

The Penitents' Enactment: Justice and Rehabilitation in Rabbinic Civil Law

Part II

1. בבא קמא צד:

תנו רבנן הגזלנין ומלוין ברבית שהחזירו אין מקבלין מהן והמקבל מהן אין רוח חכמים נוחה הימנו.

The Sages taught in a *baraita*: With regard to **robbers or usurers that returned** either the stolen item or the interest to the one from whom they took it, **one should not accept it from them. And** with regard to **one who does accept it from them, the Sages are displeased with him**, since by doing so he discourages those who wish to repent.

אמר רבי יוחנן: בימי רבי נשיגית משנה זו. דתניא: מעשה באדם אחד שבקש לעשות תשובה, אמרה לו אשתו: ריקה! אם אתה עושה תשובה, אפילו אבנט אינו שלד! ונמנע ולא עשה תשובה. באותה שעה אמרו: הגזלנין ומלוין רביות שהחזירו – אין מקבלין מהם, והמקבל מהם – אין רוח חכמים נוחה הימנו.

Rabbi Yohanan says: This mishna, i.e., the statement of the Tosefta, was taught in the days of Rabbi Yehuda HaNasi, as it is taught in a baraita: There was an incident with regard to one man who desired to repent. His wife said to him: Empty one [reika], if you repent you will have to return all the stolen items to their rightful owners, and even the belt that you are wearing is not yours, and he refrained and did not repent. At that time, the Sages said: With regard to **robbers or usurers that returned** either the stolen item or the interest, **one should not accept it from them. And** concerning **one who does accept it from them, the Sages are displeased with him.**

תא שמע הרועים והגבאים והמוכסין תשובתן קשה ומחזירין למכירין.

Come and hear the statement of another *baraita*: With regard to **shepherds; or tax government tax collectors; or tax collectors** who purchase the right to collect taxes themselves and collect unlawfully, **their repentance is difficult**, since they steal from the public, **and they must return** what they have stolen **to whomever they recognize** as victims of their theft.

אמרי: מחזירין, ואין מקבלין מהם. ואלא למה מחזירין? לצאת ידי שמים. אי הכי, אמאי תשובתן קשה? ועוד, אימא סיפא: ושאינן מכירין – יעשה בהן צרכי ציבור, ואמר רב חסדא: בורות, שיחין ומערות!

Say that **they return it, but one does not accept it from them. But why do they return it** if it will not be accepted? In order **to fulfill** their obligation to **Heaven. If so**, if they are not actually obligated to return what they have stolen, **why is their repentance difficult? And furthermore, say the latter clause** of the *baraita*: **And** as for the money belonging to those **that they do not recognize** as their victims, **they should use** that money for **community needs. And Rav Hisda says:** This means providing **pits, ditches, and caves**, which benefit the general public.

אלא לא קשיא כאן קודם תקנה כאן לאחר תקנה. והשתא דאמר רב נחמן בשאין גזילה קיימת אפילו תימא אידי ואידי לאחר תקנה ולא קשיא כאן בגזילה קיימת כאן בשאין גזילה קיימת. והא אבנט דגזילה קיימת היא! מאי אבנט? דמי אבנט.

Rather, it is **not difficult: Here**, where the *baraita* states that he must actually return what he has stolen, it is referring to a time **before the ordinance** for the penitent was instituted. **There**, where the *baraita* states that one does not accept the repayment from a robber, it is referring to a time **after the ordinance** was instituted. **And now that Rav Nahman says** that when the Sages say that he does not return what he has stolen, they refer only to a case **where the stolen item does not exist** in its initial form, and **you can even say that this and that**, both *baraitot*, are referring to a time **after the ordinance** was instituted, **and it is not difficult. Here** is referring to a case **where the stolen item still exists. There** refers to a case where the **stolen item does not still exist. But** the incident of the **belt**, which was the impetus for instituting the ordinance for the penitents, was a case **where the stolen item still exists! What** is meant by: Even the **belt? The value of the belt.**

וכל היכא דגזילה קיימת לא עבוד רבנן תקנתא? והרי מריש דגזילה קיימת היא ותנן על המריש הגזול שבנאו בבירה שיטול דמיו מפני תקנת השבים! שאני התם דכיון דאיכא פסיקא דבירה שויה רבנן כדליתא.

And is it so that **the Sages did not institute an ordinance** for the penitent **anywhere that the stolen item still exists? But there is the case of a beam, which is a stolen item that still exists, and we learned** in a mishna (*Gittin* 55a): **With regard to a stolen beam that the robber built into a building**, the Sages instituted **that the robbery victim should take its monetary value and not the actual beam because of the ordinance** instituted for **the penitent. There it is different. Since in that case there is the loss of the entire building, the Sages treat the beam as though it were not** in existence.

2. רמב"ם הלכות גזילה ואבידה א:יג

כל הגזול את חבירו שוה פרוטה, כאילו נוטל נשמתו ממנו, שנאמר "כן ארחות כל בוצע בצע את נפש בעליו יקח" (משלי א:י"ט). ואף על פי כן, אם לא היתה הגזילה קיימת, ורצה הגזול לעשות תשובה, ובא מאיליו והחזיר דמי הגזילה, תקנת חכמים היא שאין מקבלין ממנו, אלא עוזרין אותו ומוחלין לו, כדי לקרב הדרך הישרה על השבין. וכל המקבל ממנו דמי הגזילה, אין רוח חכמים נוחה הימנו:

Whenever a person robs a colleague of even a *prutah's* worth, he is considered as if he took his very soul, as Proverbs 1:19 states: "Such are the ways of those who are greedy. They take away the soul of the owner." Notwithstanding the severity of this sin, if the article that was taken by robbery no longer exists, and a robber seeks to repent and comes of his own volition to return the value of the article he obtained by robbery, our Sages ordained that one should not accept it. Instead, the robber should be helped and forgiven, to make the path of repentance more accessible to those who wish to return. Our Sages did not look favorably on anyone who accepts payment for an article that was taken from him through robbery.

3. תוספות בבא קמא צד:

בימי רבי נשנית משנה זו – אור"ת דלא לפניו ולא לאחריו אלא לדורו דוקא תקן משום מעשה שהיה ולא לדורות הבאין דהא מעשים בכל יום שמקבלים מן הגזלנים ודנין גזילות כי ההוא דגזל פדנא דתורא לקמן (דף צו:)...

"In the days of Rabbi this Mishnah was taught" — **Rabbeinu Tam** explains that this means neither before him nor after him, but **specifically for his generation**. For, after all, it is an everyday occurrence that people accept [property] from robbers and adjudicate cases of robbery, as in the case of the one who robbed a bundle of an oxen-driver, below (96b)...

...ור"י אומר דממתני' לא ה"מ למפרך דלא תקן רבי דאין מקבלים אלא מאותן בני אדם שרוב עסקם ומחיתם בכך והיו ניזונים בגזל ורבות ומתפרנסים בכך כל ימיהם כדקתני הגזלנין ומלוי ברבית דמשמע שאומנותם בכך וכן רועים וכל הנהו דמייתי אבל ממתניתין לא פריך שלא עשו תקנה מקבל מאדם שגזול ומלוה ברבית באקראי בעלמא

And **Rabbi Yitzhak** [ר"י] says: We could not have raised a difficulty from the Mishnah, because Rabbi did not institute [the rule] that one may accept [stolen property] except from those **people whose principal occupation and livelihood consisted of this**, and who were sustained by robbery and interest and made their living from these things throughout their lives. This is what is implied by the expression "the robbers and those who lend at interest"—it implies that this was their profession. The same applies to shepherds and all the other cases that [the Gemara] brings. But we cannot raise a difficulty from the Mishnah, because they did not institute a rule against accepting property from someone who only occasionally robs or lends at interest.

אבל אין לפרש דלהכי לא פריך ממתני' משום דרבי לא תיקן אלא באותם שעשו תשובה... מכ"מ ההיא דגזלנים ומלוי ברבית לא משמע דאיירי בעבדי תשובה ועוד שכל אדם יכול להערים שיעשה תשובה ויחזור מעצמו ולא יקבלו ממנו...

However, one cannot explain that the reason [the Gemara] does not raise a difficulty from the Mishnah is that Rabbi instituted the rule only with regard to people who had repented... For, in any event, the passage about robbers and those who lend at interest does not sound as though it is dealing with people who have repented. Furthermore, any

person could deceive [the system] by claiming that he had repented, return [the stolen property] on his own, and then people would not accept [property] from him...

4. משנה יומא ח:ט

...עבירות שבין אדם למקום, יום הכפורים מכפר. עבירות שבין אדם לחברו, אין יום הכפורים מכפר, עד שירצה את חברו. את זו דרש רבי אלעזר בן עזריה, מכל חטאתיכם לפני יי' תטהרו (ויקרא ט"ז:ל), עבירות שבין אדם למקום, יום הכפורים מכפר. עבירות שבין אדם לחברו, אין יום הכפורים מכפר, עד שירצה את חברו.

Furthermore, for **transgressions between a person and God, Yom Kippur atones**; however, for **transgressions between a person and another, Yom Kippur does not atone until he appeases** the other person. Similarly, **Rabbi Elazar ben Azarya taught** that point from the verse: **"From all your sins you shall be cleansed before the Lord"** (Leviticus 16:30). For **transgressions between a person and God, Yom Kippur atones**; however, for **transgressions between a person and another, Yom Kippur does not atone until he appeases** the other person.

5. משנה בבא קמא ח:ז

אף על פי שהוא נותן לו, אין נמחל לו עד שיבקש ממנו, שנאמר: ועתה השב אשת וגו' (בראשית כ':ז). ומנין שלא יהא המוחל אכזרי, שנאמר: ויתפלל אברהם אל האלהים וירפא אלהים את אבימלך וגו' (בראשית כ':ז).

Despite the fact **that** the assailant who caused damage **gives to** the victim all of the required payments for the injury, his transgression is **not forgiven for him** in the heavenly court **until he requests** forgiveness **from** the victim, **as it is stated** that God told Abimelech after he had taken Sarah from Abraham: **"Now therefore restore the wife** of the man; for he is a prophet, and he shall pray for you, and you shall live" (Genesis 20:7). **And from where** is it derived **that if** the victim **does not forgive him that he is cruel? As it is stated: "And Abraham prayed to God; and God healed Abimelech,** and his wife, and his maidservants; and they bore children" (Genesis 20:17).