כ. ספרי תורה ותפילין ומזוזות שנכתבו על ידי גוי, יגנזו. [ש"ע יו"ד סי' רפא ס"א]. ואם כתבם קראי, אף שהרמב"ם ז"ל מונה אותם בכלל המינין, אף על פי כן לא ישרפו, כי לא נקראו מינין לענין זה, מי ששורף אותם עובר משום (דברים יב, ד) "לא תעשון כן לה' אלהיכם. [רדב"ז ח"ב סי' תשעד, הובא בפת"ש יו"ד שם סק"ב]

תפילין שאין ידוע מי כתבם

כא. תפילין שנמצאו ביד אפיקורוס, ואין ידוע מי כתבם, יגנזו. [ש"ע סי' לט ס"ח]. והטעם שגונזים אותם, הוא מספק שמא האפיקורוס כתבן. אולם אין שורפים אותם, כיון שיש לחוש מספק שמא ישראל כשר כתבם, והרי כתוב (דברים יב, ד): "לא תעשון כן לה' אלהיכם". [משנ"ב ס"ק טו, קול יעקב ס"ק טו]
ואם הוחזק שגזל תפילין מישראל, תולין בו, ומותרים לישראל לצאת בהם. [קול יעקב ס"ק כו]

כב. תפילין שנמצאו ביד גוי, ואין ידוע מי כתבם, כשרים. [ש"ע סי' לט ס"ח]. משום שאין הגוים עשויין לכתוב תפילין, לפי שאינן צריכים להם. [בית יוסף אות ו, קול יעקב ס"ק כז]

Day 82

Non-Jews and Karaites

20) If a non-Jew writes a Torah scroll, tefillin parchments, or mezuzot, they must be deposited in *geniza* and never used. If a Karaite Jew writes any such scroll, it must not be burned. Even though Rambam labeled the Karaites among the category of *min*, they are not equal to a *min* in all aspects. If someone would burn a Torah written by a Karaite, he would be guilty of destroying God's sacred Names, transgressing the prohibition of " לֹא תַעֲשׂוּן כֵּן לַה' אֱלֹהֵיכֶם– Do not do these things to God your Master" (*Devarim* 12:4).[308]

When the Scribe Is Unknown

Tefillin in an *apikoros's* hands

21) If tefillin are found in the possession of an *apikoros* and no one knows who wrote the parchments, they must be deposited in *geniza* and never used since it is possible that they were written by an *apikoros*. They must not be burned, since they might have been written by a regular Jew, and the Torah prohibits destroying God's Name, as the verse states: " לֹא תַעֲשׂוּן כֵּן לַה' אֱלֹהֵיכֶם– Do not do these things to God your Master" (*Devarim* 12:4).

If there is proof that this person stole the tefillin from a Jew, we may assume that the tefillin are kosher and they may be used for the mitzvah.

Tefillin in a non-Jew's hands

22) If a set of tefillin is discovered in a non-Jew's possession and it is unknown who wrote the parchments, we may assume that they are kosher. There is no reason to suspect that a non-Jew wrote the tefillin parchments, for a non-Jew has no use for them.[309] If a Torah scroll is found in a non-Jew's possession, however, it

308. This is the ruling of Harav David ben Zimra, cited by many *Aḥaronim*. The responsa *Tzitz Eliezer* (Vol. IX, #10:6) states that it is obvious that the religious status of the Karaites today is far lower than that of the Karaites in the time of Harav David ben Zimra.

309. The *Shulḥan Arukh* (*Y.D.* 281:1) cited two opinions regarding a Torah scroll found in a non-Jew's possession if the identity of the scribe cannot be ascertained. One opinion is that we may assume that it is kosher for use, and the other is that it must be deposited

אבל ספר תורה שנמצא ביד גוי, יגנז [ש"ע יו"ד סי' רפא ס"א], **שמא גוי כתבו להתלמד בו** [בית יוסף סי' לט אות ו]. **ואם** הוחזק שבזזו גוים ספרי ישראל, תולים שאותם ספרים שלהם היו, וקורין בהם. [ר"ן, הובא בש"ע סי' רפא סוף ס"א]. **וכן בזמן הזה שאין הגוים יודעים לכתוב ספר תורה, כשרה, שאנו תולים שהגויים בזזו אותה.** [ש"ך, הובא במשנ"ב ס"ק טז].

ומכל מקום הכל לפי הענין, ובכל מקרה לגופו יש להתבונן אם יש חשש שנכתב על ידי גוי. [הלכה ברורה עמ' רנט]. ובפרט בדורות האחרונים, שרבה מאד המכשלה מסופרים ועושי תפילין שהמה קלי דעת

must be deposited in *geniza* and never used, since we must suspect that a non-Jew wrote the scroll in order to study the Torah. If there is proof that non-Jews stole Torah scrolls from Jewish owners, then we may assume that this is one of the stolen scrolls and it is kosher for use.

Nowadays, there is almost no reason to suspect that a non-Jew would write a Torah scroll [since printed versions of the Torah's text are readily available without writing a scroll], and we may always assume that it was taken from a Jewish source. Nevertheless, each case must be judged on its own merits. In recent generations, there has been a plague of irreverent scribes and dealers who see nothing wrong with selling parchments and Torah scrolls that appear to be beautifully written exactly as the halakha prescribes, but which in reality were written by people who know nothing about the halakha of

in *geniza* and never used. According to the rules we use in interpreting the *Shulḥan Arukh*, the halakha in practice should follow the second, stringent opinion. This seems to be contradicted by the *Shulḥan Arukh's* ruling that if tefillin are found in a non-Jew's possession and no one knows who wrote the parchments, we may assume that they are kosher. A careful examination of the *Bet Yosef* reveals, however, that there is no contradiction.

The Talmud cites two opinions about Torah scrolls, tefillin, or mezuzot found in the possession of a non-Jew. One is that we may use them, and the other is that they must be deposited in *geniza* and not used. Rabbenu Nissim noted that Rambam ruled according to the lenient opinion, explaining that it is highly unlikely that a non-Jew would write these parchments, while Rabbenu Yitzḥak Alfasi ruled according to the stringent opinion.

Regarding a Torah scroll, Rabbenu Asher, Rabbenu Yeruḥam, and the *Arba'a Turim* ruled that it may not be used. Maran in the *Bet Yosef* noted that the *Arba'a Turim* concurred with Rambam's ruling regarding tefillin, apparently contradicting the ruling regarding Torah scrolls. To reconcile these rulings, Maran suggested that there is a fundamental difference between a Torah scroll and tefillin. A non-Jew might want to write a Torah scroll in order to study it, but no non-Jew has any reason to wear tefillin and therefore there is no reason to suspect that these tefillin parchments were written by a non-Jew. No non-Jew would have any reason to write tefillin parchments, however, and so we may assume that they are kosher tefillin.

This is different than a case of tefillin found in the hands of a *min* or an *apikoros*, where the rule is either to burn them or to deposit them in *geniza*. There is room to suspect such wayward Jews of writing tefillin parchments, and therefore we cannot assume that the tefillin are kosher. There is no basis to suspect an ordinary non-Jew of writing tefillin parchments, and therefore tefillin found in his hands may be assumed to be kosher.

According to this, it becomes clear why the *Shulḥan Arukh* ruled that tefillin found in a non-Jew's possession are kosher whereas a Torah scroll found in his possession cannot be assumed to be kosher.

Reciting a blessing on tefillin found in a non-Jew's possession

One might assume that it is forbidden to recite a blessing on these tefillin since some *Rishonim* ruled that they may not be used. The *Halakha Berura* (page 261) ruled that it is permissible to recite the blessing in this case. This is because it is possible to form a *safek sefeka* to assume that they are kosher. Since this is a Torah mitzvah, it is permissible in such a case to recite the appropriate blessing. This is especially so since it follows Maran's ruling.

לחלוטין, וללא שום רגש ומצפון מסוגלים להוציא מתחת ידיהם פרשיות וספרי תורה בכתב מהודר ויפה מאד בזמן שאין מקדשין הכתיבה ושמות קדושים, ואין מקפידין על חק תוכות וכתיבה כסדרן ושאר דיני סת"ם החמורים, וכן בעסק הבתים והרצועות בענין עשיתן לשמה.

ולכן כשמוצאים בידי נכרים או יהודים ובגניזה ובכל מקום שהוא ספרי תורה או תפילין ומזוזות, ובעליהם אינם ידועים, ואין עליהם מסורת כי השתמשו בהם אנשים כשרים, בסתמא יש ליזהר מלצאת בהם ידי חובה אלא אם כן השערת מומחים יריאים ושלימים הבקיאים בעניני סת"ם כי ניכר לפי הקלף והכתב והבתים והפרשיות וכו' וסדר עשיתן שנעשו ע"י סופר מומחה וירא שמים. [פסקי תשובות אות ה]

כג. ספרי תורה תפילין מזוזות שנמצאו ביד הגוים, חייבין הצבור לקנותם ממנו בכדי דמיו או יותר מעט, כדי שלא יזלזל בו. [ש"ע יו"ד סי' רפא ס"א]. ואין לוקחין תפילין ומזוזות וספרים מן הגוים, יותר מכדי דמיהן הרבה, כדי שלא להרגיל לגנבן ולגוזלן. [ש"ע סי' לט ס"ז]. אבל במעט יותר משווין חייבם לקנות מהם. [כמ"ש ש"ע יו"ד הנ"ל. משנ"ב ס"ק יז, קול יעקב ס"ק כח]

sanctifying the words they write. What's more, these so-called scribes do not obey the rules of kosher writing and erasing, nor do they care about the halakha demanding that each letter of tefillin parchments or mezuzot must be written in order. Besides this, there are unscrupulous manufacturers of tefillin *battim* who do not fashion their products in a kosher manner.

Therefore, any Torah scrolls, tefillin, or mezuzot discovered in the possessions of a Jew or non-Jew must not be used for mitzvot unless their source can be ascertained, or if is known that the items had been used by Jews for the mitzvot beforehand. Of course, if the item is examined by an expert who then asserts that it appears to be genuine and kosher, one may rely on his expertise.

Redeeming sacred items from a non-Jew

23) If it becomes known that a non-Jew has a Torah scroll, tefillin, or mezuzot, the Jewish community is obligated to purchase those items from him to make sure that they will not be treated with disrespect.[310] They are expected to pay the amount that the items are worth, or even a bit more. It is forbidden, however, to pay far more than the market value to redeem Torah scrolls, tefillin, or mezuzot from a non-Jew, since this would whet the non-Jews' appetite to steal such items so that they can profit from them.

310. Although the *Shulhan Arukh's* ruling is that a Torah scroll found in a non-Jew's possession must be deposted in *geniza* and never used, the community is nevertheless obligated to purchase it and even to pay a bit more than such a Torah scroll should be worth, and then to deposit it in *geniza*. If they would leave it in the non-Jew's hands, he is likely to eventually treat it with disrespect. This halakha applies even if the Torah scroll has become nonkosher for some reason. If the Torah scroll was written by an *apikoros*, however, the community is not expected to purchase it in order to burn it. This is the ruling of the *Mishna Berura* (39:17). See more about this in the *Kol Yaakov* (39:28).

ואסור לומר לגוי שיתנם בזול יותר מדאי, שמא יתרגז הגוי, וינהג בהם מנהג בזיון. ואם הגוי רוצה הרבה ממון, מחוייבים לבוא עמו במשא ומתן ולדבר עימו דברי ריצוי, אולי ישתווה עמו בכדי דמיו או מעט יותר, ואם אף על פי כן עומד הגוי על דעתו, אז מניחו בידו וילך לו. [משנ"ב ס"ק יח, קול יעקב ס"ק כט]

איסור מכירת ס"ת ותפילין לגוים ורפורמים

כד. אסור למכור ספר תורה ותפילין לגוי, ואפילו הוא פסול ופיסולו ניכר. [הלכה ברורה עמ' רסב], ואפילו מטרת קנייתן כדי לשמור אותם דרך כבוד בבתי משכיותיהם וכדומה, אסור. ואף במקום איבה, נחלקו דיעות הפוסקים (רמ"א יו"ד סי' רצא ס"ב, וראשון לציון שם). [פסקי תשובות אות ו]

כה. אסור למכור ספר תורה ותפילין לקראים שאינם מאמינים בתורה שבעל פה ובדברי חז"ל, אף על פי שידוע שנוהגים בו כבוד. ואם הוא ספר תורה פסול, ופיסולו ניכר באופן ברור, מותר למוכרו

It is forbidden to try to bargain with the non-Jew to sell the Torah for far less than it is worth. This might infuriate him and then he might destroy the scroll or otherwise harm it. If the non-Jew insists on asking an exorbitant amount, the community should engage in calm negotiations in the hope of persuading him to sell it for its true market value or a bit more. If the non-Jew cannot be persuaded, the community should walk away from the bargaining table and leave the Torah scroll in his hands.

Day 83

Selling Torah Scrolls and Tefillin to Reform Jews

Selling scrolls to non-Jews

24) It is forbidden to sell a Torah scroll or a set of tefillin to a non-Jew, even if it is obvious that it is nonkosher.[311] This is the rule even if the non-Jew wishes to display the item in a museum and intends to treat it with the proper respect. If the Jew's refusal will increase hatred and friction between Jews and non-Jews, some *Poskim* ruled that it is permitted, but others forbade it even in such a case.

Selling scrolls to Karaite Jews

25) It is forbidden to sell a Torah scroll or tefillin to Karaite Jews even though it is obvious that they will treat it with respect, since they do not believe in the Oral Torah or the teachings of our Sages. It is permissible to sell them a Torah scroll that is obviously nonkosher, but if the problem with the scroll is not visible it is forbidden. For example, if the scroll was not written for the express purpose of the

311. The previous halakha states that if Jews discover a Torah scroll in a non-Jew's possession they are obligated to purchase it from him, and even to pay somewhat more than it might be worth. Harav Tzevi Hirsh Hayot (responsa #32) ruled, based on this, that Jews may not sell any of these sacred items to non-Jews. See more about this in the *Halakha Berura* (page 262) and the *Piske Teshuvot* (39:6).

Selling a mezuzah to a non-Jew

Mahari"l, cited by Rama (gloss to *Y.D.* 291:2), ruled that it is forbidden to sell a mezuzah to a non-Jew who wishes to affix it to his doorpost. The Rama added that this can be permitted if there is reason to suspect that the Jew's refusal will spawn hatred toward Jews. Several *Aharonim* disagreed and ruled that it is forbidden in any case. In fact, that is the ruling of the *Halakha Berura* (page 264).