

Two kinds of Rabbinic conditions: The Sdei Chemed ("Mem" 61, s.v. *V'ra'isi*) rejects the comparison between eating from a table outside the sukkah, and performing mitzvos without intent. Although the Sages do have authority to render a mitzva invalid even according to Torah law, they did not always choose to exercise this power. A distinction must be drawn between two kinds of Rabbinic conditions. The prohibition against eating from a table outside the sukkah was instituted to prevent people from being drawn to eat outside their sukkah. In this case, they saw it necessary to enforce their ruling, by declaring that if their condition is not met, the entire mitzva is invalid. The enactment that mitzvos require intent, on the other hand, was not instituted to prevent people from failing to perform the mitzvos. Rather, the Sages wished to add an important element of reverence to the mitzvos, by requiring people to perform them with intent. In this case, our Sages would not find it necessary to render the entire mitzva invalid. Rather, we must return to our original conclusion, that the sugya of R' Shimon ben Gamliel and the two pairs of tefillin is indeed a proof that "mitzvos require intent" is of Torah origin.

What is the source of this condition? Having established this, we must return to the Imrei Bina's question; from where in the Torah did the Sages learn that *mitzvos* require intent?

The Keren Ora (introduction to Maseches Zevachim) suggests that reason alone requires us to have intention when performing the mitzvos. A mitzva performed without intent cannot properly be considered an expression of obedience to the Creator. Other Acharonim find hints from pesukim in the Torah that mitzvos require intent: "To serve Him with all your hearts" (Devarim 10:12), "This day, Hashem your G-d commands you to perform these statutes and these laws. You must guard and perform them with all your hearts and all your soul" (Devarim 10:16).