דין חתן במצות תפילין

יט. בזמן הזה נתפשט המנהג שהחתן וכל סיעתו, הולכים לבית הכנסת לתפלת שחרית להתפלל עם הצבור בטלית ותפילין כשאר העם, מיום הראשון של החופה עד יום השביעי. [משנ"ב ס"ק כג, כה"ח ס"ק כד]. וצריך שיזהרו שלא יהיה שם שכרות וקלות ראש בשעה שהתפילין עליהם. [כה"ח שם בשם הבית עובד]

דין עוסק במצוה לענין תפילין

כ. כותבי תפילין ומזוזות הם ותגריהם ותגרי תגריהם וכל העוסקים במלאכת שמים, פטורים מהנחת תפילין כל היום [ש"ע סי' לח ס"ח], משום ש"העוסק במצוה פטור מן המצוה". אולם בשעת קריאת שמע

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A Newlywed Groom

During the first week

19) In our times, it has become common practice for a newlywed groom to come to the synagogue for the *shaḥarit* prayers and to put on his tallit and tefillin like everyone else, all through the week of his wedding celebration.[286] He and those celebrating with him must make sure not to become drunk or to engage in levity while wearing tefillin.

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When Involved With Another Mitzvah

Scribes and tefillin dealers

20) Scribes who are busy writing parchment scrolls for tefillin and mezuzot are obligated to wear tefillin only during the time that they are reciting the morning *Shema* and the *Amida* of *shaḥarit*. During the rest of the day they are exempt from wearing tefillin since they are preoccupied with another mitzvah activity.[287] The

286. The Talmud teaches (*Sukkah* 25b): "The groom and all those celebrating with him are exempt from the prayers and from wearing tefillin. Ribbi Shila said that the groom is exempt but the other celebrants are obligated." Rashi explained that this exemption is based on the assumption that the groom and his friends will be constantly drunk and involved in levity.

Rambam did not codify any halakha stating that a newlywed groom is exempt from tefillin, and Maran explained in the *Bet Yosef* that this does not mean that he disagreed with the Talmud's ruling. Rather, it is included in Rambam's general ruling (*Hilkhot Tefillin* 4:13) that whoever is a state of distraction that prevents him from concentrating is exempt from the mitzvah of tefillin.

Rabbenu Asher (*Sukkah* chapter 2, #8) explained that Ribbi Shila obligated the celebrants to recite the *Shema*, but he agreed that they are exempt from the prayers and from tefillin. This is Rabbenu Asher's ruling in practice as well. It turns out that both Rambam and Rabbenu Asher agreed that the groom and his fellow celebrants are exempt from tefillin.

The *Mishna Berura* (38:23) cited a responsum of the Rama (#132) asserting that in our times even a newlywed groom is obligated to recite the *Shema* and all the prayers (concurring with the ruling of the *Shulḥan Arukh* in *Siman* 70). It follows that he is obligated to put on tefillin as well. The *Magen Avraham* maintained that the groom is exempt for the duration of his wedding feast, but the *Olat Tamid* and Harav ḤIDA (*Birke Yosef*) testified that the common custom follows the ruling of the Rama. Therefore, even the groom is obligated to put on tefillin and to recite all the prayers throughout the week of his celebration. The *Kaf Haḥayim* Sofer (38:24) concurred with this, but added that the *Bet Oved* issued a warning that the celebrants must take care not to become drunk or to act with levity while wearing tefillin.

287. Suppose someone needed to have tefillin or mezuzot written for him, but he had to catch a flight that

ותפלה חייבים הם בתפילין [ש"ע שם], כדי שיקבלו עליהם עול מלכות שמים. [ב"י]. ובזמן הזה בלאו הכי אין מניחין תפילין כל היום, כמבואר לעיל בסימן ל"ז הלכה ה'.

ומה שהתגרים פטורים מהנחת תפילין, היינו אף באופן שמרויחים מזה, כיון שעיקר כוונתם כדי להמציאן למכור למי שצריך להם. אבל אם עיקר כוונתם רק להשתכר אין הם נחשבים "עוסק במצוה". [משנ"ב ס"ק כד, כה"ח ס"ק כה]. **ואף אם כונתו לשניהם בשוה מיקרי עוסק במצוה.** [ביאור הלכה ד"ה הם, כעין מ"ש באו"ר סי' תקפט סק"ח]. **ויש חולקים.** [ראה פסקי תשובות אות ח]

כא. העוסק בתורה פטור מהנחת תפילין כל היום, זולת בשעת קריאת שמע ותפלה. [ש"ע סי' לח ס"ק].

same applies to those who sell and distribute tefillin and mezuzot, whether on a wholesale or retail basis. This halakha was practical when the common practice was that everyone wore tefillin all day long. Nowadays, almost no one wears tefillin all day long, as explained above in *Siman* 37:5, and therefore this halakha has very little practical application, if any.

The rule stating that dealers and distributors of tefillin and mezuzot are exempt from tefillin applies even if they profit financially from selling these items, as long as their main objective is to make these mitzvah items available to people [but they must take a profit in order to be able to devote their time to this service]. If their main objective is to make money, however, they are not counted in the category of people preoccupied with other mitzvot, and therefore they are not exempt from tefillin at all. If the dealer's intentions are for both purposes equally, he is considered to be preoccupied with another mitzvah and he is exempt from tefillin, but some *Poskim* disagree about this.[288]

Torah study and tefillin

21) If someone devotes all his time to Torah study, he is exempt from wearing tefillin throughout the day; he needs to wear them only while reciting the morning *Shema* and the *Amida* of *shaharit*.[289]

very day, and the scribe realizes that if he takes off time to recite the *Shema* and *shaharit* in the morning he will not finish in time. Whose mitzvah takes precedence?

The Rama (38:8) ruled that if a scribe has already begun his work before it becomes time to recite the *Shema*, he may continue writing even though he will not finish until the time for reciting the *Shema* has passed. See the *Mishna Berura* (38:27). The *Kaf Hahayim* (38:26) noted that Maran did not agree with the Rama in this matter, and he ruled that the scribe will have to interrupt his work to recite the *Shema* and to pray. Based on this, the *Halakha Berura* (page 229) ruled that if the scribe is an Ashkenazic Jew, he may continue writing until he finishes, but if he is a Sefardic Jew he must interrupt to put on tefillin and recite the *Shema* with its blessings and the *Amida* of *shaharit*.

288. The *Mishna Berura* (*Bi'ur Halakha*) ruled that if the dealer has both goals in mind he is considered to be involved in a mitzvah, but the *Piske Teshuvot* cited others (*Ketav Sofer*, *Arukh Hashulhan*) who ruled that the dealer is exempt from wearing tefillin only if he performs his activities totally for the sake of the mitzvah without any thought of the profit he will gain from this pursuit. According to the *Teshuvot Vehanhagot*, as long as someone is willing to perform the mitzvah even if he would not be paid for it, then he is considered to be involved with a mitzvah even though in reality he is promised a salary for his services.

289. The *Shulhan Arukh* (*Y.D.* 246:18) ruled: "If, while someone is busy studying Torah, he becomes obligated to perform another mitzvah, he must not

דין מנודה ומצורע ובעל קרי

כב. מנודה ומצורע חייבים להניח תפילין, אך לא יברכו עליהם. [חס"ל, יפ"ל, כה"ח ס"ק לה]

כג. בעל קרי, אף על פי שהוא טמא מותר להניח תפילין. [משנ"ב סי' מ ס"ק טז, וכה"ח שם ס"ק ל]. אך צריך תחילה לקנח הקרי מעליו. [ש"ע סי' מ ס"ז].

Someone Who Is Excommunicated, *Metzora*, or *Ba'al Keri*

An excommunicated person or *metzora*

22) Even someone who has been excommunicated is obligated to wear tefillin. Likewise, someone who has been stricken with *tzara'at* and pronounced *tame* by a *kohen*[290] must wear tefillin. Neither of these individuals, however, may recite the blessing of *lehani'ah* on their tefillin.[291]

Ba'al keri

23) Someone who is a *ba'al keri* may nevertheless fulfill the mitzvah of tefillin. Although his body is *tame*, this does preclude that mitzvah. He must first cleanse his body of any traces of semen.

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interrupt his Torah study as long as the mitzvah can be performed by someone else. If it is not possible for anyone else to perform this mitzvah, he must perform the mitzvah and then resume his Torah study."

It is impossible, of course, for anyone else to perform someone else's mitzvah of wearing tefillin, and if so the halakha should demand that we all wear tefillin even at the expense of some of our Torah study. Why, therefore, is this not the halakha in practice? The *Mishna Berura* 38:34) answered that the mitzvah of tefillin is an exception, since the main objective of tefillin is to keep one's mind concentrated on Torah matters. This is the meaning of the verse, "לְמַעַן תִּהְיֶה תּוֹרַת ה' בְּפִיךָ – so that God's Torah will be your subject of speech constantly." Therefore, if someone is already involved in Torah study when it comes time to put on tefillin, he does not have to interrupt his studies to put them on. He needs only put them on to recite the morning *Shema* and the *Amida* of *shaharit*.

Which Torah?

The *Magen Avraham* (38:13, cited in the *Mishna Berura* 38:32) suggested that if someone is busy studying Scriptures (the Written Torah) he is exempt from wearing tefillin, but if he is busy studying Talmud he would not be exempt. The *Peri Megadim* explained the logic of this distinction – the Scriptures include the account of the Exodus from Egypt, and therefore the study of the Written Torah has the status of *ot* – a sign and reminder of the Exodus, replacing tefillin. The *Mishna Berura* (*Sha'ar Hatziyun* 38:18) commented that the common practice is not to make this distinction, and that it appears that Harav Eliyahu of Vilna (*Bi'ur HaGra*) likewise disagreed with it. Actually, the *Bet Yosef* cited the *Itur* who likewise distinguished between the Written Torah and Oral Torah, and he rejected that distinction. The *Kaf Hahayim* Sofer (38:32) noted that the *Or Tzaddikim* and the *Yafe Lalev* concurred with the *Itur*, but that Maran disagreed and ruled that even someone studying Talmud is exempt from tefillin.

290. The condition called *tzara'at* is nonexistent in our times. The *Pesikta Zutrati* to *parashat Metzora* (cited in *Me'asef Lekhol Hamahanot* 39:50) states: "Ribbi Yohanan taught that since the day that the *Bet Hamikdash* was destroyed, it is not possible to become purified from *tum'at met*, and no one can be pronounced *tame* because of *tzara'at*. The *Afike Meginim* (39:22) explained that the *Shulhan Arukh* mentioned the halakha regarding such a person even though it has no practical application because the halakha lists these two people in one category and they are habitually mentioned together.

291. The Talmud (*Mo'ed Katan* 15a) debates whether these people are permitted to fulfill the mitzvah of tefillin and does not come to a conclusion. The *Shulhan Arukh* (38:13), following the *Itur* (page 61d), ruled that they may not wear tefillin. Several *Aharonim* (*Lehem Hamudot*, *Sifte Kohen*) disagreed, and the *Peri Megadim* ruled that they therefore must put on tefillin but they cannot recite the blessing. Harav Eliyahu of Vilna (*Bi'ur HaGra*, cited in the *Mishna Berura* 38:38) ruled that they must recite the blessing as well.

Normally, we would say that since Maran ruled that these people do not wear tefillin we must follow that ruling.

סימן לט

הכשרים והפסולים לכתיבת תפילין

א. תפילין (או ספרי תורה ומזוזות) שכתבם עבד, או אשה, או קטן אפילו הגיע לחינוך, או גוי, או ישראל מומר, או מסור, פסולים. משום דכתיב "וקשרתם" "וכתבתם" (דברים ו, ח-ט), ודרשו חז"ל (גיטין מה ע"ב, מנחות מב ע"ב) כל שאינו בקשירה או שאינו מאמין בה, אינו בכתיבה. [ש"ע סי' לט ס"א] **ובכל** אלו אף אם גדול ועומד על גביהן ורואה שעושין לשמה, אינו מועיל. [משנ"ב סוף ס"ק ו, קול יעקב סי' לט ס"ק ט]

Siman 39

Who May Write Tefillin Parchments?

People disqualified for writing tefillin

1) If tefillin parchments were written by a Canaanite slave, a woman, a boy younger than thirteen, a non-Jew,[292] a Jew who has discarded the mitzvot (*mumar*), or a Jew who has the wicked practice of informing on his brethren [to non-Jews] and causing them harm (*masor*), the parchments are not kosher to use for the mitzvah. This is because the Torah states the words *ukshartam* (you shall tie them) and *ukhtavtam* (you shall write them) in two successive verses, and our Sages derived from this that anyone who is not in the category of "tying tefillin" is disqualified from writing the parchments used in tefillin. This excludes anyone who is not obligated to wear tefillin, or who refuses to wear them even though he is obligated, or who does not believe in this mitzvah. All these individuals are disqualified from writing mezuzot or Torah scrolls as well. Even if an adult Jew supervises the individual while he writes the parchment and can testify that he wrote it for the sake of the mitzvah, the parchment is not kosher.

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In this case, however, it is not so clear, for Maran (in *Y.D.* 334:2) did not list the mitzvah of tefillin among the activities that are forbidden to someone who has been excommunicated. On the contrary, he explained in the *Bet Yosef* that Rabbenu Yitzhak Alfasi wrote that we rule leniently regarding any issues involving someone who has been excommunicated except those issues that the Talmud ruled conclusively forbidding them to this person. This appears to be the opinion of Rambam as well. According to this, Maran ruled that this person is permitted, and therefore obligated, to put on tefillin. This would be a retraction from his ruling here in *Siman* 38. In fact, the *Tif'eret leMoshe* suggested that there is a typographical error in our editions of *Shulhan Arukh Orah Hayim*, and the correct text is that this person is obligated to fulfill the mitzvah of tefillin. Harav HIDA (*Mahazik Berakha*), however, rejected this suggestion. Therefore, in practice this person must put on tefillin in case he is really obligated in this mitzvah, but he must not recite the blessing, based on the principle of *safek berakhot lehakel*.

292. The *Magen Avraham* (39:2, cited in the *Mishna Berura* 39:5) deleted the term "non-Jew" from this list, explaining that it is unnecessary. Even if a non-Jew would be permitted technically to write the parchment, the parchment would still be nonkosher since a non-Jew does not write for the sake of the mitzvah of tefillin. The *Ma'amar Mordekhai* (39:1) argued that we cannot delete this word since it appears in all the early editions of the *Shulhan Arukh*. The *Olat Tamid* (39:2) reconciled it, explaining that even if a non-Jew declares in all sincerity that he wishes to write the parchment for the sake of the mitzvah so that a Jew can wear tefillin, he is nevertheless disqualified for this as stated in the *Shulhan Arukh*.