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*.

ב. יש ליזהר שנער בן שלוש עשרה שנה לא יכתוב ספרי תורה תפילין ומזוזות, עד שיביא ב׳ שערות אחר שהוא בן י״ג שנה, שהם סימני גדלות, אבל כל עוד לא הביא ב׳ שערות, אף שהוא בן שלוש עשרה שנה, אין לו לכתוב סת״ם. ויש לגעור בסופרים שמניחין לנערים לכתוב תפילין, ואין מדקדקין לבדוק אם הביאו סימני גדלות או לא. [משנ״ב ס״ק ג, קול יעקב סי׳ לט ס״ק י]

ובדיעבד שהנער בן השלוש עשרה שנה כבר כתב התפילין מבלי שנבדק אם הביא ב׳ שערות, אם כעת יבדקוהו וימצאו שהביא ב׳ שערות, אזי אנו תולים שבעת הכתיבה כבר היו לו ב׳ שערות, והתפילין כשרות. [משנ״ב ס״ק ד, עפמ״ש ש״ע חו״מ ר״ס לה]

ואם אי אפשר לבודקו כעת לראות אם הביא ב׳ שערות (כגון שנסע למדינת הים), נחלקו הפוסקים אם סמכינן על חזקה דרבא לענין מצוה מדאורייתא [ביאור הלכה סוד״ה או, קול יעקב סי׳ לט סוף ס״ק ב]. ולהלכה, אם אין לו תפילין אחרות עדיף שיניחם, כדי שלא יתבטל ממצות תפילין, אך לא יברך עליהם. [ראה הלכה ברורה עמ׳ רמב-רמד]

A 13 year old

2) If a thirteen-year-old boy wishes to write a Torah scroll, a mezuzah parchment or a tefillin parchment, he is permitted to do so only if he has been examined and it has been ascertained that he has grown pubic hair since becoming thirteen. Until this physical proof of puberty appears, he may not write any of these parchments even though he is past his thirteenth birthday. We must decry–the practice of some scribes who apprentice teenaged boys to write tefillin without ascertaining whether or not they have physical proof of puberty.

If a thirteen-year-old boy wrote tefillin parchments without having been examined beforehand for pubic hair, but he now has pubic hair, we can assume that he already had pubic hair when he wrote the parchments. Therefore, we can assume that the parchments are kosher.

If the boy is no longer in town and he cannot be examined, the *Poskim* debated whether we are allowed to assume that he had pubic hair at the time he wrote the scroll. In practice, if no other tefillin are available, one may put on tefillin with these parchments inserted. This is preferable than doing nothing and definitely failing to fulfill the mitzvah. One may not recite a blessing on these tefillin, however.[293]

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293. The *Magen Avraham* (39:1) explained that the Torah requires that the scribe be an adult, meaning someone past his thirteenth birthday who has grown pubic hair. As long as we are unsure of either factor, he cannot be allowed to write. Now, the Talmud teaches (*Nidda* 46a) that Rava ruled that we may always assume that if the boy is thirteen years old he also has pubic hair. This is the principle called *hazaka deRava*. We can rely on this principle regarding any halakhot that were instituted by our Sages, but not regarding a halakha that the Torah demands we observe. Since the Torah disqualifies tefillin parchments written by a boy before he becomes an adult, we cannot rely on *hazaka deRava* for this issue.

The *Noda Bihuda* (*O.H.* #1) disagreed with the *Magen Avraham* and ruled that we can rely on *hazaka deRava* even regarding issues where the Torah demands adulthood. According to him, as long as the boy is past his thirteenth birthday, the parchments he writes are kosher.

The *Mishna Berura* (*Bi'ur Halakha*) cited the *Noda Bihuda* and the *Peri Megadim* ruling leniently, and cited the responsa of Harav Akiva Eiger and *Yeshu'ot Yaakov* ruling stringently. The *Kol Yaakov* Sofer (39:2) added that the *Melekhet Shamayim* also ruled stringently.

The *Halakha Berura* (page 243) demonstrated that the *Rishonim* already debated this issue. Rabbenu Shim'on bar Tzemah ruled stringently, while Rambam (responsa *Pe'er*

וראה לעיל בסימן ל"ב הלכה ק"ב(ב) שנכון ליזהר שלא יכתוב סת"ם עד שיהיה בן שמונה עשרה. וכן שראוי שיהיה הסופר נשוי.

ג. חרש ושוטה שכתבו תפילין, פסולים. [פתה"ד סי' לט אות ג, יפה לבב ר"ס לט, קול יעקב שם סק"ח]

ד. מי שנקטעה ידו השמאלית, אף על פי שאינו בקשירה, יכול לכתוב תפילין, משום שהוא נחשב "בר חיובא", אלא "פומא הוא דכאיב ליה", והיינו שהוא שייך במצוה, רק שאינו יכול לקיימה. [משנ"ב ס"ק ט, קול יעקב סי' לט ס"ק טו]

ה. אונן אינו רשאי לכתוב תפילין, שהרי אסור בתלמוד תורה. ובדיעבד שכבר כתב, יש שהכשירו את התפילין, משום דשפיר חשיב בר קשירה. [שואל ומשיב פרי השדה]. אולם יש שהעירו על זה מדברי הרא"ש שאונן נחשב "פטור" בעצם. [יבי"א ח"ג או"ח סי' כז אות ד ד"ה והנה]

See above in *Siman* 32:102b, where it was explained that it is best to employ a scribe who is at least eighteen years old, and who is married.

A deaf-mute

3) If a deaf-mute writes tefillin parchments, they are not kosher. The same applies to parchments written by someone who is *shote* (mentally deficient or insane).

Missing the left arm

4) If a scribe's left arm was amputated so that he no longer can fulfill the mitzvah of *tefillin shel yad*, he can nevertheless write tefillin parchments for others. This is because he is still someone for whom this mitzvah applies, except that he has a physical barrier making him incapable of fulfilling it.

An *onen*

5) On the day that an immediate relative has passed away, one has the status of *onen* and is exempt from the mitzvot. It is forbidden for an *onen* to study Torah, and therefore he may not write tefillin parchments either. Some *Poskim* ruled that if an *onen* went ahead and wrote tefillin parchments they are kosher since he is a person that has the mitzvah of putting on tefillin. Others maintained that we cannot rely on this leniency since it is likely that some major *Poskim* disagree with it.[294]

Hador), Rabbenu Yosef Kolon, and Rabbenu Yitzhak bar Sheshat ruled leniently. The *Halakha Berura* concluded that we must rule stringently in practice and procure other tefillin parchments. If someone has no other parchments or other tefillin available, it is better to use these parchments than to use nothing at all, but he must not recite the blessing in deference to the *Magen Avraham's* ruling.

If the thirteen-year-old boy completed a Torah scroll before proving that he has pubic hair, the scroll may be used and people may recite the blessings over it. The *Halakha Berura* explained that in this case we can add the extra argument that according to Rambam it is permissible to use an invalid Torah scroll and to recite blessings over it.

Teenager with a beard

If the thirteen-year-old boy has facial hair growing on both sides of his face, this is considered proof that he also has grown pubic hair and it is not necessary to examine him. This is Maran's ruling in *Even Ha'ezer* (169:10) and *Hoshen Mishpat* (35:1).

294. The *Sho'el Umeshiv* and the *Peri Sade* ruled that the *onen's* parchments are kosher, but Maran the Rishon Letziyon (responsa *Yabia Omer* Vol. III, #27:4)

ו. תפילין שכתבן מומר לעבודה זרה, או מומר לחלל שבת בפרהסיא, או מומר לכל התורה (אפילו חוץ מעבודה זרה ושבת), פסולות, ואפילו עובר על אלו לתיאבון ולא להכעיס, תפילין שכתב פסולות. [ראה ב"י ושו"ע סי' לט ס"א, ומשנ"ב ס"ק ו, וקול יעקב ס"ק יא]

A sinner

6) Any tefillin parchments written by someone who regularly worships idols are nonkosher. The halakha is the same regarding those written by someone who regularly desecrates Shabbat in public view,[295] or by someone who disregards all the Torah's mitzvot[296] regularly. Such people have earned the label of *mumar* – an apostate. Even if these people do not transgress these sins in order to display their disdain for the mitzvot (*lehakh'is*), but simply because they gain material or emotional pleasure from indulging in those sins (*lete'avon*), they are disqualified from writing tefillin parchments.[297]

challenged that ruling. He pointed out that according to Rabbenu Asher an *onen* is absolutely exempted from the mitzvot and if so he is completely disqualified from writing tefillin parchments. Harav Shelomo Ben Shimon (cited in the journal *Kovetz Zekhor le'Avraham* of 5756) likewise challenged this ruling, showing that the *Mikhtam leDavid* ruled that if an *onen* performs a circumcision, it does not count since the *onen* is exempt from all mitzvot.

295. Someone who disregards our Sages' rules for Shabbat

The *Mishna Berura* (39:6) ruled that someone who is careful not to transgress the Torah's rules about Shabbat, meaning that he observes the prohibition of performing any *melakha*, but he disregards the rules instituted by our Sages for Shabbat, such as the rules of *muktze* or of moving items from one place to another in a *karmelit* or through a *karmelit*, we must still consider him to be a *mumar* and therefore disqualified for writing tefillin parchments. If he presents others with parchments that he has already written, it is doubtful that we can pronounce the parchments kosher and use them for the mitzvah.

The *Peri Hadash* and other *Aharonim* (cited in the *Kaf Hahayim* Sofer *Y.D.* 2:50), however, ruled that such a sinner is not considered a *mumar*. The *Mishna Berura* (below in *Siman* 385:5) took this opinion into account, and the *Hazon Ish* (*Y.D.* 2:20) likewise ruled as long as the person does not desecrate Shabbat by performing acts forbidden by the Torah he is not considered a *mumar*. Therefore, although one certainly should not commission such a person to write tefillin parchments, if they are already written we may consider them kosher.

296. A *mumar* who disregards every mitzvah

Of course, it is impossible to ascertain that someone regularly disregards all the Torah's mitzvot without exception. The *Kaf Hahayim* Sofer (*Y.D.* 2:52) cited several *Aharonim* explaining that if someone has been observed regularly committing three well-known sins, we must assume that he regularly disregards all the Torah's mitzvot. For example, if the person was observed eating nonkosher meat, wearing garments that contain *sha'atnez*, and shaving off the *pe'ot* of his head, we must assume that he would be willing to commit any other sin as well. If it is ascertained that he religiously observes all the mitzvot other than these three, however, then he is not given the status of *mumar* for all the mitzvot. Nevertheless, if it is clear that he disregards many of the mitzvot, then even though he is accustomed to observe some mitzvot he is still a *mumar* and has the status of a non-Jew.

297. The term *mumar lehakh'is* applies, not only to someone whose intention is to spite the Creator, but also to anyone who has disdain for the mitzvah. For example, it applies to someone who has the choice of eating kosher or nonkosher food and purposely chooses the nonkosher food. If, however, his attitude is not disdain for kosher food but rather that it does not matter to him one way or the other and he will eat whatever food comes his way, he is not considered a *mumar lehakh'is*. He is worse than a *mumar lete'avon*, who is a person who chooses to sin because he hopes to gain financially or emotionally from the sin, but who would not sin when he can obtain what he wishes in a permissible manner. This in-between level is called a *mumar* who is *eno lehakh'is* – who sins "not quite out of spite."

How many sins create the status of *mumar*?

The *Bi'ur Halakha* cited the *Sifte Kohen* (*Y.D.* 2:16) ruling that even if someone desecrates Shabbat or worships an idol on one single occasion, he already has gained the dubious status of *mumar*. Likewise, if someone commits any other sin even once intentionally to spite God and the