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]

Day 79

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 Ḥadash* and other *Aḥaronim* (cited in the *Kaf Haḥayim* 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 *Ḥazon 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 Haḥayim* Sofer (*Y.D.* 2:52) cited several *Aḥaronim* 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

ואם עובר על אחת מן המצוות, אם הוא להכעיס, תפילין שכתב פסולות. ואם הוא לתיאבון, כשרות, דמומר לדבר אחד לא הוי מומר לכל התורה כשעושה לתיאבון. [ראה משנ"ב וקול יעקב שם]

וכל זה הוא לגבי דיעבד, אבל לכתחילה יש להחמיר שלא להניח לאיש כזה לכתוב סת"ם, כי יש מחמירין אפילו במומר לתיאבון, ואפילו באחרים עומדין על גביו ואומרין לו שיכתוב לשמה. [משנ"ב ס"ק ו]

ז. מומר לתפילין, שאינו מניח תפילין, אפילו אם אינו עושה זה להכעיס, תפילין שכתב פסולות. אך אם אינו מניח תפילין מחמת שממהר לעסקיו, עדיין הוא בכלל בר קשירה, ותפילין שכתב כשרות. [משנ"ב

If someone regularly transgresses any other sin in order to display his disdain for that mitzvah (*lehakh'is*), he is likewise considered a *mumar* and disqualified from writing tefillin parchments. If he transgresses it only in order to gain material or emotional pleasure from it (*lete'avon*), he does not become a *mumar* and he is still qualified to write them. The general rule is that someone who commits a single sin regularly (other than idolatry or desecrating Shabbat) with the intent of *lete'avon*, he is not considered a *mumar*.

None of the sinners mentioned in these paragraphs should be commissioned to write tefillin parchments, mezuzot, or Torah scrolls, even though the parchments they write are technically kosher. This is in deference to those *Poskim* who ruled that even someone who sins regularly *lete'avon* is considered a *mumar*.[298] According to those *Poskim*, these sinners are disqualified even if another Jew supervises his writing and instructs him to write the parchments for the sake of the mitzvah.

Person who does not wear tefillin

7) Someone who chooses intentionally not to fulfill the mitzvah of tefillin is disqualified from writing tefillin parchments, even if he did not make this decision to spite God.[299] If he has nothing against fulfilling the mitzvah, but he

Torah, he has the status of *mumar* until he repents. It is clear from the *Bet Yosef* that this is the case – a person can fall into this sorry category after committing a sin even one time.

The *Mishna Berura* (385:4) stated that the *Poskim* debated what the status is for someone who desecrated Shabbat in public only one time. In the *Sha'ar Hatziyun* (385:2), the ruling is that this person is already considered a *mumar*. In the preface to *Hilkhot Shabbat* in the *Mishna Berura*, however, it states: "If someone desecrates Shabbat several times in public, he has the status of a *mumar*, and therefore the halakha treats him as someone who has become a non-Jew."

A careful reading of the *Shulhan Arukh* (385:3) reveals that a *mumar* is someone "who desecrates *Shabbatot* (the plural of Shabbat) in public." This seems to support the position that it applies to someone who has desecrated Shabbat several times. The *Hazon Ish* (*Y.D.* 2:20) ruled leniently regarding someone who has not yet desecrated Shabbat publicly three times.

298. This is the opinion of the Tosafot, as cited by the *Magen Avraham* and the *Bi'ur Halakha*.

299. In the previous halakha, it was explained that if someone disregards one mitzvah regularly, but he does not mean to spite God by sinning (*lehakh'is*), the tefillin parchments he writes are kosher. The *Magen Avraham* and other *Aharonim* ruled, however, that if the one mitzvah he disregards is that of tefillin, he is disqualified completely since he has chosen to have the status of someone to whom the mitzvah of tefillin does not apply. Even in this case, if the reason he sins is that he feels that he can gain financially or emotionally by not fulfilling the mitzvah of tefillin, the parchments he writes are kosher.

If someone fails to fulfill the mitzvah of tefillin simply because he doesn't consider it worth the effort, he is

אך לכתחילה יש להחמיר שלא להניח לאיש כזה לכתוב סת״ם, וכאמור בהלכה הקודמת. [משנ״ב שם] ס״ק ו. ועי׳ קול יעקב ס״ק יב].

fails to fulfill it whenever he decides that he is too busy to bother with it, he is still considered a person who is in the category of those who fulfill the mitzvah, and the parchments he writes are kosher. Nevertheless, one should not commission a person like this to write tefillin parchments, mezuzot, or Torah scrolls, as mentioned in the previous halakha.[300]

disqualified for writing tefillin parchments even though his sin is not out of spite. The *Magen Avraham's* leniency applies only to someone who fails to fulfill the mitzvah because he believes that he will gain something by not fulfilling it.

Half the set of tefillin

The *Bi'ur Halakha* ruled that even if someone regularly fulfills the mitzvah of *tefillin shel yad* alone, or that of *tefillin shel rosh* alone, he has disqualified himself from writing tefillin parchments since both mitzvot are listed in the same verse and both are juxtaposed to the word וּכְתַבְתָּם – you shall write them. As explained above, this does not apply to someone who fails to fulfill the mitzvah because he hopes to gain financially or emotionally. It applies only to someone who rejects the mitzvah *lehakh'is* – to spite God, or someone who feels that the mitzvah is unimportant.

Someone who insists on wearing tefillin the wrong way

The *Bi'ur Halakha* added that if someone regularly wears his *tefillin shel rosh* down on his forehead, and even when people try to correct him he ignores them, the tefillin parchments that he writes are kosher. We may assume that he wears his tefillin in the correct place at least for a moment each day.

Failing to wear tefillin how many times?

The *Bi'ur Halakha* ruled, based on the *Sifte Kohen* (*Y.D.* 2:16) that a person is disqualified after sinning only once, until he repents. Therefore, even if someone chooses to disregard the mitzvah of tefillin even one day he is disqualified from writing tefillin parchments.

300. This is the ruling of the *Mishna Berura* (39:6). The *Hazon Ish* (*Y.D.* 2:20), however, ruled that if someone chooses not to fulfill the mitzvah of tefillin because he feels that this will bring him financial or emotional gain, then if he writes tefillin parchments they are kosher. The *Halakha Berura* (page 248) demonstrated that earlier *Aharonim* already debated this issue.

Regarding tefillin "of Rabbenu Tam"

According to some *Aharonim* (*Yismah Moshe*, *Keset Sofer*, *Ot Hayim*), if a scribe fulfills the mitzvah of tefillin but he does not wear tefillin "of Rabbenu Tam," he is not qualified to write tefillin parchments for tefillin "of Rabbenu Tam." They contend that regarding these tefillin he is someone who regularly fails to fulfill the mitzvah. The *Mikdash Me'at*, however, ruled that he is qualified to write them. The responsa *Pene Mevin* likewise ruled that if the scribe refrains from wearing tefillin "of Rabbenu Tam" only because he is afraid that people will suspect him of haughtiness, he is qualified to write such parchments. The *Halakha Berura* (page 249) concurred with this ruling, pointing out that the *Magen Avraham* ruled that if the scribe does not wear tefillin at all, but his reason is to gain financially or emotionally, the parchments he writes are kosher. The case discussed here is far better, since this scribe agrees with the mitzvah of wearing tefillin wholeheartedly. He does not wear tefillin "of Rabbenu Tam" because he relies on the opinion of Rashi and Rambam since that opinion is the one universally accepted.

The *Piske Teshuvot* (39:3) ruled that it is advisable to be careful to employ only a scribe who wears tefillin "of Rabbenu Tam" to write such parchments, but if a scribe who does not wear them writes such parchments, they are kosher and may be used. We may judge the scribe as a person who believes in the sanctity of tefillin "of Rabbenu Tam," but he refrains from wearing them based on the *Shulhan Arukh's* ruling (34:3) that only someone with a reputation of great piety may wear them.