

SURVEY OF CONTEMPORARY HALAKHIC PERIODICAL LITERATURE

Among all the forms of mass masochism practiced by that frailty known as man, none is quite as silly as the acquiring of tattoos. This egocentric perversion has had its devotees since the dawn of time... but among most Western peoples it is as best a juvenile indiscretion, and at worst a thing of shame and loathing....

Hugh Garner, "The Tattooed Lady, the King and I,"
Saturday Night, April 11, 1953, p. 9.

MEDICAL AND COSMETIC TATTOOING

I. INTRODUCTION

What influence, if any, the biblical prohibition against tattooing has had upon the development of a sense of revulsion toward that practice among cultivated strata of Western society is a matter of speculation. But there has probably been no culture in which tattooing was met with greater disdain than the society of Torah adherents. To this day there persists a folk belief, the source of which eludes members of the scholarly community, to the effect that a Jew bearing a tattoo must be denied burial in consecrated ground.¹

Serious as the prohibition against tattooing certainly is, the punishment it entails is hardly as severe as the punishment prescribed for a plethora of far more serious transgressions regularly committed by many with far greater equanimity. The attitude of Judaism *vis-à-vis* tattooing is poignantly captured in an obscure midrashic statement found in *Baraita de-Yeshu'ah* (*Baraita of Redemption*):

Twenty-four matters delay the Redemption.... The nations of the world anger Him with tattoos that are on their hands... while Jews placate Him with *tefillin* that are on their hands.... Thus you learn that one who

¹ Kate Torgovnick, "For Some Jews, It Only Sounds Like 'Taboo,'" *New York Times*, July 17, 2008, p. G1.

comports himself in accordance with the customs of the gentiles delays the Redemption.²

Values such as those reflected in this midrashic statement are deeply ingrained in the Jewish psyche and are not necessarily correlative with the gravity of the transgression associated with a particular practice.

Alas, the above-captioned lines, written a half century ago in the 1950's, do not reflect contemporary mores. For reasons this writer cannot fathom, there has been a dramatic *volte face* in social mores with the result that tattooing is now accepted with equanimity and has even acquired a certain cachet, particularly among the young.³ Not so in the Jewish community. The eternal verities of Judaism are not subject to change. And in this area at least, the persistent influence of Jewish teaching is readily discerned.

Nevertheless, there is very little in the universe that is an absolute evil. As the Gemara, *Shabbat*, 77b, tells us, even the lowliest insect was created for a divinely ordained purpose. Even the disdainful may, at times, become an object of value. And yes, in some limited contexts, tattooing may have a beneficial purpose and, in some few situations, may even be halakhically imperative. Man was endowed by his Creator with the intellectual capacity to develop and perfect methods of tattooing for the purpose of achieving salutary ends. Utilization of such procedures for frivolous reasons constitutes not only a violation of the sanctity of the human body entrusted to man for safekeeping but also perversion of a divine gift.

II. MEDICAL MICROPIGMENTATION

Tattooing for medical and cosmetic purposes, at times referred to in medical literature as dermatography but most frequently categorized as micropigmentation, has a long history and, in recent years, has come to include a broad array of applications. Micropigmentation is now widely used in cranio-facial surgery, plastic and reconstructive procedures, cosmetic surgery, breast reconstruction and ophthalmology. It has potentially life-saving benefit in conjunction with radiation therapy, endoscopic surgery and in ultrasound-guided localization of nonpalpable breast

² Published in J. D. Eisenstein, *Ozar ha-Midrashim*, I, 247.

³ Michael Kimmelman, "Tattoo Moves From Fringes To Fashion. But Is It Art?" *New York Times*, September 15, 1995, p. C27.

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lesions. It is also of value in marking the position of breast tissue prior to chemotherapy designed to shrink the tumor so that a radical mastectomy may be avoided and the tumor excised by means of surgery.

Medical tattooing may be as old as the history of ornamental tattooing. In 1991, a German couple hiking near a glacier in the Italian Alps stumbled upon the remains of a naturally preserved body of a human male in a snowfield near a natural pass. The body was estimated to be 5300 years old. The Neolithic iceman, dubbed "Otzi" by scientists, had multiple tattoos in the form of a cross on the inside of the left knee, six straight lines, each six inches long, above the kidneys over the lumbar spine and parallel lines over the right knee as well as on both ankles. Discovery of the Neolithic iceman is evidence of tattooing that predates earlier discoveries of tattooing by more than one thousand years.⁴ Radiographic studies revealed that the deceased had suffered from osteoarthrosis in the tattooed areas. Since the tattoos correspond to acupuncture points and both procedures involve inserting needles under the skin, it has been suggested that the tattoos indicate that the "iceman" had been the subject of a form of stimulating treatment similar to acupuncture.⁵

Decorative tattooing was considered barbaric in ancient Greece. Nevertheless, in the year 150 C.E., Gallin attempted to cover leukomatous opacities of the cornea by means of a crude tattooing procedure. Apart from scattered references in classical sources, it is only in the mid-1800's that detailed documentation of medical tattooing appears in the literature. In 1835, a German physician used tattooing methods to restore natural color to the skin in cases of congenital vascular nevi. In 1850, tattoos were employed in plastic lip procedures. In the 1870's, modern methods of corneal tattooing of unsightly corneal scars were introduced. In the 1920's, tattoos were applied to simulate sparse or missing eyelashes after ocular surgery. In the wake of World War II, with the emergence of plastic surgery in the treatment of disfiguring battle wounds, tattoos were used to simulate missing lips and absent eyebrows. Later, tattoos were employed to match skin grafts to adjacent facial tissues. Still later, tattooing was employed in treating port-wine birthmarks.

More significantly, in 1958, tattooing of colonic mucosa was introduced as a novel method to mark the site of excised colorectal polyps. Tattooing of the breast was first employed in 1974 in reconstruction of the nipple and areola in burn victims and was later used in reconstructive

⁴ See K. Spindler, *The Man in the Ice* (London, 1994).

⁵ See L. Dorfer, M. Moser, F. Bahr *et al.*, "A Medical Report from the Stone Age," *Lancet*, vol. 354, no. 9183 (September, 1999), pp. 1023-1025.

breast surgery. The novel use of micropigmentation for cosmetic makeup dates to 1984 with the perfection of tattooing of eyelids to produce permanent eyeliner by Gioria Ang.⁶ Micropigmentation has been similarly employed for purposes of liplining.

Tattooing is explicitly enjoined by Jewish law as a violation of the negative commandment recorded in Leviticus 19:28, “and imprints (*ketovet ka’aka*) you shall not place upon yourselves.” Nevertheless, any such procedure is not only permitted but is mandatory if there is even a possibility that it will contribute to the preservation or prolongation of a human life.

Endoscopic tattooing designed to label a specific site in the gastrointestinal tract is a prime example of such life-saving potential. Endoscopic tattooing was originally introduced to mark lesions in the colon before surgical resection and is particularly valuable as a means of localizing tumors before laparoscopic resection. It is also effective as a means of enabling subsequent endoscopic and surgical localization of various digestive tract lesions to mark the sites of malignant polyps and, in the stomach, to mark areas of acute gastrointestinal hemorrhage, as well as in treatment of certain anomalies of the esophagus and pancreas.⁷

Micropigmentation is also extremely important in radiation oncology. Target localization to assure beam alignment requires accurate positioning during each of a series of sessions of radiotherapy. Positional tattoos in the form of small black dots are placed on the patient’s skin at selected points in order to assure reproducible and accurate positioning of the patient.⁸

It may, however, be possible to avoid tattooing in conjunction with radiation oncology by using other methods. Use of semi-permanent ink marks or temporary tattooing with pure henna in exposed areas has been proposed for extrahalakhic cosmetic and psychological reasons.⁹ If appropriate, those methods would serve to achieve the desired medical result without suspension of halakhic proscriptions. Nevertheless, if

⁶ For a detailed and valuable survey see Snejjina Vassileva and Evgeniya Hristakieva, “Medical Applications of Tattooing,” *Clinics in Dermatology*, vol. 25, no. 4 (July, 2007), pp. 367-374.

⁷ *Ibid.*, p. 372.

⁸ *Loc. cit.*

⁹ See N. Rastogi, “Use of Semi-Permanent Ink for Radiation Field Marking in Developing Countries,” *Radiology*, vol. 2, no. 2 (May, 1996), pp. 163-164 and K. Wurstbauer, F. Sedlmayer and H.D. Kogelnik, “Skin Marking in External Radiotherapy by Temporary Tattooing with Henna: Improvement of Accuracy of Patient Comfort,” *International Journal of Radiation Technology and Biological Physics*, vol. 50, no. 1 (May, 2001), pp. 179-181.

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employment of such substances for target localization may in any way compromise the efficacy of radiation therapy, tattooing is certainly permissible for reasons of *pikuah nefesh*.

Use of a charcoal suspension for localization of breast lesions may also represent a life-saving procedure. With the advent of routine screening for breast cancer there has been an increase of imaging-detected nonpalpable breast lesions. A nonsurgical core needle biopsy decreases the frequency of unnecessary surgery by making possible a histological diagnosis of imaging-detected lesions. Preoperative localization is necessary for accurate excision of a nonpalpable lesion.¹⁰

Avoidance of an extensive surgical procedure is certainly within the category of *pikuah nefesh*. However, the same result may be achieved by employing a needle and wire system that uses a colored dye as a visual marker. The drawback of the latter expedient is that a localization method of that nature must be performed on the day of the biopsy because of the risk of needle displacement and fast dye dispersion. The tattoo effect of charcoal suspension makes it possible to delay surgery for days, and even weeks.¹¹

III. INTERNAL TATTOOING

Although the primary reason for preferring tattooing over use of a colored dye as a visual marker seems to be the convenience of scheduling, nevertheless, to this writer, the procedure seems entirely permissible because it seems that the requisite tattooing is not visible on the external skin. There does not appear to be any stricture forbidding internal tattooing. Although residual charcoal marking of the skin along the incision is encountered as a complication in 3.6% of procedures, such tattooing is an unintended effect that is not a necessary concomitant of the procedure, i.e., a *davar she'eino mitkhaven*, and hence is permissible. Endoscopic tattooing, even for purposes not involving treatment of a life-threatening condition, would be justified for the same reason.

The limitation of the prohibition to external tattooing of the body is based upon the manifold references in rabbinic literature describing *ketovet ka'aka* as a procedure performed "on the flesh" (*al besaro*),¹² not

¹⁰ See Kyungran Ko, Boo-Kyung Han, Kyungn Mi Jang *et al.*, "The Value of Ultrasound-Guided Tattooing Localization of Nonpalpable Breast Lesions," *Korean Journal of Radiology*, vol. 8, no. 4 (August, 2007), pp. 295-301 .

¹¹ *Ibid.*, p.296.

¹² See, for example, Tosefta, *Makkot* 3:9 and Rambam, *Hilkhot Avodah Zarah* 12:11. See also sources cited by R. Chaim Kaniewski, *Patshegen ha-Ketav*, no. 5.

to speak of the authorities who describe the procedure as involving piercing the *or*, i.e., the skin. Thus, the eminent Israeli rabbinic authority, R. Chaim Kanievski, *Patshegen ha-Ketav*, no. 1, concludes that if a person has only “incised the abdomen under anesthesia and tattooed therein and subsequently sutured [the abdomen], it seems there is no culpability.” Nor is there any evidence of any stricture whatsoever regarding such a procedure.

IV. MICROPIGMENTATION TO CONCEAL DISFIGUREMENT

To the best of this writer’s knowledge, tattoos designed to mask disfigurement resulting from burns or lip reconstruction and the like have not been the subject of rabbinic disagreement. Even if cosmetic tattooing is regarded as impermissible, there may be reason to permit micropigmentation in situations of significant disfigurement.

In a contribution to *Kerem Shlomoh*, no. 164 (Av 5755), reprinted in *Oraita*, XVII (5756), and later in *Ve-Shev ve-Rape*, ed. by R. Raphael Evers, I, no. 45, as well as in the author’s *Teshuvot Shraga ha-Me’ir*, VIII, no. 44, R. Shraga Feivish Schneeberg of London finds reason to distinguish between cosmetic tattoos in the form of permanent makeup and the like for beautification and tattooing designed to give the appearance of natural pigmentation, e.g., concealment of scar tissue, port-stains, or simulated eyebrows. Rambam, *Hilkhot Avodah Zarah* 12:11, as well as *Semag*, *lo ta’aseh*, no. 61 and *Sefer ha-Hinnukh*, no. 253, state that the prohibition against tattooing is predicated upon the fact that, in antiquity, devotees of pagan cults indicated their adherence to a particular cult by means of distinctive tattoos.¹³ To be sure, as stated by Ritva, *Makkot* 21a, the prohibition is general in nature and is not limited to devotional body-marking. Nevertheless, Rabbi Schneeberg argues that the prohibition is limited to tattoos recognizable as altering skin pigmentation but does not extend to micropigmentation

Patshegen ha-Ketav is a monograph published in Rabbi Kanievski’s *Si’ah ha-Sadeh*, II (Bnei Brak, 5737).

¹³ A survey of devotional tattoos, tattoos as protective totems against the evil eye and power amulets in various cultures is presented by Noah Scheinfeld, “Tattoos and Religion,” *Clinics in Dermatology*, vol. 25, no. 4 (July-August, 2007), pp. 362-366. The author’s focus is upon India, Asia, the South Pacific and North Pacific rather than upon the ancient Middle East. Insofar as Jewish tradition is concerned, his credibility is challenged by his mistranslation of Exodus 13:9 as “and it shall be to you as a sign upon your hand” which he then erroneously understands as a reference to tattoos.

designed to give the appearance of natural color as is the case, for example, with regard to a tattoo whose purpose is to camouflage scar tissue. That distinction, however, is not supported by inferences from either rabbinic texts or precedents in responsa literature.¹⁴

Moreover, Rabbi Schneebalg's thesis is however subject to challenge on the grounds that its cogency lies primarily in Rambam's categorization of the prohibition against tattooing. It is indeed the case that Rambam, *Hilkhot Avodah Zarah* 12:11, regards the prohibition as designed to eradicate the devotional tattooing practiced by pagans. Rambam seemingly infers the nature of the prohibition from the opinion of R. Shimon recorded in the Mishnah, *Makkot* 21a, and from a statement of the Tosefta, *Makkot* 3:9. The Tosefta states that tattooing results in culpability if undertaken only for idolatry. R. Shimon maintains that statutory punishment is limited to tattooing the name of a pagan deity. *Bet Yosef, Yoreh De'ah* 180, quotes Rabbenu Jerucham as citing anonymous early-day authorities who ruled in accordance with the view of R. Shimon. *Minhat Hinnukh*, no. 253, is of the opinion that such indeed was the view of Rif.¹⁵ Rambam apparently inferred that, although the Sages disagreed with R. Shimon and regarded punishment to be prescribed for all tattoos, they nevertheless recognized the rationale underlying the prohibition to be eradication of pagan practices.

Accepting Rambam's analysis of the thrust of the prohibition, it is arguable that it is generating the effect, i.e., unnatural marking of the body mimicking the markings of pagan devotees, no matter how far removed the marking may be from devotional tattoos of pagans, that is to be eschewed rather than the act *per se*.¹⁶ If so, it may be the case, as Rabbi

¹⁴ R. David Rosenberg, *Kerem Shlomoh*, no. 181 (Iyar-Sivan 5757), contends that, if such a distinction is accepted, micropigmentation must begin at the margins because, if begun within the discolored or abnormal tissue, a look of normalcy is not immediately restored. This writer finds that argument to be without merit. The distinction drawn by Rabbi Schneebalg is not dependent on perception in the eye of the beholder but upon the nature of the tattoo, i.e., a tattoo designed to produce normal pigmentation in the tissue subjected to micropigmentation as distinct from a tattoo designed to "color" the skin.

¹⁵ Since Rosh, *Makkot* 3:16, utilizes the same terminology as Rif, it may be assumed that this is Rosh's position as well. Cf., however, R. Jacob Ettlinger, *Makkot* 21a, s.v. *u-ketovet*; R. Pinchos ha-Levi Horowitz, *Panim Yafot*, Leviticus 19:28; and *To'afot Re'em* in his commentary on *Sefer Yere'im*, no. 338, who dispute attribution of this view to Rif. Nevertheless, *Piskei ha-Rosh, Makkot* 3:6, explicitly rules in accordance with the view of R. Shimon. See also the biblical commentary authored by the son of Rosh, *Ba'al ha-Turim*, Leviticus 19:28.

¹⁶ See the discussion cited *infra*, footnote 87 and accompanying text, regarding the question of whether it is the act of tattooing or the generation of the tattoo that is proscribed.

Schneebalg argues, that only acts designed to yield “unnatural” pigmentation are proscribed. However, Rambam’s analysis of the prohibition was not espoused by all early-day authorities. Rashi,¹⁷ *Makkot* 21a, s.v. *ketovet ka’aka*, comments, “It is forbidden to write any script on the skin in this manner for such is the edict of Scripture.” Rashi emphasizes that a) it is the act of tattooing *per se* that is forbidden regardless of its purpose and b) the prohibition is the expression of an absolute edict for which no rationale need be sought. According to Rashi’s representation of the prohibition, there is no basis for distinguishing between tattooing for an artificial result and micropigmentation designed to mimic natural coloration.

Nevertheless, there are stronger grounds, at least according to some authorities, to sanction micropigmentation designed to correct or to conceal severe disfigurement. *Tosafot*, *Shabbat* 50b, s.v. *be-shvil za’aro*, declare that a person suffering from a condition that causes him to remain secluded because he is embarrassed to appear among people is regarded as being in a state of “pain,” for “there is no greater pain than this.” In effect, psychological distress of that magnitude is itself a malady which renders such a person a *holeh she-ein bo sakkanah*, i.e., a person afflicted with a non-life-threatening illness.

Assuming that the disfigurement is so severe as to prevent normal social intercourse and assuming also that the tattooing procedure used to conceal disfigurement is rabbinically — as opposed to biblically — prohibited, there may be grounds, according to some scholars, to permit tattooing procedures in the treatment of such a patient. In a monograph published by the London Beth Din as no. 21 in a series of such responsa and reprinted in three sections in the Shevat, Adar, and Nisan issues of *Ha-Pardes*, Dayan Leib Grosnass espoused the position that all rabbinic prohibitions are suspended in the context of medical therapy even if there is no threat to life.¹⁸ That view, however, is contrary to the position of *Teshuvot ha-Rashba ha-Meyuhasot le-ha-Ramban*, no. 127; *Teshuvot R. Akiva Eger*, no. 5, s.v. *hineh*; and R. Moshe Feinstein, *Iggerot Moshel, Orah Hayyim*, II, no. 88 and *Even ha-Ezer*, I, no. 13.¹⁹

¹⁷ The author of the commentary published on the inside margin of the final pages of *Makkot* was actually authored by Rashi’s son-in-law Rivan. See note appended to the text of Rashi, *Makkot* 19b, s.v. *reisha*.

¹⁸ For a fuller treatment of Dayan Grosnass’ responsum see this writer’s *Contemporary Halakhic Problems*, I (New York, 1983), 96-99.

¹⁹ Cf., R. Chaim Halberstam, *Teshuvot Divrei Hayyim*, II, *Yoreh De’ah*, no. 62; R. Moshe Schick, *Teshuvot Maharam Shik, Yoreh De’ah*, no. 173; R. Joseph Saul Nathanson, *Teshuvot Sho’el u-Meshiv*, I, no. 210; and R. Eliyahu Klatzkin, *Devar Eliyahu*, no. 17. For a further discussion see *Contemporary Halakhic Problems*, I, 119-123.

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In his earlier cited discussion Rabbi Schneebalg advances a closely related argument for sanctioning otherwise forbidden tattoos when the tattoo is designed to eliminate a cause of embarrassment. Rabbi Schneebalg suggests that correction of disfigurement undertaken for purposes of *kavod ha-beriyot*, i.e., considerations of human dignity, warrants suspension of rabbinic prohibitions. The Gemara, *Berakhot* 19b, establishes the principle that rabbinic edicts do not apply in situations of humiliation or acute embarrassment. In light of the position of the authorities who maintain that only tattooing of letters and/or an indelible tattoo that never dissipates is biblically forbidden, Rabbi Schneebalg regards cosmetic tattoos to be only rabbinically forbidden and hence permissible in order to eliminate embarrassment. The same point is made by R. Ezra Batzri in a brief comment included in a longer discussion of the issue published in *Tehumin*, vol. XXII (5762).

In a later issue of *Kerem Shlomoh*, no. 181 (Iyar-Sivan 5757), R. David Rosenberg of Monroe takes issue with Rabbi Schneebalg's position. His major contention is that even *hazi shi'ur*, i.e., an act involving less than the minimum quantity that constitutes the threshold for punishment, is nevertheless biblically proscribed and hence is not permitted for the sake of *kavod ha-beriyot*. R. Rosenberg regards tattooing without prior "writing" as constituting a *hazi shi'ur* and hence as biblically forbidden. Such an act was categorized as a biblically forbidden *hazi shi'ur* by R. Yerucham Fischel Perla, sometimes referred to as Mahari Perla, in his commentary on R. Sa'adya Ga'on's *Sefer ha-Mizvot, lo ta'aseh*, no. 29, s.v. *ve-ha-nireh*.

As will be discussed subsequently, many authorities deem the biblical prohibition to be applicable only if "writing" is performed on the surface of the skin and the ink or dye is subsequently embedded beneath the skin. Mahari Perla declares, *inter alia*, that biblical culpability – as distinct from a biblical transgression – results only from writing on the surface of the skin and subsequently implanting the ink or pigment beneath the surface. Mahari Perla categorizes implantation of pigment without prior writing on skin as *hazi shi'ur*. But since *hazi shi'ur*, although it does not entail the prescribed punishment, is nevertheless biblically forbidden, contends Rabbi Rosenberg, it is forbidden even for purposes of *kavod ha-beriyot*.

It should, however, be noted that *Minhat Hinnukh*, no. 110, maintains that the concept of *hazi shi'ur* applies solely to matters of quantity but not to one of a series of acts which only in the aggregate constitute a transgression.²⁰

²⁰ Assuming that *hazi shi'ur* can apply to matters other than quantity, the issue regarding *ketovet ka'aka* is more complex with the result that pigmentation alone does not rise to the level of *hazi shi'ur*. Culpability for transporting an object through

Moreover, *Tosafot*, *Gittin* 20b, s.v. *be-ketovet ka'aka*, and *Bet Shmu'el*, *Even ha-Ezer* 124:16, explicitly categorize etching the skin without subsequent pigmentation as rabbinically,²¹ rather than biblically, forbidden.

In point of fact, although in his *Shraga ha-Me'ir*, VIII, no. 45, Rabbi Schneebalg finds it necessary to reject the position of Mahari Perla regarding *hazi shi'ur*, his original responsum categorized micropigmentation as rabbinically forbidden on other grounds entirely, *viz.*, because it does not involve tattooing letters and because it is not really permanent. Thus, Rabbi Rosenberg's objection is a *non sequitor*.

Unrelated to the prohibition of tattooing, Rabbi Rosenberg forbids micropigmentation for males. R. Mordecai Winkler, *Teshuvot Levushei Mordekhai*, *Mahadura Kamma*, *Yoreh De'ah*, no. 11, was asked whether a man might avail himself of cosmetics to cover "red blotches" on his face. *Levushei Mordekhai* responded that enhancement of the skin by "coloring" undertaken for beautification is forbidden by virtue of the

a public thoroughfare requires carrying it a minimum distance of four cubits. Transporting the object less than that distance is not prohibited as constituting a *hazi shi'ur*. Among the explanations advanced is that of *Pri Megadim* in the concluding section of his introduction to *Hilkhot Shabbat*. *Pri Megadim* explains that the prohibited category of labor is defined as transporting an object a distance of four cubits. Carrying the object a distance of two cubits is not "half a quantity" but "half a labor," i.e., no act of labor at all, and hence is entirely permissible. The prohibition against slaughtering a mother animal and her young on the same day is an obvious paradigm. There is no culpability unless both animals are slaughtered on the same day, but slaying the mother, although a necessary condition of the subsequent transgression, is not a *hazi shi'ur*, else no mother animal might ever be licitly slaughtered. It is only slaughtering the second of the two animals that is forbidden; slaughtering the first is itself entirely innocuous.

Patshegen ha-Ketav, no. 3, expresses doubt with regard to the nature of the act forbidden by the prohibition against *ketovet ka'aka*. Assuming that there is no culpability unless the dual acts of piercing the skin and pigmenting the scratch are performed: Does the Torah forbid each of those acts separately but without culpability in situations in which only one act is carried out? Or does the Torah forbid only the second of those acts with the result that the first act is required solely as a condition precedent for violation of the transgression? If the first analysis is correct, there can be culpability only if those acts are performed intentionally and upon prior admonition. If the second is correct, only the second act need be performed willfully and with prior admonition. Accordingly, it seems to this writer that the possibility of *hazi shi'ur* can be entertained only if each of the acts is regarded as individually proscribed but not if the first is merely a condition precedent to rendering the second act a transgression.

²¹ Cf., however, *Patshegen ha-Ketav*, no.18, who maintains that only permanent etching of the skin without pigmentation is rabbinically forbidden according to *Tosafot* but that even indelible "writing" without embedding the ink or dye is entirely permissible.

commandment “a male shall not put on a woman’s garment” (Deuteronomy 22:5). Use of cosmetics and the like designed to enhance physical attractiveness is regarded as a distinctive feminine practice.

There is, however, a significant difference between cosmetic enhancement of appearance and removal of a blemish or disfigurement. *Levushei Mordekhai* prohibits only “beautification” or enhancement of normal appearance. Quite arguably, removal of a blemish in order to create a normal appearance is not a form of “beautification.” For that reason, R. Menasheh Klein, *Mishneh Halakhot*, IV, nos. 246 and 247, permits both men and women to undergo cosmetic surgery to remove talmudically identified “blemishes.”²² R. Ya’akov Breisch, *Teshuvot Helkat Ya’akov*, III, no. 11, sanctions such procedures for both men²³ and women who shun normal social intercourse as a result of a deformity or other disfigurement.²⁴ R. Eliyahu Bakshi-Doron, *Teshuvot Binyan Av*, I, no. 50, sec. 3, and R. David Halevi, *Teshuvot Aseh Lekha Rav*, IV, no. 65, also sanction such procedures under similar circumstances.

²² The issue of plastic surgery for purely cosmetic purposes is discussed in this writer’s *Contemporary Halakhic Problems*, I (New York, 1981), 119-123. In addition to *Helkat Ya’akov* and *Mishnah Halakhot*, surgery for cosmetic purposes is forbidden by R. Eliezer Waldenberg, *Ziz Eli’ezer*, XI, no. 41, secs. 8-9, and R. Shmu’el ha-Levi Wosznier, *Teshuvot Shevet ha-Levi*, VI, no. 198, as a forbidden form of wounding. See also the argument advanced by R. Menachem Panet, *Teshuvot Sha’arei Zedek, Yoreh De’ah*, no. 143. See also R. Immanuel Jakobovits, *No’am*, VI (5723), 276. *Iggerot Moshesh, Hoshen Mishpat*, II, no. 66, sanctions the practice on the grounds that, as recorded by Rambam, *Hilkhot Hovel u-Mazik* 5:1, “wounding” is prohibited only if undertaken “*derekh nizayon*” or “*derekh bizayon*,” i.e., “in the manner of vanquishing,” or “in the manner of humiliating,” depending upon which manuscript version is accepted. Procedures undertaken to improve personal appearance, argues *Iggerot Moshesh*, do not fall into the category of *derekh nizayon* or *derekh bizayon*. That inference from the terminology employed by Rambam was drawn much earlier by R. Judah Assad, *Teshuvot Mahari Assad, Yoreh De’ah*, no. 249 and is cited by R. Yitzchak Ya’akov Weisz, *Teshuvot Minhat Yizhak*, I, no. 36, sec. 4. Those who disagree with *Iggerot Moshesh* and ban cosmetic surgery presumably maintain that the *derekh nizayon* or *derekh bizayon* is determined objectively in the context in which wounding occurs and excludes only procedures such as self-defense or excision of diseased tissue that are not determined by subjective intent. See this writer’s article in *Bet Yizhak*, XL (5768), 216.

“Wounding” for purely cosmetic purposes is also sanctioned by R. Ovadiah Yosef, *Teshuvot Yabi’a Omer*, VIII, *Hoshen Mishpat*, no. 12. See also *Patsbegen ha-Ketav*, no. 14. Cf., R. David Halevi, *Aseh Lekha Rav*, IV, no. 65.

²³ See also *Yabia Omer*, VIII, *Hoshen Mishpat*, no. 12, sec. 5, who also sanctions cosmetic surgery for males in such circumstances.

²⁴ See the discussion cited *infra*, footnote 87 and accompanying text, regarding the question of whether it is the act of tattooing or the generation of the tattoo that is proscribed.

V. COSMETIC TATTOOING

R. Nathan Gestetner, *Teshuvot le-Horot Natan*, X, no. 64 and R. Uriel Eisenthal, *Megillat Sefer*, no. 16, both forbid tattooing that is entirely cosmetic in nature. Two short and rather cryptic statements by R. Samuel ha-Levi Wozner and R. Chaim Kanievski expressing disfavor with regard to cosmetic tattooing appear in *Or Yisra'el*, Nisan 5759. However, in contributions to the same issue of *Or Yisra'el*, R. Yechiel Tauber, a member of the *bet din* of the Machon le-Hora'ah, located in Monsey, New York, and R. Matisyahu Deutsch of Jerusalem, without reaching a definitive conclusion, advance considerations for permitting cosmetic tattooing, but only if the micropigmentation to be performed is not of a type that is biblically proscribed.²⁵ Permissibility of micropigmentation, even for the earlier discussed purpose of masking disfigurement, is predicated upon the consideration that the procedure involves what would otherwise be rabbinic, rather than a biblical, infraction. There are, however, significant controversies with regard to the elements that serve to delineate the biblical prohibition.²⁶ Accordingly, the micropigmentation may be reduced to a rabbinic transgression because it differs from biblically forbidden tattooing in one or more ways. Each of the possible elements of the biblical prohibition requires examination.

1. Non-Cognitive Markings

As cited earlier, Rambam, *Hilkhot Avodah Zarah* 12:11, states that tattooing is prohibited because “it was the wont of idolaters to inscribe themselves to idolatry, to wit, that [the bearer of the tattoo] is a slave sold and registered to its worship.”²⁷ Accordingly, a number of authorities, including R. Jacob Ettlinger, *Arukh la-Ner*, *Makkot* 21a, understand

²⁵ Permissive views are also advanced by R. Chaim Amselm and R. David Avitan in contributions to *Or Torah*, Av 5756 and by R. Jacob Herman, *Ha-Emek*, no. 3 (Nisan 5760).

²⁶ A number of the rabbinic writers report that so called “permanent makeup” is designed to endure only for a maximum period of between two and five years. That information is apparently derived from commercial promotional literature. See Galaxy Beauty Salon, http://www.galaxybb.sk/galaxy_en (last visited Dec. 31, 2009). Rashi, Leviticus 19:28, *Gittin* 20b; Ritva and Rivan, *Makkot* 21a; *Sefer ha-Hinnukh*, no. 253; *Kol Bo*, no. 97; and Rabbenu Hillel, *Torat Kohanim*, *Parashat Kedoshim* 6:10, maintain that there is a biblical prohibition only if the tattoo remains “forever.” See *Minhat Hinnukh*, no. 253. *Nemukey Yosef* and Rabbenu Yonatan, *Makkot* 21a, posit a biblical prohibition even if the pigmentation endures only for “a lengthy period of time.” R. Chaim Kanievski, *Patshegen ha-Ketav*, no. 6, declares that subcutaneous tattooing that lasts only a shorter period of time is rabbinically proscribed.

²⁷ See Tosefta, *Makkot* 3:9, which speaks of tattooing on behalf of idolatry.

Rambam as ruling that the biblical prohibition is attendant only upon tattooing a legend, i.e., letters similar to a dedicatory inscription, to the service of an idol. Similarly, *Sefer ha-Hinnukh*, no. 253, limits the biblical punishment to the tattooing of “at least one letter.”

Nevertheless, R. Jonah Landsdorfer, *Teshuvot Me'il Zedakah*, no. 31, notes that Rambam²⁸ and other earlier authorities²⁹ fail to indicate explicitly that only the tattooing of letters is proscribed. Rather, Rambam defines the proscribed act as referring to a person who “scratches his skin or fills the site of the scratches with ink, dye or other colors that leave an imprint,” seemingly indicating that any type of pigmentation is prohibited. Similarly, *Minhat Hinnukh*, no. 253, asserts that Rambam regards all tattoos as biblically proscribed. However, *Me'il Zedakah* further notes that Rambam, *Hilkhot Sanhedrin* 19:4, includes “a person who writes *ketovet ka'aka*” in his enumeration of the negative commandments punished by lashing.³⁰ In employing the term “writes” Rambam seemingly emphasizes that the prohibition is limited to tattooing letters.³¹

At the same time, it would appear that, according to Rashi, only “writing,” i.e., tattooing letters, is biblically proscribed.³² Nevertheless, in this case as well, *Me'il Zedakah* suggests that the phrase employed by Rashi need not be understood as connoting only recognizable writing as opposed to other markings.³³

Putting aside the correct interpretation of the position of Rambam and Rashi, many early-day authorities are unequivocal in their view that

²⁸ See *Yad ha-Ketanah*, *lo ta'aseh*, no. 57, *Minhat Ani*, sec. 87, who understands Rambam as banning tattoos not only in the “form of letters and words” but also tattoos of a complete picture or form. Nevertheless, *Yad ha-Ketanah* expresses doubt with regard to whether a mere pigmented “scratch” is biblically forbidden.

²⁹ See the terminology employed by *Semag*, no. 72 and R. Aaron of Lunel, *Orhot Hayyim*, II, no. 22, sec. 4.

³⁰ *Brit Mosheh*, in his commentary on *Semag*, *lo ta'aseh*, no. 61, sec. 6, points to Rambam's listing of the commandments in his introduction to the *Mishneh Torah* in which he defines the commandment as “Not to *write* (emphasis added) on the body as [is the wont of] idolators.”

³¹ Cf., *Patsbegen ha-Ketav*, no. 8, who dismisses that inference.

³² See also R. Moshe Schick, *Maharam Shik al Taryag Mizvot*, no. 254. The notion of a two-letter minimum is refuted by the multiple arguments advanced by R. Leib Ettlinger, *Shomer Zion ha-Ne'eman*, no. 97 (14 Nissan 5610).

³³ Cf., *Yad ha-Ketanah*, *Hilkhot Avodah Zarah*, *lo ta'aseh*, no. 57, *Minhat Ani*, sec. 87, who expresses the opinion that both Rambam and Rashi regard tattooing pictures or forms as certainly forbidden by biblical law but expresses doubt with regard to tattoos in the form of a “mere scratch.” R. Joseph Saul Nathanson, *Teshuvot Sho'el u-Meshiv*, *Mahadura Tinyana*, I, no. 49, explicitly excludes pictures from the biblical prohibition.

the biblical prohibition is limited to tattooing letters. R. Chaim Kanievski, *Patshegen ha-Ketav*, no. 8, cites a number of early-day authorities, including *Piskei ha-Tosafot*, *Makkot*, sec. 32; R. Ovadiah of Bartenura, *Makkot* 3:6; *Semak*, no. 72; and Rabbenu Yonatan, *Makkot* 21a, who limit the biblical prohibition to tattooing letters. Despite the statement of *Sefer ha-Hinnukh* declaring that tattooing a single letter is biblically forbidden, R. Jacob Alfandri, *Teshuvot Muzal me-Esh*, I, no. 51, expresses doubt with regard to whether tattooing even a single letter results in culpability or whether culpability is incurred only by tattooing a minimum of two letters as is the case with regard to writing on *Shabbat*. *To'afot Re'em*, in his commentary on *Sefer Yere'im*, no. 338, cites R. Noah Chaim Zevi Berlin, *Ma'ayan ha-Hokhmah* (Rödelheim, 5564), p.57 and R. Shlomoh Ganzfried, *Lehem ve-Simlah*, as assuming that the minimum is two letters. That view is endorsed by *Teshuvot Sho'el u-Meshiv*, *Mahadura Tinyana*, I, no. 49.³⁴ R. Chaim Joseph David Azulai³⁵ and *Leket Eliyahu* are cited as declaring that even a single letter is biblically forbidden.

R. Isaac of Corbeil, *Semak*, no. 72: *Torat Hayyim*, *Avodah Zarah*, 29a; R. Aaron of Lunel, *Orhot Hayyim*, II, no. 24, sec. 4 and *Korban Aharon*, commentary on *Torat Kohanim*, *Parashat Kedoshim* 6:10, declare that the biblical prohibition is limited to tattooing letters. *Targum Yonatan*, Leviticus 19:28; *Tiferet Yisra'el*, *Makkot* 3:48; *Mishnat Hakhmamim* no. 57, sec. 6; and *Yad ha-Ketanah*, *Hilkhot Avodah Zarah*, *lo ta'aseh*, no. 57, *Minhat Ani*, sec. 87, assert that, although the prohibition is not limited to tattooing letters but includes also tattooing of pictures or recognizable representations.³⁶ That certainly seems to be the opinion of *Targum Yonatan*. Both Rash me-Shantz and Ra'avad, in their respective commentaries on *Torat Kohanim*, *Parashat Kedoshim*, 6:10, indicate that tattooing any indelible mark is biblically proscribed. Rashi, or more accurately, Rivan³⁷ and Ritva, in their respective commentaries on *Makkot* 21a, indicate that all tattoos are biblically forbidden. That is

³⁴ Despite the emphatic insistence of some of the latter-day authorities cited, R. Leib Ettlinger, *Shomer Zion ha-Ne'eman*, no. 97 (14 Nisan 5610), advances multiple arguments refuting the notion of a two-letter minimum.

³⁵ See *Birkei Yosef*, *Shiyurei Berakhah*, *Yoreh De'ah* 180:1 and *Mahazik Berakhah*, 340:3.

³⁶ Micropigmentation of permanent eyeliner and the like certainly does not seem to result in what may be termed a picture or representation (*zurah*). Nevertheless, R. Uriel Eisenthal, *Megillat Sefer*, no. 17, suggests that a tattoo following the contour of the eyelid constitutes a *zurah*.

³⁷ See *supra*, note 17.

also the position of *Minhat Hinnukh*, no. 253. Apparently all authorities are in agreement that any indelible mark is forbidden at least by virtue of rabbinic decree.³⁸

2. *Embedding without Prior Writing*

Shakh, Yoreh De'ah 180:1, following *Bah*, rules that tattooing is biblically prohibited regardless of whether the pigment is first placed on the surfaces of the skin and then embedded beneath the skin or whether the surface of the skin is first broken and the pigment then applied within the scratch. Despite *Shakh's* understanding of Rambam and *Shulhan Arukh, Mishnat Hakhamim*, no. 57, sec. 1, declares that, according to Rambam and *Semak*, a biblical infraction occurs only if the surface is scratched first, as indeed, despite *Shakh's* understanding of *Shulhan Arukh*,³⁹ would indeed appear from Rambam's formulation of the prohibition as well as from *Shulhan Arukh's* adoption of Rambam's language.⁴⁰ *Mishnat Hakhamim*, no. 57, cites Rabbenu Nissim (presumably the reference is to *Nemukei Yosef*), *Makkot* 21a and Maharshal, in his commentary on *Semag, lo ta'aseh*, no. 61,⁴¹ in support of his understanding of Rambam.

Rashi, on the other hand, seems to indicate that writing must first occur on the surface of the skin.⁴² That is also the opinion of *Piskei*

³⁸ Cf., *Mishnat Hakhamim* cited *infra*, note 48.

³⁹ *Bah* and *Shakh*, however, apparently maintain that Rambam regards the order as irrelevant. That position is apparently based upon the fact that the *Tur, Yoreh De'ah* 180, quotes both Rambam and the contradictory language of Rashi. See also *Minhat Hinnukh*, no. 253 and Mahari Perla, *Sefer ha-Mizvot le-R. Sa'adya Ga'on, lo ta'aseh*, no. 30.

⁴⁰ This is also the position of Ra'avad and Rash me-Shantz, *Torat Kohanim, Parashat Kedoshim* 6:10; *Nemukei Yosef*, Rabbenu Yonatan and Me'iri, *Makkot* 21a; *Piskei ha-Tosafot, Makkot*, sec. 32; Ralbag, Leviticus 19:28; *Piskei ha-Rosh, Makkot* 3:6; *Semag, lo ta'aseh*, no. 61; *Semak*, no. 72; R. Ovadiah of Bartenura, *Makkot* 3:6, Rabbenu Jerucham, *Helek Adam, netiv* 17, sec. 5 (Cf., however, *Patshegen ha-Ketav*, no. 2, s.v. *u-betargum*); *Kol Bo*, no. 97; as well as of *Sefer ha-Hinnukh*, no. 253 and *Tosafot ha-Rosh, Gittin* 20b. See also *Patshegen ha-Ketav*, no. 2.

⁴¹ See also *Brit Mosheh* and *Dina de-Haya* in their respective commentaries on *Semag, lo ta'aseh*, no. 61.

⁴² A third view is advanced by Rabbenu Hillel, *Torat Kohanim, Parashat Kedoshim* 6:10. Rabbenu Hillel defines the biblical *ketovet ka'aka* as "first inscribing the name of the pagan deity on his skin to write the name of the pagan deity on the skin and then stabbing with a needle at the site and then pouring ink on top and afterwards the imprint will never leave [the site]." Rabbenu Hillel defines *ketovet ka'aka* as involving three acts rather than two, *viz.*, marking, laceration of the skin and then pigmentation.

ha-Tosafot, *Gittin* sec. 73.⁴³ However, the comments of Ritva, *Makkot* 21a,⁴⁴ seem to reflect the view of *Bah* and *Shakh*.⁴⁵

The issue may well hinge upon the proper definition of the words employed in the biblical formulation of the prohibition. The biblical verse in which the prohibition is rooted is “and you shall not place *ketovet ka’aka* upon yourselves” (Leviticus 19:28). Rashi, in his commentary on that verse, defines “*ketovet*” quite literally as “writing” and “*ka’aka*” as “embedded.”⁴⁶ Rambam, *Hilkhot Avodat Kohavim* 12:11, apparently understands the word “*ketovet*” as referring to the act of scratching or piercing the surface of the skin and “*ka’aka*” as a reference to the ink or dye used for pigmentation.⁴⁷ Although, as shown earlier, Semak misunderstood Rambam as limiting the biblical prohibition to tattooing letters, it might appear that, according to Rambam’s understanding of the biblical nomenclature, any indelible imprint embedded beneath the skin constitutes a biblical infraction. Indeed, *Minhat Hinnukh*, no. 253, remarks that Rambam maintains that even a tattoo in the nature of a “mere scratch” is biblically forbidden. *Patsbegen ha-Ketav*, no. 8, understands *Minhat Hinnukh*’s comment as connoting any pigmentation, including one lacking any recognizable representation, shape or form.

Based upon *Tosafot*, *Gittin* 20b, s.v. *ketovet ka’aka*, most authorities, including *Bet Shmuel*, *Even ha-Ezer* 124:16 and *Minhat Hinnukh*, *loc. cit.*, assert that indelible writing on the surface of the skin or carving the

⁴³ This is apparently also the view of *Targum Yonatan*, Leviticus 19:28. See *Patsbegen ha-Ketav*, no. 2, s.v. *u-betargum*.

⁴⁴ See *Brit Mosheh*, *lo ta’aseh*, no. 61, sec. 4. Cf., however, *Patsbegen ha-Ketav*, no. 2, s.v. *akhen*.

⁴⁵ The position of *Shakh* is accepted by *Yad ha-Ketanah*, *Hilkhot Avodah Zarah*, *lo ta’aseh* 57 and R. Shlomoh Ganzfried, *Kizur Shulhan Arukh* 169:1. *Brit Mosheh*, *lo ta’aseh*, no. 61, sec. 3, argues that this is also the view of *Bet Shmu’el*, *Even ha-Ezer*, 124:16.

⁴⁶ See also R. Abraham ibn Ezra, *Commentary on the Bible*, Leviticus 19:28; *Nemukei Yosef* and Ritva, *Makkot* 21a; *Piskei ha-Tosafot*, *Makkot*, sec. 32; *Piskei ha-Rosh*, *Makkot*, sec. 3:6; R. Ovadiah of Bartanura, *Makkot* 3:6; Ra’avad and Rash me-Shantz, *Torat Kohanim*, *Parashat Kedoshim* 6:10.

Brit Mosheh, *lo ta’aseh*, no. 61, sec. 3, asserts that Rashi fully recognized that tattooing is usually performed by first piercing the skin and then introducing the pigment and that such was the idolatrous practice of pagans in antiquity. Nevertheless, a close reading of the biblical verse led him to conclude that the biblical prohibition defines *ketovet ka’aka* as “writing” followed by “embedding.” That, in turn, led Rashi (or Rivan), *Makkot* 21a, to conclude that the prohibition represents a divine edict unrelated to pagan practices.

⁴⁷ See also *Semag*, *lo ta’aseh*, no. 61; *Semak*, no. 72; Rabbenu Jerucham, *Helek Adam*, *netiv* 17, sec. 5; *To’afot Re’em* on *Sefer Yere’im*, no. 338; and Malbim, Leviticus 19:28. Cf., *Sefer ha-Hinnukh*, no. 253 and *Minhat Hinnukh*, *ad locum*. See also *Patsbegen ha-Ketav*, no. 1.

skin without pigmentation are each rabbinically forbidden.⁴⁸ R. Leib Ettlinger, a brother of R. Jacob Ettlinger, *Shomer Zion ha-Ne'eman*, no. 97 (14 Nisan 5710), states that branding is forbidden for that reason.⁴⁹ However, *Bet Yosef*, *Yoreh De'ah* 180, understands *Tosafot's* comment as reflecting only the view of the Amora'im recorded in *Makkot* 21a, who declare that ashes may not be placed on a wound⁵⁰ precisely because both laceration and pigmentation are each individually rabbinically proscribed, but each alone is entirely permissible according to Rav Ashi who permits application of ashes to a wound.⁵¹

R. Leib Ettlinger expresses doubt with regard to whether performing the two acts, i.e., "laceration" and "embedding," simultaneously constitutes a biblical transgression.⁵² Thus, if a biblical transgression is incurred only if the tattoo is the product of two separate and distinct acts, use of a tattoo needle coated with pigment may involve only a rabbinic infraction.

However, conventional methods of tattooing, which involve use of a hollow needle containing pigment in a manner such that the skin is first

⁴⁸ Cf., however, *Mishnat Hakhamim*, no. 57, sec. 1, who regards either one of those acts alone to be entirely permissible according to Rambam, and *To'afot Re'em* on *Sefer Yere'im*, no. 338, who suggests that such is the opinion of *Sefer Yere'im*. *Minbat Hinnukh*, no. 253, disputes *Mishnat Hakhamim's* understanding of Rambam. Cf. also, *Patshegen ha-Ketav*, no. 18. *Patshegen ha-Ketav* further cites *Tosafot ha-Rosh*, *Gittin* 20a, who apparently maintains that, although the act of implanting pigment in an existing scratch is rabbinically prohibited, carving the skin is not prohibited by that edict. *Patshegen ha-Ketav* opines that such is also the opinion of Me'iri, *ad locum*.

⁴⁹ R. Leib Ettlinger evidently intends to point out that the biblical transgression is incurred only if the tattoo is the product of two separate and distinct acts. R. Leib Ettlinger, states that branding with a metal implement is rabbinically forbidden. He then adds cryptically that in his opinion, even if the brand is subsequently filled with pigment, no biblical transgression is incurred "since no 'seritah' (laceration) is made in this [process]." This writer fails to understand a) why branding does not constitute *seritah* and b) if, indeed, branding is not a form of *seritah*, what the basis for branding without pigmentation might be.

⁵⁰ See *infra*, notes 55-62 and accompanying texts.

⁵¹ Cf., *Minbat Hinnukh*, *loc. cit.* *Patshegen ha-Ketav* expresses reservation with regard to whether *Tosafot* accept the existence of a normative rabbinic prohibition. He further asserts that if such a prohibition exists, it is limited to applying pigment to an existing puncture of the skin but does not apply to gouging letters on the skin. See *Darkei Teshuvah* 180:1; *Patshegen ha-Ketav*, no. 2; *Teshuvot le-Horot Natan*, X, *Yoreh De'ah*, no. 64; and R. Mordecai Gross, *Kerem Shlomoh*, 180:1, note 4.

⁵² See also R. Jacob Ettlinger, *Arukh la-Ner*, *Makkot* 21a, s.v. *be-matnitán*. This issue is also discussed by R. Abraham Aaron Yudelewitz, *Teshuvot Bet Av*, *Hamisha'y*, no. 230, sec. 3. For a general discussion of the question in other areas of Halakhah see R. Joseph Engel, *Ziyyunim la-Torah*, *klal* 35.

pierced and pigment is then injected beneath the skin, would appear to be distinguishable from the method described by R. Leib Ettliger by virtue of the fact that the acts are not truly simultaneous. Nevertheless, in a contribution to the Nisan 5759 issue of *Or Yisra'el*, Rabbi Tauber questions whether a needle prick – and hence even a series of needle pricks – is subsumed within the meaning of *seritah*, or laceration. If not, the “writing” occurs without antecedent laceration with the result that tattooing carried out in this manner may be forbidden only rabbinically.

3. *Tattooing for a Utilitarian Purpose*

An entirely different argument is alluded to by Rabbi Tauber but is more fully elucidated by R. Matisyahu Deutsch in a contribution to the same issue of *Or Yisra'el*. The Tosefta, *Makkot* 3:9, declares that no culpability is incurred in tattooing a slave in order to prevent him from escaping. That rule is incorporated in *Shulhan Arukh*, *Yoreh De'ah* 180:4, but is omitted in the codifications of Rambam, *Semag* and Rosh. In a gloss on *Shulhan Arukh*, *ad locum*, R. Akiva Eger cites *Kasa de-Harsana*, commentary on *Teshuvot Besamim Rosh*, no. 324, in an apparent expression of astonishment at *Shulhan Arukh's* ruling. *Kasa de-Harsana* declares that the statement of the Tosefta reflects the position of R. Shimon, *Makkot* 21a, who maintains that only tattooing of the name of a pagan deity is forbidden⁵³ and hence tattooing other identifying marks on a slave is permissible.⁵⁴ The normative rule, however, is in accordance with the view of the majority who declared all tattoos to be forbidden.

⁵³ See also *Teshuvot Bet Av*, *Hamisha'i*, no. 230, note appended to sec. 4. Cf., *Hasdei David* (Jerusalem, 5754), *Makkot* 3:9.

⁵⁴ *Besamim Rosh's* comment is somewhat problematic since Rivan, *Makkot* 21a, states that R. Shimon maintains that one incurs statutory punishment only for tattooing the name of a pagan deity but agrees that all tattoos are forbidden. Cf., however, Ritva, *Makkot* 21a.

Teshuvot Zera Emet, III, no. 111, also understands the ruling of the Tosefta to be in accordance with R. Shimon but takes note of the fact that R. Shimon's position is limited to culpability. *Zera Emet* notes that the Tosefta states only that one who tattoos a slave so that he will not be able to escape “is not culpable” and comments that, according to R. Shimon, tattooing a slave to prevent his escape is not a culpable act but is nevertheless forbidden. *Shulhan Arukh* similarly employs the phrase “is not culpable” and Rema adds a gloss stating that he nevertheless regards the act as impermissible.

The case brought to the attention of *Zera Emet* involved an infant *mamzer* who was being taken to a distant locale. *Zera Emet* permitted directing a non-Jew to mark the infant with a tattoo indicating his status.

For a novel analysis of the controversy between the Sages and R. Shimon see *Patsbehen ha-Ketav*, no. 9.

TRADITION

There is an even more basic problem with regard to a type of pigmentation discussed by the Gemara, *Makkot* 21a. An understanding of that discussion may illuminate *Shulhan Arukh's* ruling with regard to tattooing a slave and may be relevant to the issue of cosmetic micropigmentation.

Apparently, in antiquity, some type of ash was used therapeutically in the treatment of an open wound. The Gemara cites one opinion to the effect that it is forbidden to employ ashes for that purpose because the ashes become permanently embedded in the wound and “appear to be a tattoo.” The Gemara concludes with the statement of Rav Ashi who declares that “wherever there is a wound, the wound signifies [the nature of the tattoo].” That statement is codified by *Shulhan Arukh, Yoreh De'ah* 183:3.⁵⁵

Various rabbinic scholars have endeavored to explain why use of such ashes, at worst, merely “appears” to be tattooing but is not deemed to be an actual biblically prohibited tattoo:

- (1) The author of *Sefer ha-Kovez*, in his commentary on *Mishneh Torah, Hilkhot Avodat Kokhavim* 12:11, as well as *Minhat Hinnukh*, no. 253, resolve the problem by advancing the theory that use of ashes in treating a wound is permitted because permanent pigmentation is neither an intended nor a necessary result of therapeutic application of ashes. Such use would nevertheless have been banned by reason of *ma'ariv ayin*, i.e., bystanders' erroneous perception of transgression, but for the consideration that the presence of a wound obviates the likelihood of such erroneous perception.
- (2) *Minhat Hinnukh, loc. cit.*, cites Rashi, who describes the procedure as involving the placement of ashes upon the surface of the wound with resultant diffusion causing pigmentation, which takes place over a period of time. *Minhat Hinnukh* suggests that such a procedure entails no biblical prohibition according to the authorities who define the prohibition as denoting lacerating the skin and then introducing a pigment into the wound. The ashes, however, are placed on the surface of the wound and only later migrate into the surrounding tissue. It may, however, be countered that placing ashes within an open wound is tantamount to introducing the pigment under the skin. By the same token,

⁵⁵ Cf., however, *Piskei ha-Tosafot, Gittin*, sec. 73, who forbids use of ashes in treating a wound. However, that ruling is contradicted by *Piskei ha-Tosafot, Makkot*, sec. 33.

contrary to *Minbat Hinnukh*'s assumption, there may be no biblical prohibition according to Rashi who limits the biblical prohibition to writing directly on the unbroken surface of the skin and subsequently embedding the pigment.⁵⁶ Since the skin has been broken by the wound it is not possible to write on the surface and hence, for Rashi, there should be no biblical transgression.

- (3) As noted by *Minbat Hinnukh*, *loc. cit.*, most authorities limit the biblical prohibition to tattooing letters or a figure. Other tattoos are rabbinically forbidden. Presumably, a tattoo following the margins of a wound would have no recognizable representative shape and hence, but for its obvious therapeutic purpose, would be only rabbinically forbidden. *Teshuvot Me'il Zedakah*, no. 31, however, suggests that ashes may be applied to a wound even if the result is pigmentation in the form of discernible letters.
- (4) *Netivot Olam*, in his commentary on *Semag, lo ta'aseh*, no. 61, explains that the biblical prohibition applies, according to Rambam, only if a person performs both an act of laceration and a separate act of introducing a pigment subcutaneously or, according to Rashi, if he first applies pigment to the surface of the body and then embeds the pigment under the skin. Applying pigment without performing any other act constitutes a rabbinic prohibition promulgated because of a concern that the observer who sees only the resultant tattoo might assume that the tattoo came about in a manner biblically proscribed. However, in the case of a wound, what actually transpired is readily evident. Since the onlooker has no cause to assume that transgression of a biblical commandment occurred, the Sages did not forbid use of ashes in treating the wound.⁵⁷
- (5) There may, however, be a more fundamental resolution of the problem. It may be argued that, the Sages, whose ruling is recorded in the Mishnah, *Makkot* 21a, although they disagree with R. Shimon who maintains that the prohibition is limited to tattooing the name of a pagan deity, nevertheless concur in the view that the prohibition is limited to tattoos that might mistakenly be regarded as associated in some manner with a pagan cult.⁵⁸

⁵⁶ Cf., R. Leib Ettlinger, *Shomer Zion ha-Ne'eman*, no. 96.

⁵⁷ See also *Patshegen ha-Ketav*, no. 3 and *Teshuvot le-Horot Natan*, X, *Yoreh De'ah*, no. 64.

⁵⁸ See *Mizpeh Shmu'el*, commentary on the Tosefta, *Makkot* 3:9; *Get Pashut, Even ha-Ezer* 124:30; *Teshuvot Muzal me-Esh*, index; *Minbat Hinnukh*, no. 253; and *Hiddushei Hatam Sofer, Gittin* 20b. Cf., *Patshegen ha-Ketav* nos. 3 and 16.

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If so, Rambam's earlier-cited statement in the *Mishneh Torah* concerning the rationale underlying the prohibition – which seems to be incongruous since in the *Mishneh Torah* Rambam does not generally explore the reasons why certain acts are forbidden – is intended to serve the practical halakhic purpose of limiting the scope of the prohibition to exclude tattoos that clearly have no relation to idolatrous practices. On this analysis, pigmentation designed for an obvious therapeutic benefit is not at all biblically proscribed. Nevertheless, such a tattoo would, under certain circumstances, be rabbinically forbidden because the onlooker has no inkling of the therapeutic intention that motivated the procedure. In countering that consideration with regard to the practice of placing ashes upon an open wound, the Gemara declares that the presence of a wound serves to demonstrate the innocuous and even laudatory nature of the tattoo with the result that there can be no confusion on the part of the onlooker. This explanation was advanced by R. Moshe Schick, *Maharam Shik al Taryag Mizvot*, no. 254, and is generally attributed to him.⁵⁹ But, as cited by Rabbi Deutsch, it was succinctly formulated much earlier by the fourteenth-century authority, Rabbenu Jerucham, *Helek Adam*, *netiv* 17, sec. 5. It seems to this writer that the comment of *Shakh*, *Yoreh Deah* 182:6, to the effect that the presence of a wound testifies to a non-pagan motive for the tattoo, supports this thesis.

It may be argued that tattooing a slave is similar to therapeutic tattooing in that it is undertaken for a pragmatic, non-idolatrous purpose and hence is similarly permitted by *Shulhan Arukh*. In both cases, the non-idolatrous function of the mark is self-evident. However, *Bi'ur ha-Gra* 180:3, questions *Shulhan Arukh's* ruling on the grounds that, unlike the case with regard to treating a wound by applying ashes, the onlooker here is in no position to ascertain the motive prompting the tattooing. Accordingly, *Bi'ur ha-Gra* asserts that tattooing a slave must be regarded as rabbinically forbidden. Nevertheless, it may be countered that *Bi'ur ha-Gra* forbids only a tattoo intended to serve as identification but whose nature as an identification mark is not evident. If so, tattooing a mark expressly indicating the status of a person so marked is entirely analogous to a wound that serves as testimony to the nature of the tattoo.⁶⁰ In such a

⁵⁹ See also *Arukh la-Ner*, *Makkot* 21a, s.v. *ketovet*.

⁶⁰ Cf., *Bet Shmu'el*, *Even ha-Ezer* 124:16; *Get Pashut* 124:30; and *Hiddushei Hatam Sofer*, *Gittin* 20b. *Teshuvot Bet Av*, *Hamisha'i*, no. 230, secs. 4-5, accepts this general line of reasoning but compares tattooing a *Magen David* as a sign of allegiance to the Zionist movement to tattooing a slave. That comparison is inapt. The authorities who permit tattooing a slave on the basis of this rationale do so only because the tattoo has a function beyond its message. That is not so with regard to the *Magen David*.

case, the tattooed text testifies explicitly to an intent that is utilitarian rather than idolatrous and hence may be permissible even according to *Bi'ur ha-Gra*.

Accepting this line of argument, Rabbis Tauber, Deutsch, and Herman assert that micropigmentation as a substitute for make-up is analogous to pigmentation of a wound since the nature of the latter is also self-evident.⁶¹ Nevertheless, Rabbi Deutsch draws attention to *Tosafot, Gittin* 20a, who state that tattooing a *get* on the hand of a slave, to which the Gemara refers, constitutes a rabbinic prohibition. *Tosafot* declare that there is no biblical transgression solely by virtue of the fact that the writing was not filled in with ink or pigment. When pigmented, the same tattoo, according to *Tosafot*, would be biblically forbidden. Apparently, then, *Tosafot* maintain that tattoos are forbidden by biblical law even when it is obvious that the tattoo is designed for a legitimate practical purpose.⁶²

Moreover, it should be noted that *Shulhan Arukh* rules only that there is no statutory culpability for marking a slave with a tattoo but is silent with regard to permissibility of the act. That omission leads Rema to comment that, although there is no punishment at the hands of a *bet din*, the act is nevertheless forbidden.

In addition, *Rema, Yoreh De'ah* 180:4, in forbidding the tattooing of a slave to prevent escape, impliedly rejects the view that tattoos serving an

⁶¹ *Hasdei David*, commentary on the Tosefta, *Makkot* 3:9, comments that tattooing a slave is rabbinically forbidden because the licit nature of the tattoo is not perceived as readily as is the nature of ashes embedded in a wound. Whether or not *Hasdei David's* assessment of a tattoo on the body of a slave is accepted, cosmetic micropigmentation is certainly distinguishable from therapeutic use of ashes in treating a wound. The latter is not merely utilitarian. The wound testifies to the fact that it requires the standard therapy, i.e., a form of pigmentation whose technical execution is entirely permissible. Unlike therapeutic application of ashes, permanent eyeliner, for example, need not necessarily be carried out in the customary professional manner but might well be accomplished in the manner of biblically prohibited *ketoret ka'aka*. This distinction is apparently recognized by R. Ezra Batzri, *Tehumin*, XXII (5762), 286. See also *Le-Horot Natan*, X, no. 64, sec. 7, R. Baruch Shraga, *Or Torah*, Tammuz 5756, and *Minbat Yehudah* (Tishri 5755), no. 1, who analyze the permissibility of therapeutic placement of ashes upon a wound but nevertheless regard cosmetic micropigmentation as forbidden.

⁶² *Tosafot's* statement serves only to demonstrate that an obvious utilitarian purpose does not render a tattoo permissible. *Tosafot* must nevertheless distinguish between the rabbinically forbidden tattoo on the body of a slave and the entirely permissible placing of ashes upon a wound on the basis of one of the earlier cited explanations. The issue then is whether the cosmetic nature of the tattoo is obvious testimony to the absence of a factor rendering the tattoo biblically proscribed just as a wound testifies to the nature of the method used in applying ashes. See *supra*, note 61.

obviously utilitarian purpose are permissible as does R. Ezekiel Landau, *Teshuvot Noda bi-Yehudah, Mahadura Tinyana, Even ha-Ezer*, no. 135. *Noda bi-Yehudah* advances the novel view that the ruling recorded by *Shulhan Arukh* seemingly indicating that it is permissible to tattoo a *get* on the hand of a slave is limited to tattooing a slave because, although slaves are bound by all negative precepts, they are bound by those commandments only subsequent to circumcision and immersion in a *mikveh*.⁶³ Prior to those events their status is identical to that of non-Jews with regard to whom the prohibition against tattooing does not pertain.⁶⁴ According to *Noda bi-Yehudah*, the reference to tattooing a slave⁶⁵ applies only to a slave who has not undergone circumcision and immersion in a *mikveh*.⁶⁶

⁶³ *Kasa de-Harsana*, in his commentary on *Teshuvot Besamim Rosh*, no. 324, tentatively suggests that the Tosefta permitting the tattooing of a slave in order to prevent his escape applies to all slaves because, although slaves are bound by all negative precepts, they are not bound by the prohibition against tattooing. The reason for this exemption, asserts *Kasa de-Harsana*, is that one of the verses banning making incisions in the body as a sign of mourning contains the phrase “for you are a holy people unto the L-rd your G-d” (Deuteronomy 14:2). The thrust of that phrase, he suggests, is to exclude slaves because they are not included in the category of “a holy people.” If so, argues *Kasa de-Harsana*, since that prohibition is also recorded together with the prohibition against tattooing in Leviticus 19:28, slaves should also be excluded from the prohibition against tattooing. Hence tattooing a slave, he concludes, is also permissible.

⁶⁴ *Noda bi-Yehudah*'s assumption with regard to tattooing a gentile is subject to some question. The Gemara, *Nazir* 57b, declares in the name of R. Huna that it is prohibited to round the corners of the head of a minor. *Tosafot, ad locum*, comment that it is nevertheless permitted to do so to a gentile. *Nemukey Yosef, Makkot* 21a, regards that issue to be a matter of doubt. That doubt is recorded by Rema, *Yoreh De'ah* 181:5. *Minhat Hinnukh*, no. 253, observes that, logically, the same doubt should extend to tattooing the body of a gentile. Cf., *Patshegen ha-Ketav*, no. 14. Of interest in this context is the statement of *Midrash Megillah*, published in *Ozar ha-Midrashim*, I, 60, indicating that Mordecai acquired Haman as a slave and inscribed the bill of sale on Haman's foot. Cf., *Patshegen ha-Ketav*, no. 15.

⁶⁵ Cf. *Teshuvot Sho'el u-Meshiv, Mahadura Tinyana*, I, no. 49, who objects to *Noda bi-Yehudah*'s interpretation on the grounds that the phrase in the Tosefta “so that he not escape” implies that, absent that consideration, tattooing a slave would not be permissible. However, if the slave has not undergone circumcision and immersion there is no reason to restrict tattooing in any way. Cf., *Teshuvot Bet Av, Hamisha'i*, no. 230, note appended to sec. 4.

⁶⁶ *Patshegen ha-Ketav*, no. 14, cites Me'iri, *Gittin* 20b, who states, “perhaps a person is not commanded with regard [to tattooing] his slave” and suggests that Me'iri's comment is limited to a slave who has not undergone circumcision and immersion. Nevertheless, *Patshegen ha-Ketav* questions that interpretation because Me'iri states only that “perhaps” such an act is permissible whereas if the slave is yet a gentile there should be no doubt regarding the permissibility of tattooing. See also R. Jacob Gesundheit, *Tiferet Ya'akov, Gittin* 20b.

An even stronger objection lies in the fact that the argument in support of the permissibility of cosmetic tattooing is predicated entirely upon Rambam's analysis of the prohibition. However, as indicated earlier, Rashi and those who accept his view regard the prohibition as entirely unrelated to concerns regarding idolatrous practices. According to those authorities, tattooing is forbidden even when it is self-evident that the tattoo is designed for an innocuous or even salutary purpose. Those authorities must explain the permissibility of placing ashes upon a wound on some other basis. According to those authorities, this argument for sanctioning cosmetic tattooing fails.

4. *Duration of the Tattoo*

All authorities agree that the biblical prohibition serves to ban only indelible tattoos just as the biblical prohibition against writing on the Sabbath is limited to durable writing. The sole issue is defining the concept of durability in this context. Rashi, commentaries on Leviticus 19:28 and on *Makkot* 21a,⁶⁷ *Tosafot Yeshanim* and Ritva, *ad locum*; *Sefer ha-Hinnukh*, no. 253; and Rabbenu Hillel, *Torat Kohanim*, 6:10, declare that the biblical prohibition is limited to a tattoo that is permanent or that endures "forever." However, both *Nemukei Yosef* and Rabbenu Yonatan, in their respective commentaries *ad locum*, state only that the tattoo must "be recognizable for a long period of time." As R. Jacob Herman, *Ha-Emek*, no. 3 (Nisan 5760), points out, the phrase "a long period of time" is imprecise. The duration of "permanent" make-up, as reported by rabbinic writers, is between two and five years. Whether that is sufficient to constitute "a long period of time" is an open question.

Patshegen ha-Ketav, no. 6, endeavors to show that even *Nemukei Yosef* and Rabbenu Yonatan require permanent durability. *Patshegen ha-Ketav* argues that those authorities maintain that the biblical prohibition is limited to tattooing letters but offers the novel suggestion that, according to those authorities, such tattoos are forbidden even if the letters are distorted and become blurred and unrecognizable leaving only a faded blotch that endures permanently. Accordingly, he offers the novel suggestion

Patshegen ha-Ketav further suggests that "wounding" is permissible if intended for a constructive purpose. Hence, tattooing a slave in order to prevent him from escaping does not entail a violation of the prohibition against "wounding" and would be prohibited solely by virtue of the prohibition against tattooing. *Patshegen ha-Ketav* then, very tentatively, suggests that since a slave is the property of his master, just as there is no prohibition against constructive wounding of a slave, there is similarly no prohibition against tattooing one's own slave in order to prevent him from escaping.

⁶⁷ See *supra*, note 17.

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that those authorities define the biblically proscribed tattoo as one in which the letters of the tattoo must be recognizable as letters for at least “a long period of time” while the pigmentation endures “forever.” If so, the controversy between the early-day authorities is significantly narrowed and perhaps entirely eliminated.

Minbat Hinnukh, no. 253, observes that although indelible writing on the skin is rabbinically banned, writing or other markings that are removable or that will disappear within a relatively short period of time are entirely permissible. Examples would include writing phone numbers or notes on the hand with ordinary ink, rubber stamped identification marks indicating that an entrance fee has been paid, transfers applied by children to their hands and henna tattoos.

Evidence providing some support for this view may be found in a statement of the Gemara, *Shabbat* 120b. The Gemara speaks of individuals who wrote the Divine Name on their skin and admonishes them not to wash the skin or anoint it with oil, lest they erase the Divine Name. There is no hint that the act itself is rabbinically proscribed.

Patshegen ha-Ketav suggests that if his interpretation of *Nemukei Yosef* and Rabbenu Yonatan is rejected, with the result that the biblical prohibition includes a tattoo that endures for merely “a long period of time” and then completely dissipates, it follows that the rabbinic prohibition forbidding “writing” without subsequent “embedding” was enacted specifically to ban non-permanent marking of the skin.⁶⁸ Were that indeed the case, and if it is assumed that the prohibition is not limited to markings in the form of letters or representations, it might be contended that even cosmetics such as rouge and mascara are rabbinically proscribed. Lipstick is applied superficially and is not absorbed by the skin and consequently can readily be blotted or scraped off. Since lipstick remains on the surface without penetrating the skin it is certainly arguable that it is not a marking of the skin and hence is entirely permissible. However, many other cosmetics are absorbed by the skin and, although they will disappear with time, earlier removal must be by means of a cleansing agent that penetrates the pores. If such a conclusion is to be avoided, a distinction must be drawn between transient, ephemeral markings such as cosmetics, which

⁶⁸ *Mishnat Hakhamim*, no. 57, sec. 1, cited by *Minbat Hinnukh*, no. 253, speaks of the occasional practice of writing on the hand with ink or dye and cites that practice in asserting, *contra Tosafot*, that merely writing on the skin, even indelibly, is not forbidden by rabbinic decree and remains entirely permissible. *Mishnat Hakhamim* further compares writing on the hand with ink to use of ashes in treating a wound. His comments seem to presuppose the absence of a distinction between transient and indelible writing insofar as possible rabbinic prohibition is concerned.

are entirely permissible, and markings that are durable but which do remain recognizable for “a long period of time” and hence, according to this view, are rabbinically proscribed. Nevertheless, the point of demarcation between those categories remains unclear. Although his view is apparently rejected by other authorities, *Patshegen ha-Ketav*, no. 18, himself suggests that, although there is a rabbinic prohibition against “inscription” without subsequent pigmentation, there is no similar rabbinic prohibition against even indelible writing on the surface of the skin.

VI. CONFLUENCE OF MULTIPLE RABBINIC RESTRICTIONS

In terms of a halakhic determination with regard to the normative status of cosmetic pigmentation it seems clear that the procedure cannot be ruled to be biblically proscribed. Cosmetic micropigmentation involves a number of unresolved and hence doubtful issues, each of which, if resolved in a lenient manner, would render the act biblically permissible. Those issues include: 1) the question of whether the prohibition applies only if pigment is applied prior to laceration; 2) whether the biblical prohibition is restricted to letters and possibly pictures and the like or whether it includes any tattooed mark; 3) whether tattoos designed for a utilitarian purpose are biblically forbidden; and 4) whether a cosmetic tattoo endures, both empirically and halakhically, for the requisite length of time to be encompassed within the biblical ban.

None of those issues is definitively resolved by the authors of authoritative halakhic codes. A rabbinic decisor who regards the controversies or doubts surrounding any two or more of those issues to be unresolved must perforce conclude that applicability of the prohibition entails a *sfek sfeika*, or “double doubt.” It is indeed the case that a biblical prohibition renders a prospective act forbidden even if it is only doubtful that the act is encompassed within the ambit of the prohibition. However, in situations in which there are two separate doubts, or a *sfek sfeika* with regard to the applicability of the prohibition, the act is entirely permissible. Consequently the presence of multiple doubtful factors that distinguish cosmetic micropigmentation from assuredly prohibited tattooing – each of which is a factor that generates a separate doubt with regard to applicability of the prohibition – combine to create a *sfek sfeika* that serves to render the prohibition inapplicable.

However, the matter is further complicated because the early-day authorities who regard the biblical prohibition to be nugatory in the

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absence of any one of the enumerated factors they regard as a necessary condition of the biblical prohibition do concede that the act is nevertheless banned by rabbinic decree even in the absence of that condition. Thus, even laceration without prior application of pigment, pigmentation without laceration, a tattoo of a non-cognitive mark, a tattoo designed for a utilitarian purpose and a subcutaneous tattoo of limited duration are each recognized as being prohibited, if not biblically, at least by virtue of rabbinic decree. If so, cosmetic tattooing would appear to constitute a rabbinic transgression.

Such a conclusion, however, is negated by a comment of *Hiddushei Hatam Sofer*, *Gittin* 20b, s.v. *ketovet ka'aka*. As previously noted, the Gemara discusses the validity of a *get* tattooed on the hand of a slave. Numerous commentators question the permissibility of engraving such a text as well as whether the witnesses to the *get* become disqualified by virtue of the transgression involved in tattooing their signatures. Again, as already noted, *Tosafot* comment that inscribing a *get* on the hand of a slave without subsequent pigmentation is a rabbinically proscribed act. *Hatam Sofer* takes issue with that statement. *Hatam Sofer* observes that a tattoo designed to serve a utilitarian purpose, e.g, a tattoo designed to prevent a slave from escaping or a tattoo designed to sever a marital relationship, is only rabbinically forbidden. Moreover, as *Tosafot* themselves state, laceration that leaves a permanent mark without subsequent pigmentation is also only rabbinically forbidden. Hence inscribing a *get* on the body of a slave without subsequent pigmentation can be forbidden only by the confluence of two separate rabbinic decrees. *Hatam Sofer* asserts that such an act, since it involves *trei de-rabbanan*, i.e., a “rabbinic prohibition superimposed upon another rabbinic prohibition,” cannot be forbidden.

The logic underlying *Hatam Sofer's* position is readily grasped. Rabbinic injunctions are quite specific. The Sages interdicted only specifically delineated categories of behavior. Those categories, according to *Hatam Sofer*, are not overlapping.⁶⁹ The Sages prohibited indelible laceration and they also forbade utilitarian tattoos. But they did not enact an additional and more comprehensive edict prohibiting tattoos that are at once utilitarian and unpigmented. Hence, if it is determined that cosmetic tattoos can be regarded as forbidden only by virtue of accretion of two or more rabbinic decrees, such tattoos, according to *Hatam Sofer*, would be

⁶⁹ See R. Mordecai Brisk, *Teshuvot Maharam Brisk*, I, no. 23. There may, of course, be cases in which it is clear that such acts were explicitly included in a rabbinic prohibition. See R. Isaac Schmelkes, *Teshuvot Bet Yitzhak*, *Orah Hayyim*, no. 73, sec. 3.

entirely outside the parameters of any rabbinic prohibition. Much earlier, R. David ibn Zimra, *Teshuvot Radvaz*, III, no. 589, similarly ruled an act involving *trei de-rabbanan*, to be permissible.⁷⁰

Tosafot's ruling that inscribing a *get* on the hand of a slave involves a rabbinic infraction may reflect the view that utilitarian tattoos are biblically prohibited. Alternatively, *Tosafot* may reject *Hatam Sofer's* thesis regarding the permissibility of *trei de-rabbanan*. Nevertheless, even if *Tosafot* are in disagreement with *Hatam Sofer*, there are grounds for assuming that, even if an act involving *trei de-rabbanan* is forbidden, the act would not be prohibited if it represents *telat de-rabbanan*, i.e., the confluence of three distinct rabbinic prohibitions.

R. Shalom Mordecai Schwadron, *Teshuvot Maharsham*, VII, no. 9, addresses the issue of cigarette smoking on *Yom Tov*. Cigarette wrappers, depending upon the brand, often bear letters printed on the side of the paper wrapper. The cigarette paper is burned in the course of smoking and hence the letters are destroyed in the process. The issue presented to Maharsham was the permissibility of "erasing" the letters on the wrapper in the course of smoking the cigarette on *Yom Tov*.⁷¹

Maharsham analyzes the nature of "erasure" that is forbidden on *Shabbat* and *Yom Tov* and concludes that destruction of the letters on the cigarette wrapper is biblically permissible for at least three separate reasons: 1) A biblical violation occurs only if the erasure is constructive, e.g., undertaken for the purpose of writing upon the erasure. "Destructive" erasure, as is the case in turning paper into ashes, is forbidden only by rabbinic decree. 2) Only an act of "labor" carried out in a usual manner is biblically proscribed. Erasure by means of drawing one's breath is an "unusual" form of erasure and hence only rabbinically forbidden. 3) A

⁷⁰ See also *Magen Avraham* 352:4. *Tiferet Yisra'el*, *Kelim* 24:66, compares *trei de-rabbanan* to a *gezeirah le-gezeirah*, i.e., an edict promulgated to assure compliance with a prior edict. Although there are exceptions, as a general rule it is presumed that the Sages did not enact a secondary edict in order to assure compliance with a primary edict. *Melo ha-Ro'im ot gimel, gezeirah le-gezeirah*, secs. 6-9, endeavors to show that they always refrained from enacting tertiary edicts. An act involving *trei de-rabbanan* is regarded as permissible by R. Jonathan Eybeschütz, *Kereti u-Peleti*, 108:1; R. Ezekiel Landau, *Teshuvot Noda bi-Yehudah, Mahadura Tinyana, Yoreh De'ah* no. 51; R. Menachem Panet, *Teshuvot Sha'arei Zedek, Yoreh De'ah*, no. 205. See also the opinion of *Ba'al ha-Terumot*, cited by *Bet Yosef, Orach Hayyim* 303, regarding wearing jewelry on *Shabbat*.

⁷¹ For a discussion regarding the permissibility of smoking on *Yom Tov* even without destroying letters, see this author's article in *Tradition* vol. 21, no. 2 (Summer, 1983), pp. 167-172 and *idem, Be-Netivot ha-Halakhah*, II (New York, 5759) pp. 30-35.

person is forbidden to perform interdicted labor on *Shabbat* and *Yom Tov* only if his act constitutes the proximate cause of the performance of the forbidden “labor.” Indirect causation, or *gerama*, is only rabbinically forbidden. Although there is room for questioning his categorization, Maharsham regards drawing on a cigarette as merely an indirect cause of destroying the letters printed on the cigarette wrapper. Moreover, the burning of letters by the smoker, although it is a necessary and foreseeable consequence, (a *pesik reisha*) is nevertheless an unintended result of an otherwise permissible act.⁷² Since the resultant erasure is unintended, contends Maharsham, the act can only be rabbinically forbidden – particularly since it is only the result of a *gerama*. Accordingly, smoking cigarettes bearing printed letters can be prohibited only upon accretion of at least three separate rabbinic prohibitions. Maharsham regards such acts as entirely permissible.⁷³

A similar view with regard to *telat de-rabbanan* is formulated by R. Mordecai Brisk, *Teshuvot Maharam Brisk*, I, no. 23. Maharam Brisk permits a woman to use non-pigmented face powder on *Shabbat* because a prohibition could be sustained only upon the confluence of three different rabbinic prohibitions: 1) “dyeing” or coloring human skin; 2) applying a white color on a white surface; and 3) “dyeing” that is merely temporary or transient in nature.⁷⁴

Although, with several exceptions,⁷⁵ the writers who have been cited decline to permit micropigmentation performed for purely cosmetic purposes, a rabbinic decisor might well apply the principle of *telat*

⁷² *Terumat ha-Deshen*, nos. 64 and 66 maintains that every unintended *pesik reisha* is permitted if the act involves only a rabbinic prohibition. See also Ritva, *Eiruvin* 88a; and Me’iri, *Shabbat* 48a, as well as the responsum of R. Akiva Eger whose opinion is the subject of discussion in *Teshuvot Hatam Sofer, Yoreh De’ah*, no. 140. An opposing position is espoused by *Magen Avraham, Orah Hayyim* 314:5 and *Teshuvot Hatam Sofer, Yoreh De’ah*, no. 140. See also *Taz, Orah Hayyim* 253:18. R. Ovadiah Yosef, *Teshuvot Yabi’a Omer*, IV, *Orah Hayyim*, no. 34 and V, *Orah Hayyim*, no. 28, sec. 1, catalogues the authorities who adopt views both pro and con with regard to that issue.

⁷³ See also *Teshuvot Maharsham*, II, no. 188 and III, nos. 188 and 332. Cf., however, R. Samuel ha-Levi Wosznor, *Teshuvot Shevet ha-Levi, Yoreh De’ah*, I, no. 197, who states only that in an instance of financial loss one may rely upon a minority opinion in a case of “*trei u-telat de-rabbanan*.”

⁷⁴ See also *Pri Megadim, Orah Hayyim*, introduction, *Hanhagot ha-Nishal ve-ha-Sho’el*, sec. 14. Cf., *Teshuvot Yabi’a Omer*, VI, *Orah Hayyim*, no. 28, sec. 3, who writes that an unintended effect that is of no interest to the person performing the act (*de-lo ikhpat leih*) is permitted in situations in which there would be no violation other than by virtue of the confluence of “two or three” rabbinic prohibitions.

⁷⁵ See *supra*, note 25.

de-rabbanan and arrive at a permissive ruling. As has been stated, it can readily be concluded that such cosmetic procedures are biblically permissible on the basis of *sfek sfeika*. Any resultant prohibition could only be rabbinic in nature. But, since the act reflects a confluence of three or even four rabbinic prohibitions, the act would remain entirely permissible. To put the matter somewhat differently: Prohibiting cosmetic tattooing would involve a determination that the Sages prohibited an act that involved three or four different factors each of which would require a separate rabbinic decree to render the act an infraction, *viz.*, decrees banning pigmentation subsequent to laceration or without laceration, an indelible non-cognitive mark, a tattoo undertaken for utilitarian purposes and a tattoo of less than permanent duration.⁷⁶ Rabbinic decrees are regarded as attenuated in situations in which they must be imposed one upon the other with the result that an act involving *telat de-rabbanan* is entirely permissible.⁷⁷

Consequently, cosmetic micropigmentation may be regarded as permissible according to the authorities who accept the principle of *telat de-rabbanan*. As will be demonstrated in the following section, there are additional grounds for permitting cosmetic tattooing when performed by a non-Jew.

VII. TATTOOING BY A NON-JEWISH TECHNICIAN

Assuming that cosmetic tattooing involves a rabbinic infraction, rather than a biblical prohibition, Rabbi Tauber argues that, although it is forbidden for a Jew to perform such a procedure, a woman may be permitted to have the micropigmentation performed upon her by a non-Jew. The prohibition against tattooing is directed both to the person performing the procedure and to the person upon whom pigmentation is performed. Nevertheless, as codified by Rambam, *Hilkhot Avodat Kokhavim*

⁷⁶ Of course, from the vantage point of transcendental truth, one, several or all of these factors may not be a necessary condition of the biblical prohibition. However, in any particular case of a *sfek sfeika* involving such factors, the presence of two such factors renders the biblical prohibition nugatory as a matter of normative law. Nevertheless, a tattoo lacking any one of those necessary conditions is proscribed by rabbinic edict. Hence, in combination with other factors that render the act rabbinically prohibited, the prohibition, since in application it is rabbinic rather than biblical, becomes attenuated as a *telat de-rabbanan*.

⁷⁷ See *Yabi'a Omer*, V, *Orah Hayyim*, no. 28, sec. 3, who discusses sources indicating that practices of a like nature should be eschewed as a matter of piety.

12:11, the person receiving the tattoo is culpable only if he assists in the procedure by performing a physical act; however, if he remains entirely inert, he is not culpable. Rambam's ruling is generally understood to be predicated on the rule that statutory punishment cannot be administered other than upon performance of a physical act. Nevertheless, since the prohibition is also directed against the person upon whom the procedure is performed, even passive participation is forbidden.

Rabbi Tauber, however, suggests that rabbinic prohibitions forbidding types of tattooing not proscribed by biblical law are directed only against the individual who performs the procedure but not against the person being tattooed who merely "assists" in the act by positioning himself or the like. In a different context, *Magen Avraham* 340: introduction, rules that a woman preparing for immersion in a *mikveh* on *Shabbat* may direct a non-Jew to cut her fingernails in a manner proscribed only rabbinically. *Magen Avraham's* thesis is that mere "assistance" (*mesaye'a*) is not forbidden in conjunction with rabbinic prohibitions.⁷⁸ Similarly, R. David ibn Zimra, *Teshuvot Radvaz*, I, no. 243, rules that on *erev Pesah* after mid-day, when labor is forbidden, it is nevertheless permissible to employ a non-Jewish barber to cut one's hair⁷⁹ on the grounds that, since the prohibition regarding labor on *erev Pesah* after mid-day is rabbinic in nature, mere "assistance" in the form of positioning oneself⁸⁰ for the barber's convenience is permissible.⁸¹

⁷⁸ Although some early-day authorities disagree, Rosh, *Bava Mezi'a* 7:6, rules that directing a non-Jew to perform a forbidden act is prohibited not only with regard to *Shabbat* violations but with regard to other biblical prohibitions as well.

⁷⁹ This ruling is consistent with the position of the many authorities who rule that not only is it forbidden to direct a non-Jew to perform an act prohibited on the Sabbath or festivals but that it is not permissible to direct a non-Jew to perform any act that, for a Jew, would constitute a violation of a rabbinic edict. See sources cited in *Encyclopedia Talmudit*, II (Jerusalem, 5716), 44. Cf., however, *Bi'ur ha-Gra*, *Orah Hayyim* 468:1, who regards directing a non-Jew to perform forbidden labor on *erev Pesah* to be forbidden because it is included in the prohibition against directing a non-Jew to perform forbidden labor during the course of the festival.

⁸⁰ There are obvious grounds for permitting tattooing by a non-Jew when the procedure is carried out under anesthesia, e.g., tattooing a nipple and areolae in conjunction with breast reconstruction. In such circumstances there is no "assistance" by the patient in the form of positioning.

⁸¹ The notion that "assistance" may be considered an act resulting in culpability is introduced by the Gemara, *Makkot* 20b, with regard to the biblical prohibition against rounding the corners of the head (Leviticus 19:27). The Gemara questions how it may be the case that a person whose hair is cut by another may be culpable and responds by declaring that such a person is culpable by virtue of "assisting" in positioning his head. Ritva, in one analysis of the Gemara's discussion, suggests that the Gemara assumes that both the person rounding the corners of the head and the person whose

VIII. RECOVERY OF FEE

An interesting ramification of the issue of permissibility of cosmetic tattooing is discussed by R. Baruch Shraga, a member of the Jerusalem Rabbinical Court, in a decision published in *Piskei Din shel Bet Din she-al Yedei Rabbanut Yerushalayim*, IV(5754), and reprinted in the Tammuz 5756 issue of the Sephardic Torah journal, *Or Torah*.

A woman paid a fee of 1,200 *shekalim* to a cosmetician for a course of micropigmentation. Upon becoming aware of the dubious halakhic acceptability of the procedure, she sued for recovery of the fee. The defendant responded that rabbinic authorities, whom she named, had sanctioned the procedure and, moreover, far from constituting a halakhic infraction, availing oneself of permanent make-up constitutes a “*mizvah!*” The “*mizvah*,” she asserted, lies in the assurance that a woman pressed for time to apply makeup on *erev Shabbat* would nevertheless have an attractive appearance in honor of *Shabbat* by virtue of her permanent

hair is cut are bound by a single prohibition against rounding the corners of the head. If there exists but a single prohibition, the question of “assistance” is germane to the issue of whether the person whose hair is cut has, by means of his “assistance,” in effect, participated in the act of cutting his own hair. Were “assistance” not regarded as an act, there could be no violation of the biblical prohibition on the part of the person allowing his hair to be cut. If so, it would be cogent to conclude that consideration of “assistance” as an “act” is entertained by the Gemara only in the context of establishing that “assistance” constitutes a violation of a biblical prohibition.

Ritva, however, further suggests, and considers it likely to be the case, that allowing the corners of one’s head to be rounded constitutes a biblical prohibition quite distinct from the prohibition against performing the act of rounding the head. If so, even remaining completely inert during the procedure without rendering any assistance whatsoever is biblically interdicted and the Gemara’s introduction of the issue of “assistance” is solely with regard to administering statutory punishment since the rule is that such punishment cannot be imposed even for an expressly proscribed act in the absence of a physical act.

If so, argues Rabbi Tauber, the Gemara’s question with regard to whether “assistance” constitutes an “act” is limited to whether it constitutes an act with regard to culpability but is not relevant to the issue of permissibility. In effect, that “assistance” constitutes an “act” for purposes of transgression is taken for granted. If there is no question that “assistance” constitutes an “act,” albeit possibly non-culpable, with regard to a biblical proscription, there is no clear reason to assume that “assistance” is not also regarded as an “act” with regard to rabbinic proscriptions.

Nevertheless, it seems to this writer that *Magen Avraham*’s unequivocal permissive ruling is indicative of the fact that, at the very minimum, *Magen Avraham* considered the absence of any explicit talmudic reference to a prohibition against “assistance” in connection with rabbinic prohibitions to be evidence that “assistance” does not fall within the ambit of rabbinic decrees.

make-up. Upon investigation, it was established that no rabbinic authority had authorized the cosmetician to engage in micropigmentation.

Assuming that cosmetic micropigmentation is not sanctioned by Halakhah, the issue is recovery of a fee charged for an illicit procedure. *Shulhan Arukh, Hoshen Mishpat 234:2*, rules that if an animal is slaughtered but is found to be non-kosher after it has been sold, the purchase price must be refunded without any deduction for meat that has already been consumed. *Shulhan Arukh, Hoshen Mishpat 234:2*, limits that rule to foodstuffs that are biblically proscribed. Discovery that the food in question is rabbinically forbidden also results in rescission of the sale but funds representing the value of the portion of the food already consumed need not be returned.⁸²

Shakh, Yoreh De'ah 119:25, explains that the requirement that the full purchase price be refunded even though the food has been eaten is in the nature of a penalty imposed upon the seller who was in a position to discover that the food was not kosher. It follows, therefore, that in a situation in which, even with due diligence on the part of the seller, it would have been impossible for the seller to discover that the food purveyed was non-kosher, the penalty is not imposed. That position is contested by *Mahaneh Efrayim, Hilkhoh Nizkei Mammon*, no. 9. *Mahaneh Efrayim* cites the discussion of the Gemara, *Berakhot 37a*, in demonstrating that the full purchase price must be returned even in circumstances in which the seller was not remiss because, although the purchaser consumed the food, he derived no pleasure or benefit therefrom;⁸³ on the contrary, a Jew finds non-kosher meat to be repugnant and nauseating. According to *Mahaneh Efrayim*, the full purchase price must be refunded, not as a

⁸² For an analysis of the distinction see *Netivot ha-Mishpat*, 234:3 and *idem, Nahalat Ya'akov, Beizah*, addenda, s.v. *ve-lule divreiheim* (New York, 5721), p. 13b; R. Shimon Shkop, *Sha'arei Yosher, sha'ar alef*, chap. 10; R. Chaim Eleazar Shapira, *Teshuvot Minbat Elazar*, I, no. 5; R. Eliezer David Greenwald, *Teshuvot Keren le-David*, no. 18, s.v. *ela*; *Teshuvot Torat Hesed, Orah Hayyim*, no. 31; and R. Ovadiah Yosef, *Teshuvot Yabi'a Omer*, I, *Yoreh De'ah*, no. 4, sec. 4 and no. 14, secs. 8-9. Cf., *Shulhan Arukh, Orah Hayyim 343:1*; *Shakh, Yoreh De'ah 81:21*; *Mishneh Berurah, sha'ar ha-zivyun 334:65*; *Terumat ha-Deshen, Pesakim u-Ketavim*, no. 55; *Eliyahu Rabbah 334:26*, R. Isaac Elchanan Spektor, *Ein Yizhak, Even ha-Ezer*, II, no. 2; *Or Sameah, Hilkhoh Geirushin 1:17*; R. Joseph Engel, *Atvan de-Oraita, klal 10*; and *Netivot Rabboteinu le- Beit ha-Levi Brisk* (Jerusalem, 5762), vol. II, *Parashat Va-Yikra*, pp. 3-5.

⁸³ R. David Avitan, *Or Torah*, Av 5756, disputes Rabbi Shraga's ruling by claiming that the tattoo is in the nature of *issurei hana'ah*, i.e., items from which it is forbidden to derive benefit and hence is absolutely devoid of monetary value. That is patently incorrect. The tattoo need not be removed and the recipient certainly reaps the cosmetic benefit for which the procedure is undertaken.

penalty, but because no benefit was received. That concept is limited to consumption of forbidden foods. Benefits denied from other forbidden acts are not associated with repugnance. Thus, according to *Mahaneh Efrayim*'s analysis, there is no evidence that payment for other types of benefit not associated with consumption of food need be refunded upon discovery that the benefit already enjoyed was halakhically forbidden.⁸⁴

However, according to *Shakh*, who maintains that return of the full purchase price without a reduction reflecting the benefit or saving accruing to the purchaser is in the form of a penalty, the principle should logically apply not only to proceeds representing the sale of a commodity but also to funds knowingly accepted in return for services. Hence, it would seem to this writer, that according to *Shakh*, the cosmetician should be required to return the funds received since her infraction does not seem to have been inadvertent.⁸⁵ Nevertheless, the cosmetician might well claim that she need not disgorge the funds because she is now in possession and relies (*kim li*) upon the opinion of those who disagree with *Shakh* and limit the rule to food products.

Moreover, as has been shown earlier, there is strong reason to conclude that cosmetic micropigmentation, even according to those who regard it as prohibited, is biblically permissible but forbidden solely by rabbinic edict. If so, the rule regarding deduction from the refund for benefit already received should be applicable.

IX. REMOVAL OF TATTOOS

For reasons perhaps best left to sociologists to explain, the practice of tattooing both among men and women has been on the rise in recent years.⁸⁶ Quite understandably, newly-observant young men and women who bear

⁸⁴ *Netivot ha-Mishpat* 9:1 rules that a person who hires a witness to commit perjury must pay the stipulated fee. *Netivot* cites the discussion of the Gemara, *Rosh ha-Shannah* 22b, in demonstrating that a person who has paid for the performance of an illicit act cannot recover the fee paid. Rabbi Shraga correctly points out that this ruling may be limited to situations in which the fee was paid with full knowledge of the illicit nature of the act performed. In such circumstances there is no room for complaint of error or fraud.

⁸⁵ Curiously, Rabbi Shraga asserts that the cosmetician may claim that no penalty can be imposed upon her because she acted inadvertently. That contention does not seem to be correct since she falsely claimed to have sought halakhic guidance with regard to a matter she recognized as problematic.

⁸⁶ Michael Kimmelman, "Tattoo Moves From Fringes to Fashion. But Is It Art?" *New York Times*, September 15, 1995, p. C1.

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tattoos acquired earlier in their lives are greatly discomfited not only because such markings are not acceptable in their new social circles but also because the tattoo serves as an announcement to all and sundry of their previous status. A responsum discussing the issue of removing a tattoo authored by R. Joseph Mugrabi and addressed to a student at Yeshivat Porat Yosef in Jerusalem was published in *Zekhor le-Avraham*, ed. R. Avigdor Berger (Jerusalem, 5762-5763), II, 806-810.

As recorded by Rambam, *Hilkhot Avodat Kohavim* 12:11, the prohibition against tattooing devolves upon both the individual applying the tattoo and the person who permits himself to be tattooed. R. Chaim Kanievski, *Patshegen ha-Ketav*, no. 3, questions whether the thrust of the prohibition is to forbid the act *per se* or whether, in essence, the prohibition is directed against generating the resultant tattoo.⁸⁷ Rabbi Mugrabi apparently assumes the latter to be the case. He then questions whether the prohibition against being tattooed is limited to permitting the act of tattooing to be performed or if an infraction is incurred every moment that the recipient bears the tattoo. If the latter is the case, it should then follow that there is an obligation to remove the tattoo in order to avoid ongoing transgression.⁸⁸ R. Nathan Gestetner, *Teshuvot le-Horot Natan*, VIII, no. 72, declines to entertain such a view in stating that “we find no explicit prohibition in retaining [a tattoo].” *Patshegen ha-Ketav*, nos. 3 and 21, and R. Eliyahu Bakshi-Doron, *Or ha-Torah*, Shevat 5762, similarly see no prohibition in retaining a tattoo. Nevertheless, Rabbi Bakshi-Doron observes that repentance involves renouncing earlier sinful ways and for that reason it is advisable to remove any vestige of prior transgression. In any event, there is no gainsaying the fact that the tattoo is a source of great embarrassment to the newly observant.

It should be noted that *Minhat Hinnukh*, no. 32, *Mosaf ha-Shabbat*, sec. 35, categorizes removal of a tattoo as a constructive act.⁸⁹ An act of

⁸⁷ Since biblical culpability is incurred only upon both “writing” and “embedding,” the most obvious difference lies in a situation in which there was no prior admonition for the first of the two procedures or in which the first procedure was not performed by the individual who performs the second act. If the prohibition lies in the act *per se* there cannot be culpability for performing the second act. However, if the essence of the prohibition is generating a tattoo, completing the tattoo might well constitute the entirety of the prohibition.

⁸⁸ Cf. the terminology employed by *Minhat Hinnukh*, no. 32, *Mosaf ha-Shabbat*, sec. 35.

⁸⁹ *Patshegen ha-Ketav*, no. 21, expresses puzzlement with regard to how a prohibited tattoo, that by definition is permanent, can be removed. Excising the flesh, he observes, is not in the manner of erasure. Laser beams were obviously unknown to *Minhat Hinnukh*.

Shabbat desecration carried out in a destructive manner does not entail culpability. Thus “erasing,” one of the thirty-nine prohibited categories of labor, is generally a non-culpable act unless undertaken for the constructive purpose of writing new material upon the erasure. *Minbat Hinnukh* opines that obliterating a tattoo is a form of “erasure” and that removing a tattoo from the body of a Jew on *Shabbat* is a culpable act. He reasons that, for a Jew, a tattoo represents a gentile practice. Hence, although the infraction is incurred at the time of tattooing, “nevertheless, for [the tattoo] to remain on his body is not proper for a Jew.” By the same token, he reasons that obliterating a tattoo on the body of a non-Jew, to whom the tattoo is neither forbidden nor ignominious, is not a “constructive” act. The constructive nature of this type of “erasure,” according to *Minbat Hinnukh*, certainly lies in the removal of an ignominy.⁹⁰

Rabbi Muqrabi assumes that a tattoo can be removed only by means of some type of burning process that is itself forbidden as a form of self-wounding. Accordingly, he queries, “How can one commit a transgression in order to obviate a transgression already committed?” Rabbi Muqrabi then presents a cursory discussion of responsa forbidding plastic surgery designed solely for aesthetic purposes. Rabbi Muqrabi cites Rabbi Bakshi-Doron, *Teshuvot Binyan Av*, I, no. 50, sec. 3, who permits cosmetic surgery under certain limited conditions. Therapeutic “wounding” is entirely excluded from the prohibition against “wounding” and is permitted even in the treatment of a non-life-threatening condition. *Tosafot*, *Shabbat* 50b, categorizes embarrassment at appearing in public as constituting “the greatest of pain.” Consequently, Rabbi Muqrabi finds that, according to all authorities, a person to whom a tattoo is a source of grave embarrassment may undergo “wounding” for surgical removal of the tattoo.⁹¹ It should be noted that tattoos can be removed by laser treatment. That procedure does not at all involve forbidden wounding.

⁹⁰ Cf., *Patshegen ha-Ketav*, no. 21, who surprisingly professes failure to understand *Minbat Hinnukh*'s position.

⁹¹ *Le-Horot Natan*, VIII, no. 72, equates the prohibition against wounding with the general prohibition against self-mortification and reaches the surprising conclusion that wounding that is not accompanied by pain, e.g., under anesthesia, involves no infraction. Self-mortification in the form of fasting is permissible in expiation of sin. Similarly, argues *Le-Horot Natan*, wounding in the nature of removing a tattoo undertaken as a form of repentance is permissible. There is scant support for the underlying premise. Early authorities fail to state that pain is a necessary condition of the prohibition against wounding. It is only self-mortification that is categorized as a prohibited derivative of wounding because of the pain that is generally associated with wounding.

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In the previously cited article in *Or Torah*, Rabbi Bakshi-Doron addresses the rather bizarre case of a woman who came under the influence of a pseudo-Kabbalist who directed her to tattoo on her right bicep the words of the prohibition against tattooing recorded in Leviticus 19:28. The tattoo included the Divine Name occurring in that verse. The question presented to Rabbi Bakshi-Doron was the propriety of “erasing” the Divine Name and/or the biblical verse in question by means of laser treatment.

There is a significant controversy with regard to whether a Divine Name that is written without intent to sanctify the Name may be erased or otherwise obliterated. The sources, both pro and con, are meticulously catalogued by Rabbi Bakshi-Doron. Assuming, *arguendo*, that one may not erase a Divine Name that has merely not been sanctified, the further issue of whether a Divine Name expressly written for a mundane purpose may be erased remains a question. That issue was first examined by R. Yair Chaim Bacharach, *Teshuvot Havvot Ya'ir*, no. 16, who questions whether one may melt down coins bearing the Divine Name and whether one may use a signet ring bearing the Divine Name since the Divine Name will be eradicated in breaking the seal. The distinction is that, although a Divine Name written with no specific intention may yet be deemed to have been written with intention to write a sanctified Name, that is not the case when there is specific intention for some other purpose. *Havvot Ya'ir* rules that a Divine Name written expressly for a mundane purpose may be erased. A similar view is expressed by *Teshuvot Noda bi-Yehudah, Mahadura Tinyana*, no. 180 and also by R. Chaim Joseph David Azulai, *Birkei Yosef, Yoreh De'ah* no. 276:6. An opposing view is expressed by *Mahaneh Efrayim, Hiddushim al Tur Yoreh De'ah, Hilkhot Sefer Torah*.

Rabbi Bakshi-Doron assumes that, in the case presented to him, the Divine Name was written for a mundane purpose. To this writer, that is far from certain. The parties involved in this matter dabbled in mysticism⁹² and it was the pseudo-Kabbalist's announced desire to determine whether anything untoward would occur as a result of performing this forbidden act. Precisely because of that motive there appears to be every reason to suspect that the intention was to tattoo a Divine Name endowed with sanctity.

⁹² The Gemara, *Shabbat* 120b, speaks of individuals who had the Divine Name “written” on their skin and requires that the portion of the body on which the Name is written be wrapped in *gemi* (a reed) before immersion in a *mikveh* in order to protect it from erasure. No reason is given why such an individual might choose to write the Divine Name on his skin.

There are, however, other grounds to permit removal of a tattoo containing the Divine Name. Parchment prepared from the skin of an animal of an unclean species may not be used for ritual purposes such as the writing of phylacteries and the like. *Minbat Hinnukh*, no. 437, asserts that this rule is not limited to *tefillin* but is a general rule to the effect that it is never permissible to inscribe the Divine Name on material derived from an unclean animal. *Minbat Hinnukh* then proceeds to query whether, *post factum*, a Divine Name written on parchment derived from an unclean animal may be erased but leaves the matter unresolved. He does suggest that, since the prohibition against eradicating the Divine Name is derived from the verse “You shall not do so to the Lord,” the prohibition is limited to circumstances in which obliterating the Divine Name is ignominious but does not apply in a situation in which a transgression was originally involved in the writing of the Divine Name. In such cases, erasure removes the ignominy that results from the transgression.

R. Moshe Sofer, *Teshuvot Hatam Sofer*, VI, no. 8, discusses the case of a properly written biblical verse that was subsequently pasted on the wall of a privy. *Hatam Sofer* recommends that a non-Jew be directed to remove the verse. However, in the event that a non-Jew is not available to do so, *Hatam Sofer* permits a Jew to scratch off the writing in order to prevent ongoing desecration of the Divine Name. Rabbi Bakshi-Doron regards removal of a tattoo containing the Divine Name to be comparable.

There may be an additional operative consideration as well. Rambam, *Hilkhot Tefillin* 1:13, followed by *Shulhan Arukh* 281:1, rules that a Torah scroll written by a Jewish “*apikores*” must be burned. Rashi, *Gittin* 45a, defines the term “*apikores*” used in this context as connoting an idolater. Hence, the requirement that the Torah scroll be burned is based upon the consideration that in this instance the Divine Name must be presumed to have been written with idolatrous intent. However, Rambam, *Hilkhot Yesodei ha-Torah* 6:8, defines the term “*apikores*” as used in this context in the more general sense of “heretic” and comments that a Torah scroll written by an *apikores* “is to be burned together with its Divine Names because [the heretic] does not believe in the sanctity of the Name.... Since such is his opinion the Name does not become sanctified and it is a *mizvah* to burn it in order that there be left neither a name to the heretics nor to their deeds.” Rabbi Bakshi-Doron concludes that, according to Rambam, not only may a Divine Name tattooed by a heretic be destroyed but that it is a *mizvah* to do so.