



Ein Shaliach le'Davar Aveira

The seventh *perek* discusses the obligation of a thief to pay back more than he stole. A *ganav* ordinarily must pay double the value of what he stole (*kefel*). If however he stole a sheep or cow and then either sold or slaughtered the animal, the *Torah* obligates him to pay four or five times the value respectively. The sixth *Mishnah* discusses the case where the animal dies as it is being stolen. If he had not picked up the animal or removed it from the property of his victim before the animal died, then since it had not yet been considered in the possession of the thief, he has not stolen it and is exempt from the double compensation.

The *Mishnah* however discusses cases where the object was considered stolen by an unknowing accomplice. For example, where the thief instructed his creditor to take the animal to pay of his debt, leading him to belief it was his. Similarly, if he instructed a custodian to take the animal, the law would be the same. If this third party picked up the animal or removed it from the property of the victim, then the thief is obligated to pay double.

The *Tosfot Yom Tov* cites the *Tosfot* that address the following question on the *Mishnah*. The *shomer* or creditor is effectively acting as this thief's *shaliach* to commit the crime, through which he obligates him with *kefel*. Normally however, we rule that *ein shaliach le'davar aveira* – there is no *shlichut* in such circumstances – so how could the actions of this third party obligate that *ganav* to pay *kefel*. The *Tosfot* answer that this case is an exception since the third-party is unaware the prohibition is being violated. The logic behind *ein shaliach le'davar aveira* is “*divrei ha'rav, divrei ha'talmid, divrei mi shomin*”. In other words, we reason that the *shaliach*'s prime responsibility is to listen to *Hashem* and not the person that asked to commit the

sin. In this case the *shaliach* thought that it belonged to the *ganav*, consequently there was no reason why he would not take it for him.

R' Akiva Eiger (*Bava Metzia* 10b) presents two ways to understand this logic. The first is in the name of the *Sema*. *Divrei ha'rav, divrei ha'talmid, divrei mi shomin* is normally the defense for the *meshaleach* since he would not have expected the *shalaich* to follow through. For that reason, the *Sema* maintains that if the *shalaich* is a *mumar*, a person with complete disregard for *mitzvot*, then the defense no longer applies.

R' Akiva Eiger however argues that we would still say *ein shaliach le'davar aveira* in the case of a *mumar*. That is because since the individual is required to heed the *divrei ha'rav*, it automatically annuls any attempted *shelichut*. That being the case, how do we understand our *Mishnah*?

The *Tosfot Yom Tov* cites the *Nemukei Yosef* who argues that we would still say *ein shaliach le'davar aveira* in our *Mishnah*. When the *Mishnah* say *chayav*, it obligates that *shaliach* or creditor to pay. They are not obligated to pay *kefel* since they did not know that they were affectively stealing. Nevertheless, they become responsible for returning the objects to the true owner.

Finally, the *Tosfot Yom Tov* cites the opinion of the *Rambam*, as explained by the *Magid Mishnah*, who understands that the case in this *Mishnah* is where this third party is aware the item does not belong to the *ganav*. The *Mishnah* is teaching that even though we rule that if one steals from a *ganav* they are not (also) obligated to pay *kefel*, in this case, it never was in the possession of the “*ganav*”. Consequently, the third-party is obligated to pay *kefel*.

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Revision Questions

בבא קמא ז' - ט' - ה'

- When is the thief not liable if the animal died as he was removing it from the owner's property? What other cases are similar to this one? (ז': ט')
- Where can sheep be raised in Israel? (ז': ז')
- Which animals cannot be bred in *Yerushalaim* and why? (ז': ז')
- What are the five components of compensation one must pay if he injures another person and explain each of them? (ח': א')
- What other component of damage (aside from those mentioned in the previous question) is a person liable to pay if he caused the damage but not liable if his animal caused the damage? (ח': ב')
- Is a child obligated to pay compensation if he hits his parent and does not cause a wound? (ח': ג')
- What component of compensation does *R' Yehuda* maintain is not applicable for injuries caused to *avadim*? (ח': ג')
- Explain why for the following people "*pegiatan ra*": (ח': ד')
 - *Cheresh, shoteh ve'katan.*
 - Women.
- 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? (ח': 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*? (ט': ב')
- 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 *teshuva* and return the item, can he send the item with another person to deliver it? (ט': ה')

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
8 September ה' אלול	9 September ו' אלול	10 September ז' אלול	11 September ח' אלול	12 September ט' אלול	13 September י' אלול	14 September יא' אלול
Bava Kama 9:6-7	Bava Kama 9:8-9	Bava Kama 9:10-11	Bava Kama 9:12-10:1	Bava Kama 10:2-3	Bava Kama 10:4-5	Bava Kama 10:6-7

