



## It was Stolen

The *Mishnah* (9:8) discusses a case where one was entrusted with an object, then subsequently swore falsely that it was stolen. If witnesses testify that he really had the item, he will need to pay back *kefel* – double its value. This is the same punishment for one that stole an object. Note however that this case is exceptional because if the custodian swore falsely that it was simply lost, then he would need to pay *keren ve'chomesh* – its value plus an extra twenty-five percent. Importantly, this case is where the *shomer* was a *shomer chinam*; he was not being paid to look after it. Consequently, in both cases, the claim that it was either stolen or lost would have exempted him from compensation (provided he was not negligent in caring for the object). Our case is treated differently as outlined by the *Torah* (*Shemot* 22:7-8).

The *Gemara* records a debate regarding the details of the case. According to *Rav Chiya bar Yosef*, the obligation to pay *kefel* is only if witnesses testify that he used the object for his own purposes (*shilach bo yad*) prior to making the *shevua*. *R' Sheshet* however takes the opposite position. We shall try to understand *R' Sheshet's* position.

Prior to *R' Sheshet's* opinion, *R' Chiya bar Abba* said that *R' Yochana* maintained that *kefel* will be obligated if the entrusted animal was untouched. The *Gemara* is unsure whether it is only in that case (like the opinion of *R' Sheshet*) or also in that case. The *Gemara* explains that according to the first understanding, *kefel* will only apply if he did not touch it, since as soon as he handles it for his own needs, he acquires it and the subsequent *shevua* has no effect. How do we understand this *Gemara*?

*Rashi* explains that as soon as he used the *pikadon* for his own purposes, he “acquired it” and it is considered his property. That is to the extent that no matter what happens, the value will need to be returned to the owner. Consequently, the false oath is being made to the current “owner”, which is himself.

*R' Akiva Eiger* (*Shut MK* 192) finds this explanation difficult. Granted he is obligated to pay back, but it does not truly belong to him. Furthermore, the *Gemara's* reasoning that “the *shevua* has no effect” does not fit with this explanation.

*R' Akiva Eiger* explains that the straightforward explanation is that once he is *sholeach yad*, he is obligated to pay no matter what. Consequently, the *shevua* that it was stolen no longer exempts him from payment – even if it were true. The obligation to pay *kefel* is only where such a *shevua*, were it true, would have exempted him from payment.

*R' Akiva* explains that *Rashi's* position is based on the *Gemara's* case where the custodian first swore (falsely) that it was lost, and then after swore that it was stolen. In that case he would be exempt from *kefel*. The *Gemara's* initial suggestion is that after the first *shevua* he acquired it. This sounds like *Rashi's* explanation and does not fit with the simple explanation *R' Akiva Eiger* presented above. Indeed *R' Akiva Eiger* concludes that both understandings would apply to exempt one from *kefel*.

The *Zecher Yitzchak* concludes from that same *Gemara* that it is not because the *shevua* does not exempt him, but rather because he is already defined as *gazlan*. He explains that as soon as he was *sholeach yad* he was obligated to pay *keren* (the principal value). When the *Gemara* says that the *shevua* would have no effect, it is because it cannot obligate him to pay *keren* since he is already obligated to pay. Furthermore, the *kefel* never comes about in two phases, only when it obligates *keren* as well. Consequently, in this case, we cannot obligate *kefel*.

The *Zecher Yitzchak* however cites the *Rambam* (*Gneiva* 4:3) who explains that the reason why he is exempt from *kefel* if he first swore it was lost and then swore it was stolen is because “the object already left the possession of the owner”. Firstly, we find that the exemption has nothing to do with the efficacy of the second *shevua*. He therefore explains that for one to be obligated in paying *kefel* they need to steal the object from the property of the owner. If was no longer in the possession of the owner, then it would be like stealing from a thief, where one is not obligated to pay *kefel*. Consequently, in this case, according to *R' Sheshet* once he is *sholeach yad*, it is no longer considered in the possession of the owner and the subsequent *shevuah*, would no longer be removing it from his possession so he is exempt from *kefel*.

## Revision Questions

בבא קמא ט' ג' – ו' ז'

- Regarding the previous case, when do we say that the thief does not need to travel to the victim and return the item? (ט' ז')
- 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' ז')
- Regarding the previous case, when would he be obligated to pay back double? (ט' ח')
- 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' ט')
- 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')
- Regarding the previous question, what if the son is the only heir? (ט' י')
- 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"א)
- Regarding the previous question, what is the law if the thief subsequently dies prior to delivering the money and offering the *korban*? (ט' י"א)
- Can the *korban asham* of the thief be offered prior to: (ט' י"א)
  - Returning the stolen item?
  - Paying the *chomesh*?
- When are the heirs of a thief not obligated to pay back the victim if the stolen item has been consumed? (ט' י"ב)
- Can one exchange money from the tax collector's chest? (ט' י"ב)
- If a *gazlan* stole a garment from a person and left him one in “exchange” can the person keep it? (ט' י"ב)
- When do we say that a person can keep the property that he salvaged from a natural disaster? (ט' י"ב)
- What is the law if *Reuven* claims that particular items in the possession of *Shimon* are his and were stolen, yet *Shimon* claim he purchased them? (ט' י"ג)
- Regarding the previous question, is the law different if he is know to be a thief? (ט' י"ג)
- Consider a case where *Reuven* was carrying a barrel of wine and *Shimon* was carrying a barrel of honey. If the barrel of wine cracked and *Reuven* emptied his own barrel of wine in order to save the honey, what can he claim from *Shimon*? When does this ruling change? (ט' י"ד)
- What other case is brought that is similar to the one in the previous question? (ט' י"ד)
- If someone stole a field from another and the state seized the property, when do we say that the thief is liable and when is he exempt? (ט' י"ה)
- What other case is brought that is similar to the one in the previous question? (ט' י"ה)
- If someone loaned money from someone in the city, can he return it to him in the desert? (ט' י"ה)
- Is a person obligated to pay if he borrowed money and is unsure whether he paid the person back? What if he is unsure if even borrowed the money? (ט' י"ז)

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
15 September י"ב אלול	16 September י"ג אלול	17 September י"ד אלול	18 September ט"ו אלול	19 September ט"ז אלול	20 September י"ז אלול	21 September י"ח אלול
Bava Kama 10:8-9	Bava Kama 10:10 - Bava Metzia 1:1	Bava Metzia 1:2-3	Bava Metzia 1:4-5	Bava Metzia 1:6-7	Bava Metzia 1:8-2:1	Bava Metzia 2:2-3

