

Paying Up: Repayment for Damages, Theft and Expected Profits

Outline of Shiur on Parashat VaYikra 5778 by Dayan Shlomo Cohen, Badatz Ahavat Shalom, Yerushalayim

In Parashat VaYikra we read about the atonement one receives when they bring a *Korban*.

One who stole, must pay back the owner.

If one stole but doesn't know from whom, or if he stole from many people and can't possibly keep track of all the people he stole from, the *Gemara* says they should pay back the money in the form of a public resource, such as a park or the like.

One who steals only returns the object and its depreciation, but doesn't have to pay for the usage of the object (i.e. one who stole a car and used it for a week doesn't have to pay for that benefit).

Similarly, one doesn't have to pay for the costs the owner had to incur because he didn't have his object.

If one stole a plank and used it in a building, he doesn't have to take the plank out and destroy his building, but rather he can pay its value.

Generally, a thief must return only the object he stole, not what the owner was about to build with it, and was prevented from building (i.e. one who steals materials that an owner was going to use for to build a table).

The *Shulhan Aruch* ח"מ סי' רצ"ב rules that one who gives cash to a friend in an open envelope, the friend may use it and give it back to the owner when the time is up. But if it is in a closed envelope, the money can't be touched, and must be returned as is.

The *Gemara* discusses this case in the example of a money changer, who surely deals with cash on a constant basis, thus giving an open envelope is like consent for the money changer to use the money and give back other money in exchange.

The *Rishonim* write that in our times we're like money changers as we also deal mostly in cash.

In the case of an open envelope, if when the depositor asks for the money back and he doesn't get it, and he loses a deal as a result, the *Rama* opines that he is liable for the projected profits.

The *Shach* asks, citing the *Maharshal*, why this would be any different than a thief, and thus argues with the *Rama*. Thus, according to the *Shach* the thief won't have to pay for the assumed profits (although he clearly did something wrong and is חייב בדיני שמים).

To understand the basis of their argument, let us see the *Gemara* in *Bava Metzia* 73, Reuven gives money to his agent Shimon to buy merchandise, Shimon didn't do it and as a result Reuven lost business. The *Gemara* requires Shimon to pay Reuven the assumed profits.

This would seem to be a proof to the *Rama's* opinion. However, some *Rishonim* understand that this *Gemara* is only discussing a case where there was a specific stipulation that assumed profits must be paid (notwithstanding the issue of *Asmachta*, which is a matter unto its own). This must be the position of the *Shach* and *Maharshal*.

The *Ritva's* opinion is that the reliance of Reuven on Shimon is what creates a binding obligation that Shimon must pay for the assumed profits. The *Ritva* cites the case of a worker who while is generally allowed to quit his job whenever he'd like, yet, if his quitting will cause the employer to lose money, i.e. in a building site etc. he may not quit. The reason is because the employer is relying on him. If he quits he must pay the assumed profits to the boss.

In *Netivot* in ש"ו סימן discusses a similar case, where a worker causes irreparable damage to his boss, that he must pay even in cases where generally one would be exempt, because of his special relationship with the boss, as the boss relies on him.

Thus, we find that there is a concept of paying assumed earnings with regards to workers. The *Shach* and *Maharshal* must then distinguish between these two cases, it is unclear why. See *Hattam Sofer* who sides with the *Rama* because of this.

The *Hattam Sofer* also cites the *Gemara* that discusses a homeowner who demands rent from a squatter, who entered the house without any previous agreement. The *Gemara* says that if the house wasn't meant to be rented out the squatter is exempt (מידת סדום). If, however, the owner would've rented out the property to a paying tenant, but was prevented from doing so because of the squatter, then, the *Rosh* writes that he must pay – even if he is only preventing profits. The *Rosh* explains that this is because he benefitted from the lack of profits. This would also seem to fit with the *Rama's* opinion.

Since this is a matter of doubt, the *Hattam Sofer* rules that one would pay 50% in such a case.