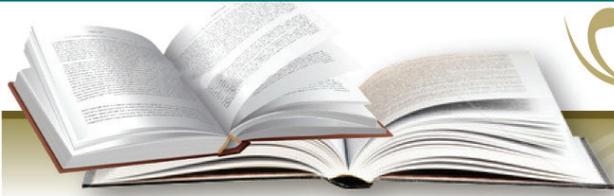


TORAH & HORAHAH



Acharei 5777

357

Dear Reader,

The opening Pasuk of our Parashah commands us in the *mitzvah* of *kedushah*: “You shall be holy, for I, Hashem your God, am holy” (Vayikra 19:2).

According to several commentaries, the obligation of *kedushah* refers to the fulfillment of all the *mitzvos* of the Torah. The Rambam (Book of Mitzvos, Shoresh 4), for example, writes that the *mitzvah* cannot be counted among the list of 613 Torah *mitzvos*, because it encompasses the entire Torah. Rashi, in a similar vein, writes that the *mitzvah* instructs us to refrain from forbidden marital relations, and from other transgressions.

The Ramban, however, ascribes a different meaning to the instruction of *kedushah*. Rejecting the interpretation mentioned by Rashi, the Ramban explains that *kedushah* refers to the Talmudic concept of *perishus*: refraining from indulgence in worldly pleasures. While commanding us in many Mitzvot, the Torah permits a person to cohabit with his wife, and to consume meat and wine, such that without transgressing any actual Torah

This week's article discusses the Torah prohibition of tattooing one's skin. What are the parameters of this prohibition? Is there an obligation to erase a tattoo after it has been made? Is it permitted to write on one's skin? Can one get a henna tattoo? Is there a problem in permanent makeup? These questions, among others, are discussed below. These questions, among others, are discussed in this week's article.

This week's Q & A addresses the question of getting a massage on Shabbos.

Tattoos in Halacha

The Pasuk in Parashas Kedoshim teaches us: “Do not cut your bodies for the dead, nor put tattoo marks upon yourselves; I am Hashem” (Vayikra 19:28).

The Tur (*Yoreh De'ah* 180) explains that the prohibition against tattooing is derived from the concept of *chukos ha-goyim*. It is forbidden to emulate non-Jews in their idolatrous practices, and tattooing one's skin is considered such an idolatrous practice. However, Rav Moshe Feinstein (*Yoreh De'ah* 2:53) explains that even after non-Jews cease to tattoo their bodies as an idolatrous practice, doing so remains a Torah prohibition. Thus, the prohibition remains relevant today.

In many senses the prohibition against tattooing is more relevant today than ever before. While tattoos were fairly rare in the past (in Western countries), in recent decades the practice of tattooing has become extremely vogue, so that the prohibition is also far more pertinent.

What are the parameters of this prohibition? Is there an obligation to erase a tattoo after it has been made? Is it permitted to write on one's skin? Can one get a henna tattoo? Is there a problem in permanent makeup? These questions, among others, are discussed



precept, a person could actually devote much of his time to the pursuit of personal pleasure. To ensure that he should not do so, the Torah commands us to be holy: to refrain from over-indulging in the physical gratification that the world has to offer.

Both interpretations are well-sourced in Torah verses. On the one hand, the former interpretation is implied by the ensuing verses of our *parashah*, which detail many *mitzvos*, and which make repeated mention of the instruction to be sanctified: “And you shall be holy to Me, for I, Hashem, am holy, and I separated you from the nations to be for Me” (Vayikra 20:26). On the other, the Ramban reinforces his position by mentioning the law of the *nazir*. Because of his abstention from drinking wine—a significant factor in human physical desire—the *nazir* is dubbed *Kadosh*, holy (Bamidbar 6:5).

How do the two interpretations go together? *Mitzvos* imply human immanence, whereas the abstention of the Ramban implies transcendence. Yet, it appears that the two converge to a single point.

In performing the *mitzvos* of the Torah, we must engage the world around us. All parts of the world, from the lifeless to the human, form the material required for *mitzvah* performance. Yet, in engaging the world through the prism of *mitzvos*, we bring an elevation to the world and

below.

Etching and Writing: Which Comes First?

The Gemara (*Makkos* 21a) states the Torah prohibition of inscribing a tattoo on one’s skin in greater detail: “If he writes but does not etch, or etches but does not write, he is exempt from lashes, until he both writes and etches.” Clearly, the prohibition against tattooing one’s skin has two elements—etching and coloring with ink.

The translation above is based on Rashi, who explains that the tattoo is made first by writing the required text, and then scratching the skin so that the ink is absorbed into the dermis and becomes a permanent marking. The Rambam, however, reverses the order, explaining that a tattoo is made by first scratching the skin, and later filling in the scratch with ink or other colored substances (*Avoda Zara* 12:11).

The order noted by the Rambam is given by most Rishonim. For instance, the Rosh writes (*Kitzur Piskei HaRosh Makos* 3, 6) that if a person writes on his skin without **first** scratching the skin, he is exempt—implying that the prohibition is only transgressed if the skin is scratched before the ink is applied.

Prohibition in the Action or the Result

The discussion of which comes first, the scratch or the application of ink, bring Rav Chaim Kanievsky *shlita* to conclude that the prohibition against tattooing applies to the action of making a tattoo, and not to actually having a tattoo on one’s skin. If there would be a problem of just having a tattoo on one’s skin, the order of scratching and applying the ink should be of no consequence.

The significance of the order indicates that the prohibition applies to the action of making the tattoo, and not to the actual presence of the tattoo on one’s skin (*Patshegen Hakesav* Chap. 18, sec. 3).

Rav Kanievsky proves this further from the teaching of the Tosefta (*Makkos* 3:9), which states, “If one etches a tattoo into another’s skin, both are liable; but if one etches a tattoo on the skin of one’s slave, so that he will not escape, he is exempt.”

Rav Kanievsky writes that the significance of a person’s intention in making the tattoo can only be explained if the prohibition applies to the action of tattooing. If there is a problem in the result of the tattoo itself, the intention would make no difference: after all, the

tattoo has been made, and while it remains it involves a prohibition. However, if the sole problem is the action of etching the tattoo, it is possible that a tattoo etched for purposes of guarding the slave rather than for the writing itself, is permitted.

Erasing Tattoos

A clear ramification of this discussion is the question of whether existing tattoos must be erased or not. This question is often asked by *baalei teshuva* who tattooed their skin as young people, and now, after returning to practicing Judaism, ask whether they are obligated to erase the tattoo.

The *Minchas Chinuch* (Shabbos 38:32) writes that somebody who erases a tattoo on Shabbos violates the Shabbos, explaining that the erasing of a tattoo is considered a “rectification,” because “it is not right that a tattoo should be on a person’s skin.” Based on this statement, *Shut Lehoros Nossan* (Vol. 8, no. 72) entertains the possibility that there is a full obligation to remove a tattoo from one’s skin.

However, he concludes that even the *Minchas Chinuch* does not see the removal of a tattoo as an obligation, and only states that it is inappropriate to leave the tattoo on one’s skin. The reason for this is that the tattoo is a reminder and a mark of a person’s previous sin, and it is therefore correct to have it removed—but there is no full obligation to do so.

Rav Yosef Shalom Elyashiv zt”l is likewise cited as having ruled that it is correct but not required to remove a tattoo from one’s skin, and that a person who does so does not transgress the prohibition of causing oneself an injury (cited in *Chashukei Chemed, Pesachim* 75b).

Writing on One’s Skin

As we saw above, the Torah’s prohibition of getting a tattoo applies only when two actions are taken: scratching and writing. This implies that where only scratching or only writing are involved, there is no Torah prohibition.

In fact, Rishonim discuss whether a rabbinic prohibition applies to etching one’s skin without filling the scratch with ink, or vice versa. The *Beis Shmuel* (124:16) notes this prohibition, as do other authorities. However, the *Minchas Chinuch* (253) writes that this rabbinic prohibition only applies when the act is permanent, and not when the writing is temporary.

to ourselves, rising beyond the mundane and physical level that meets the eye. *Mitzvos* give the world a spiritual dimension, an elevation that draws from the Divine light of Torah.

There can be no greater contradiction to the point of *mitzvah* performance that immersion in the physical. *Mitzvos* might engage the world, but they do so only to bring it spiritual elevation, to give it meaning beyond its coarse physical representation. Somebody steeped in the physical cannot approach the world from the perspective of *mitzvos*. The *kedushah* of *mitzvos*, and the *kedushah* of the Ramban, go hand in hand.

As we were brought out of Mitzrayim, we achieved, to some measure, the *kedushah* of the Ramban. We were separated from the idolatry of Egypt, and from the great evils therein. However, before we received the Torah, which is the tool by which we sanctify our surroundings, we required forty-nine days of preparation, climbing the rungs of human perfection in advance of the great event. Thus even as we engage the world, at work, as we eat and drink, or in human interaction, we are able to elevate our deeds with the elevation of *kedushah*.

After counting the Omer, some add a prayer, that the counter should “be purified and sanctified with the *kedushah* of Above.” May this, indeed, be our lot.

In fact, the *Minchas Chinuch* proves from *Tosafos* (*Gittin* 20b) that writing with non-erasable ink involves a rabbinic prohibition. However, *Shut Shevet Halevi* (3:111) writes that the statement of the *Minchas Chinuch* is hard to understand, for it appears from the *Tosafos HaRosh* (who writes similarly to *Tosafos*) that the rabbinic prohibition applies only to somebody who performs one of the prohibited actions: He either scratches his flesh without filling it with ink, or fills in a place on his skin that was already scratched. By contrast, merely writing on the body without a scratch at all is not mentioned.

Another point to note is that according to some authorities, the Torah prohibition against tattooing only applies when the name of an idolatry is inscribed. Although this is not the halachic ruling, it follows that according to certain Rishonim a rabbinic prohibition only applies to the name of an idolatry (Rav Chaim Kanievsky writes that this is the position of the Rosh and the Meiri).

Although some opinions are stringent on this point, Rav Kanievsky writes that for temporary writing there is certainly room for leniency. Similarly, *Nishmas Avrohom* (vol. 5 page 68) writes that Rav Shlomo Zalman Auerbach zatsal was lenient for one who writes with the intention of erasing after a short period of time. (He discussed a case of a doctor who jotted a phone number on his skin.)

Henna Tattoos

Based on the analysis above, it also follows that henna tattoos, which are temporary tattoos placed on top of the skin (lasting no more than a few weeks), do not involve any inherent prohibition, neither by Torah nor by rabbinic law. Even according to the *Minchas Chinuch*, writing on one's body is only forbidden when done with non-erasable ink, and henna tattoos are therefore of no concern.

But aside from the actual prohibition of the tattoo, is there a problem of *maris ayin* (the prohibition of projecting a wrong impression) in henna tattoos?

It can be argued that perhaps there is no prohibition because the prohibition of *maris ayin* does not apply where onlookers will likely assume that the deed was done in a permitted manner. It is well known that there are all kinds of temporary tattoos, so that no *maris ayin* issue will apply.

At the same time, even temporary tattoos are certainly not recommended, for they potentially involve the adoption of non-Jewish culture.

Permanent Makeup

Does permanent makeup involve a prohibition of tattooing one's skin?

This question is discussed by Rav Asher Weiss *shlita* (*Shut Minchas Asher* Vol. 2, no. 56), who opens with a discussion of whether the prohibition against getting a tattoo applies even to pictures and colors, or whether the prohibition is limited to writing letters.

Although some Rishonim make specific mention of writing and even of lettering (the *Chinuch* mentions "letters"), other authorities note the prohibition as concerning marking, which can include color alone. Therefore, this will not be sufficient cause for leniency.

Although several authorities have written that one should be stringent concerning permanent makeup for fear that it involves a prohibition of tattooing (see *Kovetz Or Yisrael*, Nissan 5759, p. 16, citing Rav Shmuel Vosner zt"l, who writes that permanent makeup involves a *serach issur* of tattooing), other authorities have written that there is room for leniency where there is a concrete need (see *Nishmas Avraham*, *Yoreh De'ah* 180:1, citing Rav Ovadya Yosef zt"l).

Rav Asher Weiss himself concludes that although

one should abstain from this practice there is room for leniency in extenuating circumstances. He was lenient for a young wife who had a very noticeable scar on her face which caused her great anguish and could cause her marital difficulties. His position was based on the fact

that the process of applying permanent makeup is inherently different from a regular tattoo (the skin is not scratched), on the doubt concerning lettering and writing, and a final doubt concerning the fact the makeup is not fully permanent, though it lasts long.

Halachic Responsa to Questions that have been asked on our website dinonline.org



The Question:

Can one get a shoulder/back massage on Shabbos? Can the masseur use oil to make for a smoother massage?



Answer:

If the massage is part of a medical course of treatment, it is not permitted, unless a person would be unable to function without it.

For regular massage, which means to relieve tension, to ease pain, or for pleasure, the massage is permitted, and oil (but not cream) can be used.



Sources:

The Shulchan Aruch (328:42) writes that it is forbidden to exercise on Shabbos, in a manner that will cause the person to sweat.

The Biur Halachah explains that this follows the ruling of the Rambam (not like Rashi), and the question of massage will apparently be contingent on this dispute.

In practice, the Biur Halachah sides with the Rambam, and therefore massage will be permitted — provided that it is not defined as an act of “healing.” This is the ruling given by the Seridei Eish (1:30), based on the Rambam.

By contrast, the Shulchan Aruch Ha-Rav (328:47) writes that massage (vigorous) is forbidden. This ruling is based on the ruling of the Shulchan Aruch in siman 327 (2), where the Shulchan Aruch is stringent in this matter, unless the massage is done in an unusual way. The reason for this is because vigorous massaging in the usual manner is considered *uvdin de-chol*, a “weekday occupation.”

This ruling, however, is based on the Gemara in Shabbos (147a-b) according to Rashi, and as we have seen, the Mishnah Berurah (and other authorities) write that the principle ruling in the matter follows the Rambam, who is lenient.

See also Mishnah Berurah 327:7, who points out the lenient ruling of the Rambam, as noted above. The Shemiras Shabbos Kehilchasa is also lenient on this issue (Chap. 34, note 95).