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?

ואם היה "יאוש ושינוי רשות", דהיינו שלאחר שנתייאשו הבעלים נמכרו התפילין לְאַחֵר, אף שאפשר להקל שיוכל להניח תפילין אלו, אך אין לברך עליהם, דספק ברכות להקל.

עב. אם קנה את התפילין בהקפה, והמוכר 'עייל ונפיק אזוזי' שבא לחזר אחר מעותיו, וזה הקונה דוחהו בלך ושוב ואינו רוצה לשלם לו, דמדינא אינם שלו (כדאיתא בחושן משפט סי' ק"ע), כל כי האי גוונא התפילין נחשבות כגזולות, ואם כן לא יצא מן הדין ידי חובה תפילין. [ראה משנ"ב סי' יא ס"ק כז]

stolen tefillin. Even in such a case, one must not recite a blessing on the tefillin, based on the principle of *safek berakhot lehakel*.[94]

Buying tefillin on credit

72) If someone purchases a pair of tefillin on credit, but when the proprietor asks for the payment he is met with continuous stalling because the person who bought them does not really intend to pay for them, the tefillin never become the property of that "purchaser." In such a case, the tefillin are considered stolen property in his hands and he cannot fulfill the mitzvah of tefillin with them.[95]

94. The *Ba'al Ha'itur*, cited by the *Bet Yosef*, ruled that if the victim of the theft has already given up hope and the tefillin are subsequently transferred to another person's hands, it is permissible to use the tefillin and to recite the blessing on them. The *Levush*, *Magen Avraham*, and Harav Zalman cited this as the halakha in practice. The *Ture Zahav* (25:14), however, argued that since Maran did not cite this ruling in the *Shulhan Arukh*, it must be that he ruled otherwise, namely that it remains forbidden to recite a blessing on the stolen tefillin no matter how many hands they have changed. Although regarding other thefts the halakha is that if the victim gives up hope and then the stolen item is transferred to someone else's hands, it becomes that person's legal property [while the thief must still pay back the victim for it], in this case it would be insulting to God to recite a blessing on such tefillin even though they technically are no longer stolen property.

The *Mishna Berura* (25:54) cited both opinions and it seems that he leaned toward stringency. Harav Yosef Hayim (*Od Yosef Hai*, *parashat No'ah* halakha 7; *Mikabtze'el* halakha 24) ruled leniently, but even so he recommended that one be stringent. The *Kaf Hahayim* Sofer (25:86) ruled stringently, but added that if there is any additional basis through which to validate the tefillin, it is permissible to recite a blessing in this case. He cited the ruling of the *Shulhan Arukh* (*H.M.* 356:1) that it is forbidden to purchase stolen property from a thief, since this encourages him to continue in his sinful ways. See the *Yalkut Yosef Tzitzit English Edition* (footnote to *Siman* 14:26).

Purchasing stolen merchandise

The *Damesek Eliezer*, cited by the *Mishna Berura* (25:54), ruled that it is permissible to use and to recite the blessing on stolen tefillin after purchasing them from a dealer who obtained them from the thief. Although the halakha forbids reciting a blessing over tefillin if someone obtained them from the thief after the owner gave up hope, this is because the act of acquiring the tefillin from the thief accomplished the final stage of the theft, removing them permanently from the owner's possession. Therefore, using them is an insult to God. Once the final acquisition has taken place, however, if someone else now purchases them from the new owner, he has no part in the theft whatsoever. Therefore, he may use them and recite the blessing.

Accordingly, if someone purchases a pair of tefillin from a store, he may use them and recite the blessing even if he suspects that the store received them from a thief. Even though it is possible that the storeowner is the thief himself, it is not necessary to suspect this to be the case as long as the purchaser does not know this to be the fact. The *Kaf Hahayim* Sofer ruled that since we do not know who stole them, and we are sure that the original owner has given up hope, we can be lenient.

Nevertheless, in every case where there is a suspicion that the tefillin are stolen it is best to refrain from purchasing them. In that way, we cannot be guilty of encouraging and promoting more of such thefts.

95. This is the ruling of the *Mishna Berura* (11:27) regarding tzitzit, and as it appears in *Yalkut Yosef Tzitzit English Edition* (*Siman* 11:29). The footnote there

זמן חליצת התפילין

עג. נהגו העולם שלא לחלוץ תפילין עד אחר קדושת ובא לציון. [ש"ע סעיף יג].
ובשיטת המקובלים, יש שכתבו שעל פי הקבלה לא יחלוץ התפילין עד שאמר בהם שלש קדושות וארבעה קדישים, **והיינו: עד אחר קדיש יהא שלמא** (שאז אמר שלש קדושות: קדושה דיוצר, קדושה דחזרה, וקדושה דובא לציון. וארבעה קדישים: חצי קדיש קודם ברכו, חצי קדיש שאחר החזרה, וקדיש תתקבל, וקדיש יהא שלמא).
ויש שהקילו לשיטת המקובלים, וכתבו שלא יחלוץ עד שיאמר בהם שלשה קדישים וארבע קדושות, **והיינו: עד אחר קדיש תתקבל.** (שאז אמר שלשה קדישים האמורים, וארבע קדושות: השלשה האמורות, וקדושה דברכו שלפני יוצר נחשבת גם כן לדבר שבקדושה).

The Proper Time to Take Off the Tefillin

Day 36

After *Kedusha* of *Uva leTziyon*

73) The common custom is to continue wearing tefillin during *shaḥarit* until after reciting the *Kedusha* in the prayer of *Uva leTziyon*. According to some *Poskim*, the Kabbalah demands that one continue wearing tefillin until after one has recited *Kedusha* three times [once before the *Shema*, once during the repetition of the *Amida*, and once during *Uva leTziyon*] and listened to kaddish four times. That includes the half-kaddish recited after *Yishtabaḥ*, the half-kaddish recited after the repetition of the *Amida*, the kaddish of *Titkabal*, and the kaddish of *yehe shelama* recited before the *ketoret*.

Some *Poskim* reversed this, saying that one must not take off the tefillin until after reciting *Kedusha* four times [they count the response of *Barekhu* as the first *Kedusha*] and listening to kaddish three times. This is more lenient, since according to this one may take off the tefillin immediately after the kaddish of *Titkabal*.

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cites the *Arukh Hashulḥan* (11:22) added that if the proprietor is willing to wait patiently as long as it takes until he collects his money one day, it is considered a valid sale despite the purchaser's procrastination.

If the proprietor cannot be located

The *Me'asef Lekhol Hamaḥanot* (25:121) cited a case where someone ordered a pair of tefillin straps from a resident of Yerushalayim, but the straps were delivered without telling him the address of the proprietor, so that the purchaser had no way of paying for them. He asked Harav Eliezer Deutsch what he should do, and the rabbi recorded his responsum in his *Peri Hasade* (Vol. I, #116). His conclusion was that the purchaser may use the straps, but that he should donate the money he owes for them to some public building or public service in the hope that the proprietor would be among those who benefit from his donation. Since it was safe to assume that the proprietor received financial assistance from the general charity fund of his community, the rabbi suggested donating the money to that fund. This advice is based on the halakha regarding a thief who wishes to repent for his sins but who cannot identify the victims of his many thefts to pay them back the money he stole from them. He is supposed to donate to public projects in the hope that his victims will benefit from his donation.

Besides this, the person who ordered the straps should write a letter to the charity's trustees explaining his problem, asking them to try to identify the proprietor. If they succeed, the matter is settled when he pays for the straps. If they do not, then in all likelihood the proprietor or someone in his family will benefit from the donated money.