סז. מי שיש תפילין בידו בלא קשר, ומברך עליהם, ועושה קשר ומניח, שפיר עולה לו הברכה שעשה תחלה, משום שעשיית הקשר אינה הפסק אלא תיקון המצוה, ודומה להביאו מלח שבין ברכת המוציא לאכילה. [ט"ז ס"ק יב]. ודוקא בדיעבד אם עשה כן אמרינן שעלתה לו הברכה, אבל לכתחלה לא יעשה כן דהוי ליה "קודם דקודם" (כמבואר לעיל הלכה ל"ח). [כה"ח ס"ק פג]

Day 34

Reciting the blessing on tefillin before tying the knots

67) If someone wishes to put on a pair of tefillin but its straps have not yet been tied into the necessary knots, he should tie the knots before reciting the blessing. At this stage it is far too early to recite the blessing for the mitzvah. If he recited the blessing and only afterward tied the knots of the straps and put on the tefillin, his blessing is valid and he will not have to repeat it. This can be compared to someone who recited the blessing of *hamotzi* and then said, "Bring the salt," before tasting the bread, since the interrupting activity was connected to the mitzvah for which he recited the blessing.

Eshkol that when changing to another pair of tefillin a new blessing is required. Since Maran in the *Shulhan Arukh* ruled to recite a new blessing, these combined arguments are sufficient to overrule the principle of *safek berakhot lehakel*.

Avoiding the debate

The *Halakha Berura* concluded that since this issue is a matter of fierce debate among the *Poskim*, it is best to conduct oneself in a manner that satisfies both opinions. Therefore, if someone plans to switch to a second pair of tefillin, he should take off the first pair and then occupy himself with another activity so that his mind is not on the mitzvah of tefillin. Later on, he can put on the second pair of tefillin and safely recite the blessing. Indeed, Maran the Rishon Letziyon made a similar recommendation in his responsum regarding changing from one mezuzah to another.

Putting the same tefillin on again

The *Halakha Berura* (page 62) wrote that, assuming that the halakha for someone who changes from one pair of tefillin to another is that he must recite another blessing, the same would apply if someone took off his tefillin while intending to put on a second pair, but then changed his mind and put on the first pair of tefillin again. Since he took them off intending to leave them off, it is the same as taking off tefillin and not intending to put any tefillin on again that day, and the halakha in such a case is that a new blessing is required if he changes his mind and decides to put them on again, as explained above in halakha 61.

In practice, however, we cannot assume automatically that when someone takes off a pair of tefillin in order to put on a different pair that a second blessing is necessary. Therefore, in this case as well, it is best that he engage in some other activity and then come back to put on his tefillin and recite a new blessing.

דין תפלין שאולין

סח. יוצא אדם ידי חובה בתפילין שאולין. ואף מותר לברך על תפילין שאולין. [ראה ש"ע סעיף יב]. ולכן יכול אדם להשתמש בתפילין של גמ"ח אף שלוקחם בתורת שאלה.

ובכל אופן ששואל מחבירו תפילין יקפיד למדוד הקשר של התפילין של ראש, כי לפעמים הקשר קטן או גדול לפי מידת ראשו, ואם יתעצל לתקנו, על ידי זה לא יקיים מצות תפילין כדין וגם יברך **ברכה לבטלה** (וכמו שהבאנו לעיל בהלכה ד' בהערה).

Borrowed Tefillin

Using a lender pair of tefillin

68) It is permissible to fulfill the mitzvah using a borrowed pair of tefillin and one may recite the blessing on it.[92] Therefore, one may use a "lender pair" of tefillin designated for individuals who have no tefillin with them.

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92. The *Bet Yosef* (end of *Siman* 25) cited the *Orḥot Ḥayim* stating that the *Itur* ruled that it is permissible to recite a blessing on borrowed tefillin. The halakha regarding tzitzit (see *Yalkut Yosef Tzitzit English Edition*, *Siman* 14:14) is that if someone borrows a four-cornered garment for less than thirty days he is not obligated to attach tzitzit to it, and therefore he may not recite a blessing for the mitzvah of tzitzit on that garment. Our Sages instituted a rule that if someone borrows such a garment for more than thirty days he must attach tzitzit to it since onlookers will think that he owns the garment, and in that case the borrower must likewise recite the blessing when wearing it. These rules are based on the fact that the Torah obligates one to attach tzitzit to one's own garment, and not to someone else's garment. This is derived from the word (*Devarim* 22:12) כְּסוּתֶךָ – your garment. The Torah makes no such specification regarding the mitzvah of tefillin, and therefore one can fulfill the mitzvah by wearing borrowed tefillin.

Mahar"i Weil

The *Aḥaronim*, in particular the *Shulḥan Melakhim* Landau, cited the responsa of Mahar"i Weil (#191) suggesting that one must own the tefillin one wears in order to fulfill the mitzvah. This is because the Torah uses the word לָכֶם (yours) in the verse preceding that of the mitzvah of tefillin.

However, upon examining the words of Mahar"i Weil it becomes clear that he meant something else altogether and that he agrees that one may borrow tefillin to fulfill the mitzvah. He stated: One must stand up to perform the mitzvah of *lulav*. We know this because the Torah uses the word *lakhem* by the mitzvah of *lulav* and again by the mitzvah of counting the days of the *omer*. Regarding the mitzvah of counting the days of the *omer*, our Sages derived from the word *bakama* (*Devarim* 16:9), which means *in the standing grain*, that one must stand up to perform the mitzvah of counting the days of the *omer*. Since the Torah uses the word *lakhem* by both these mitzvot, it must be that one must stand up to fulfill the mitzvah of *lulav* as well.

Mahar"i Weil then added: I heard from my teacher, Berman of Mayence, who cited Harav Yaakov Northausen (May God avenge his murder) stating that one must stand up when putting on tefillin, since the Torah uses the term *lakhem* in the verse preceding the mitzvah of tefillin.

A number of *Aḥaronim* (*Kenesset Hagedola*,gloss on *Arba'a Turim* 25:3; *Petaḥ Hadevir* 25:5; *Yafe Lalev* 25:52) cited this passage to teach that one must stand up when putting on tefillin, but they did not suggest that this word *lakhem* teaches us that one must own the tefillin he puts on in order to fulfill the mitzvah.

סט. מותר להשתמש בתפילין של חבירו ולברך עליהם אף שלא מדעתו, משום "דניחא ליה לאיניש למיעבד מצוה בממוניה". רק שיקפלם כבראשונה, ולא יוציאם ממקומם הראשון. [משנ"ב ס"ק נג, כה"ח ס"ק פח].

ויש בזה עוד כמה תנאים שהבאנו בהלכות ציצית (בסימן י"ד הלכה כד):

א. אין ידוע שהבעלים מקפיד שלא ישתמשו בתפיליו, אבל ידוע שהבעלים מקפידים בזה, כגון שהוא איסטניס וכיו"ב, אסור לקחת התפלין ללא רשותו.

ב. דוקא כשהתפילין מונחים בבית הכנסת על המדף וכיו"ב, אבל אם מוצנעים בתוך תיבה, או בתוך ארון נעול, ודאי שבאופן זה הבעלים מקפידים.

ג. דוקא כשהבעלים אינם נמצאים שם כדי לשאול מהם רשות, אבל אם הבעלים שם, אין לקחת התפילין מהם בלא רשות, שאין סומכים על החזקה במקום שיכולים לבררו בקל.

ד. השימוש בתפילין יהיה באקראי, אבל בקביעות אסור.

ה. דוקא כשברור שהתפילין לא יתקלקלו ויפסדו, שאם יש חשש שיפסדו, אסור לקחת ללא דעת הבעלים.

Using someone's tefillin without his knowledge

69) It is technically permissible to use someone else's tefillin to fulfill the mitzvah even without the owner's knowledge and without asking him permission. The halakha assumes that a person is willing and pleased to have people fulfill mitzvot using his property. When one finishes, however, one must make sure to wind up the straps in the same manner as the owner had them wound and to return them to the exact place where the borrower found them.

As is the case with borrowing a tallit, whenever someone wishes to borrow another's tefillin without asking permission, the following conditions must be met:

a) The borrower has no reason to think that the owner does not wish anyone to use his tefillin. If he is aware that this person would not lend his tefillin because he is very sensitive and cannot bear to use something that was in contact with someone else's skin, it is forbidden to use those tefillin.

b) The tefillin are lying on a shelf in the synagogue, in view of others. If they are hidden away in a cubby or in a locked closet, one must assume that the owner does not want anyone to use them.

c) The owner is not available to ask him permission. If the owner is present, no one may take his tefillin without asking him permission. We cannot simply assume that he would give permission when we are capable of finding out for sure.

d) One may not borrow the tefillin every day on a regular basis unless one has obtained the owner's express permission.

e) The borrower must be sure that no harm will come to the tefillin by his borrowing them. If there is any chance that they will be harmed, he must not borrow them.

ע. בזמן הזה שאנו רואים שרוב העולם מקפידים שלא ישתמשו בתפילין שלהם בלא רשות, יש להמנע מלהשתמש בתפילין של חבירו בלא ידיעתו. [ראה בא"ח פ' לך לך ה"ו]

וכבר הבאנו לעיל (הלכה ד') דברי הב"ח, שמי שידו משגת לקנות תפילין, אלא שסומך על מה ששואל תפילין מאחרים אחר שיצאו בהן, שעונשו גדול.

דין תפילין גזולין

עא. בתפילין גזולים, אין יוצאים ידי חובה, ואין לברך עליהם [ש"ע סי"ב, וב"י סו"ס כה], משום שנחשב "מצוה הבאה בעבירה". ואפילו אחר יאוש בעלים, ואפילו בדיעבד לא קיים מצות תפילין. [משנ"ב ס"ק נד]

Things are different nowadays

70) Nowadays, the fact is that most people would not want others to use their tefillin without their permission. Therefore, it is best to refrain from borrowing tefillin unless one can ask the owner for permission.[93]

Stolen Tefillin

Using stolen tefillin

71) It is not possible to fulfill the mitzvah using stolen tefillin, and one must not recite any blessing on them. This is a classic case of a mitzvah being performed through a sinful act. Even if the victim of the theft has given up hope of ever retrieving his tefillin, it remains forbidden to use them. If anyone puts them on, he does not fulfill any mitzvah whatsoever.

Nevertheless, if the victim of the theft has given up hope and then the tefillin are given or sold to someone else, there are grounds to rule that it is now permissible to use the

Day 35

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93. The *Ben Ish Hai* (*parashat Lekh Lekha* halakha 6) declared that it is obvious that most people in his time do not want others to use their tallit or tefillin. Therefore, he ruled that no one should use someone else's tefillin without the owner's express permission, even if the synagogue trustee permits him to use them, unless the trustee assures him that he knows that the owner does not mind. In fact, the author confessed, he realized that even he personally would rather not have other people using his tefillin.

The *Yafe Lalev* (14:6) stated: Since the tefillin straps are placed directly on a person's skin, and it is obvious that many people shun any contact with another person's perspiration for fear of contracting an illness, there is a basis to rule that it is forbidden to borrow someone's tallit without his express permission, and certainly to borrow his tefillin without his permission, since the tefillin straps are placed directly and tightly on the person's skin. In fact, even after asking the owner for permission it is forbidden if it is known that the owner is sensitive to such things, since it is likely that he agreed to lend his tefillin only because he was ashamed to refuse. Since he might not be sincere in giving permission, it is possible that the tefillin will be considered stolen.

The *Yafe Lalev* added that we have the privilege of fulfilling the mitzvah of tefillin because Avraham Avinu was impeccably honest. The Midrash (*Sota* 17a) teaches that since Avraham told the king of Sodom (*Bereshit* 14:23), "אם מחוט ועד שרוך נעל – I will not even take a string or shoelace from your property," being that he knew that all the property of Sodom was probably stolen from others, his descendants were privileged with two mitzvot – the mitzvah of tzitzit corresponding to *string*, and the mitzvah of tefillin corresponding to a leather *shoelace*. This being the case, how would anyone dare do something that is possibly an act of stealing in order to fulfill the mitzvah of tefillin?