



Returning Stolen Property to the Estate

The *Mishnah* deals with a *gazlan* (a robber) that swears falsely, denying he stole. The *Mishnah* teaches that if he later admits to the robbery, he must pay the victim back including an additionally *chomesh* fine (twenty-five percent of the value of the item stolen) and is obligated to bring a *korban ashem* (guilt offering).

The *Mishnah* (9:9) deals with the case where the victim is the *gazlan's* father and what should be done if the *gazlan* admits he stole after the father died. As a beneficiary of the estate, one may question whether the payment is necessary. The *Mishnah* however explains that the item needs to be returned to the sons or brothers (in the absence of sons). The *Bartenura* explains that even if the *gazlan* wanted to retain the object and compensate the other heirs, the *gazlan* must nevertheless return the object. This is because the *gazlan* must fulfil the obligation: "he must return the object he stole" (*Vayikra* 5:23). In other words, even though financially there may be no practical difference, in order to achieve an atonement, the stolen item must leave his possession.

The *Bartenura* however adds that this obligation only exists if the exact object is still in his possession. The *Tosfot Yom Tov* explains that this is the indeed the opinion of the *Rambam*. The *Rambam* rules if the object is still in his possession, he would need to give the item to his brothers and then calculate his share in the estate. If it is not, or has undergone a *shinui* (had been modified such that is now considered the property of the *gazlan*) then he would only need to do an accounting with his brothers regarding the value of the stolen item. The *Tosfot Yom Tov* explains that once the original stolen object is no longer available, he would indeed be required to compensate his victim. Yet this would no longer fall under the obligation of "he must return the object he stole". This explains why the *Rambam* maintains that he need not pay the value to the estate. As an heir he can retain the value before making the accounting with his brothers.

The *Grach* notes that there are two laws in *gezeila* that will help us understand the *Tosfot Yom Tov*. He cites the *Rambam* (1:1) who explains:

If one steals a *perutah* worth from his friend, he violates a negative prohibition as it states "do not steal". He does not receive lashes, since the [prohibition] is repaired by fulfilling the positive *mitzvah*... "he must return the object he stole" – this is a positive *mitzvah*. Even if the stolen item is burnt [which prevents him from fulfilling the positive *mitzvah*] he [still] does not receive lashes, since he is obligated to repay the value, and [regarding] any prohibition that demands payment, one does not receive lashes.

The *Grach* notes that according to the *Rambam* there are two independent obligations that apply to a thief. The first is returning the stolen object based on the above cited *pasuk*. There however is another obligation to compensate the victim when the item cannot be returned based on the next *pasuk* that states "and he must pay".

Interesting the *Aruch HaShulchan* (ChM 367:15) understands the *Rambam* differently. He explains the once the father dies, since he is a beneficiary, all that exists is the *mitzvah* of *hashava* and he need not lose out financially. Consequently, if he has the item, he returns it to the brothers and then does an accounting (including the value of the returned item) to calculate his share in the estate from the rest of the property. If the item is no longer, the *Aruch HaShulchan* understands the accounting stated by the *Rambam* in a different manner. The brothers take part of the estate that is equivalent to the money the *gazlan* owes, which would be considered as a fulfilment of *hashava*. The *gazlan* would then take from another part of the estate against that amount proportional to his share in the estate. In other words, the *Aruch HaShulchan* understand the cases when the stolen object is no longer in the opposite manner. There is no financial obligation, yet the *mitzvah* of *hashava* is fulfilled through an exercise in accounting.

Yisrael Bankier

Revision Questions

בבא קמא ח' ה' – ט: י"א

- Why is a person who hits another person on *Shabbat* and causes a wound exempt from all forms of compensation? (ח': ה')
- Give the final ruling in the case where *R' Akiva* initially ruled that a man was obligated to pay compensation for the embarrassment caused when he uncovered a woman's hair in public, yet it was witnessed later that she readily uncovered her own hair in public. (ח': ו')
- Is there anything left for a person to do after they pay compensation for an injury they caused? (ו': ז')
- Is a person obligated to pay compensation if he was told by the victim to sever his hand? (ח': ז')
- What must a thief give the original owner if he stole:
 - Wood and crafted utensils?
 - A pregnant cow which subsequently gave birth?
 - A young calf which he subsequently raised? (ט': א')
 - Wine which subsequently went sour?
 - *Trumah* which subsequently became *tameh*?
 - *Chametz* that was in the thief's possession during *Pesach*? (ב': ז')
- What is a craftsman obligated to pay if he was given a raw materials to make a utensil, and he did so then broke it? (ט': ג')
- What is the law if a colour dyer dyed wool in a different colour than which he was instructed? (ט': ד')
- If someone stole an item and swore falsely that he did not steal it, then wishes to do *teshuvah* and return the item, can he send the item with another person to deliver it? (ט': ה')
- Regarding the previous case, when do we say that the thief does not need to travel to the victim and return the item? (ט': ו')
- How can the thief be obligated to pay "a fifth of the fifth"? (ט': ז')
- What other case is one also obligated to pay "*keren ve'chomesh*"? (ט': ח')
- Regarding the previous case, when would he be obligated to pay back double? (ט': ט')
- What is the law regarding a case where a son stole from his father and swore falsely that he did not steal from him, and then his father dies? What if the son has no money to pay back? (ט': י')
- If a father makes a *neder* preventing his son from gaining any benefit from his possessions and then dies, when do we say that the son cannot inherit the property? (ט': י"א')
- Regarding the previous question, what if the son is the only heir? (ט': י"ב')
- If someone steals from a *ger* and falsely swears that he did not steal from him and the *ger* dies with no heirs, to whom does he pay *keren ve'chomesh*? (ט': י"ג')
- Regarding the previous question, what is the law if the thief subsequently dies prior to delivering the money and offering the *korban*? (ט': י"ד')
- Can the *korban asham* of the thief be offered prior to: (ט': י"ה')
 - Returning the stolen item?
 - Paying the *chomesh*?

Melbourne, Australia

Sunday -Thursday

10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Friday & Shabbat

10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Efrat, Israel

Shiur in English

Sunday -Thursday

Rabbi Mordechai Scharf
9:00am
Kollel Magen Avraham
Reemon Neighbourhood

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
16 December ח' טבת	17 December ט' טבת	18 December י' טבת	19 December י"א טבת	20 December י"ב טבת	21 December י"ג טבת	22 December י"ד טבת
Bava Kama 9:12-10:1	Bava Kama 10:2-3	Bava Kama 10:4-5	Bava Kama 10:6-7	Bava Kama 10:8-9	Bava Kama 10:10 - Bava Metzia 1:1	Bava Metzia 1:2-3

