



## Chasing After Him

The *Mishnah* discussed the case of one who is unlawfully in possession of another person's property and takes an oath denying his possession of it<sup>1</sup>. Such cases include robbery, withheld wages, a collateral to a loan or a lost item. We have learnt that if the person later admits of his own accord (and not forced to by witnesses) then he must return the withheld item as well as an additional payment of 25% of item's value (*chomesh*). He is also obligated to bring a *korban asham*. The source for this law was in last week's *Parasha* (*Vayikra* 5:20-26).

The *Mishnah* (9:5) explains that if the object in question has a value of at least a *perutah*, then the robber must take the item and return it personally to the original owner, even if it requires him to cover a great distance. By extension, the *Rambam* (*Gezeila* 7:11) explains that if it is less than the value of a *perutah* then the *gazlan* holds on to it, till the original owner collects it.

The next *Mishnah* (9:6) deals with various cases where the principal and/or *chomesh* was partially paid or forgone by the original owner. The *Mishnah* explains which cases impact on the *gazlan's* obligation to deliver the stolen items. One case listed is if the original owner forwent both the principal amount and *chomesh* aside from less than a *perutah* of the principal amount. The *Mishnah* rules that in that case the robber would not be required to deliver the remaining amount.

The *Tosfot* (104b s.v. "chutz") question the *Mishnah's* necessity of teach this case. As cited above, the previous *Mishnah* already taught that if the stolen item was valued at

less than a *perutah*, the *gazlan* would not be required to deliver it. What is the novelty of this *Mishnah*?

The *Tosfot Yom Tov* suggests that since the first *Mishnah* did not state what the law was for less than the value a *perutah*, one might have thought that due to it being an insignificant amount, it need not be paid back. The second *Mishnah* however teaches that it need not be delivered. Recalling the *Rambam* cited above, the *Mishnah* is however teaching that if the owner came to collect it, the *gazlan* must return it. As the *Rambam* teaches (*Gezeila* 1:2) robbery of even the smallest amount is biblically forbidden.

The *Tosfot R' Akiva Eiger* however suggests that the case in the second *Mishnah* is different. The principle amount was initially more than a *sha've perutah*. Unlike the first *Mishnah*, the *gazlan* was obligated to deliver the item back to the owner. Even though the value of what needs to be return has decreased, one might have thought that the obligation to deliver it remains. The *Mishnah* teaches that this is not the case.<sup>2</sup>

*R' Yehonatan* also explains that the case in the second *Mishnah* is different. In that case the *galzan* had not paid anything and the owner forwent the bulk of the financial obligation. One might have thought that since he is still retaining some of the original amount and the deduction to less than a *perutah's* worth came with ease and no financial loss to the *gazlan* he would still be required to return it. The second *Mishnah* teaches that since it nevertheless less than a *perutah*, the *gazlan* is not required to deliver it.

*Yisrael Yitzchak Bankier*

<sup>1</sup> The *Tosfot* (103a) explain that one is only required to take an oath if they partially admit to the claim; if at least the claim was *shtei kesef* and he admitted to a *perutah*. Our case must be where the *gazlan* made an oath voluntarily or it was a case of *modeh be'miktzat*.

<sup>2</sup> This is also the opinion of the *Rosh* as cited by the *Shita Mekubetzet*

**Revision Questions**

בבא קמא ט' ד' י' ה'

- 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')
- 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*?
- When are the heirs of a thief not obligated to pay back the victim if the stolen item has been consumed? (ט' י"ו')
- Can one exchange money from the tax collector's chest? (ט' י"ז')
- If a *gazlan* stole a garment from a person and left him one in “exchange” can the person keep it? (ט' י"ח')
- When do we say that a person can keep the property that he salvaged from a natural disaster? (ט' י"ט')
- 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"י')
- Regarding the previous question, is the law different if he is know to be a thief? (ט' י"יא')
- 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"יב')
- What other case is brought that is similar to the one in the previous question? (ט' י"יג')
- 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"יד')
- What other case is brought that is similar to the one in the previous question? (ט' י"טו')

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**Next Week's Mishnayot...**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
24 <sup>th</sup> March י"ג ניסן	25 <sup>th</sup> March י"ד ניסן	26 <sup>th</sup> March ט"ו ניסן	27 <sup>th</sup> March ט"ז ניסן	28 <sup>th</sup> March י"ז ניסן	29 <sup>th</sup> March י"ח ניסן	30 <sup>th</sup> March י"ט ניסן
Bava Kama 10:6-7	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

