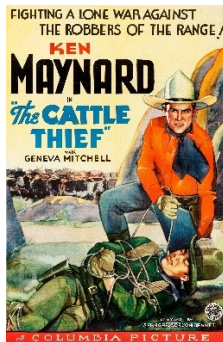


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## Stories with a Twist [320]

### This Man is An Experienced Robber, And I Wish to Penalize Him Insights into Babylonian Talmud Bava Kamma 96b



#### Background to Our Story

##### Exodus 21:37

*Whoever steals an ox or a sheep, and slaughters it or sells it, that person shall pay five oxen for the ox, and four sheep for the sheep.*

##### Exodus 22:3

*But if what was stolen—whether ox or ass or sheep—is found alive and in hand, that person shall pay double.*

##### Exodus 22:6

*When any party gives money or goods to another for safekeeping, and they are stolen from that other party's house: if caught, the thief shall pay double.*

##### Exodus 22:8

*(In all charges of misappropriation—pertaining to an ox, an ass, a sheep, a garment, or any other loss, whereof one party alleges, "This is it"—the case of both parties shall come before God: the one whom God declares guilty shall pay double to the other.)*

#### Maimonides' Laws of Robbery, Chapter 1

##### 1

Whenever a person steals property that is worth a *p'rutah* or more, he transgresses a negative commandment, as Exodus 20:13 states: "Do not steal." Lashes are not administered for the violation of this commandment, for one is obligated to give compensation. For the Torah requires a thief to compensate the party from whom he stole, whether he be a Jew or a gentile, an adult or a minor.

##### 2

The Torah prohibits stealing even the slightest amount. It is forbidden to steal as a jest, to steal with the intent to return, or to steal with the intent to pay. All is forbidden, lest one habituate oneself to such conduct.

### 3

Who is a thief? A person who takes assets belonging to a colleague in stealth, without the owner's knowing - e.g., a pickpocket who is not detected by the owner or the like.

If, however, a person takes a colleague's assets in open view and with public knowledge by force, he is not considered a thief, but rather a robber.

For this reason, an armed bandit who steals is not considered a robber, but a thief. This applies even when the owner takes notice when he steals.

### 4

When two acceptable witnesses testify that a person stole, he is required to pay twice the amount of the stolen property to its owner. If he stole a *dinar*, he must pay two. If he stole a donkey, a garment or a camel, he must pay twice its worth. He thus loses the amount that he desired that his colleague would lose.

### 5

When a thief admits that he stole, he must repay the principal, but he is not liable for the payment of the double amount, as indicated by Exodus 22:8: "one who is deemed guilty by the court must pay double." This excludes a person who admits his own guilt; he need not pay double.

This principle applies with regard to all the fines required by the Torah. A person who admits his own guilt is not liable for the fine.

### 6

The obligation to make double restitution applies with regard to all articles with the exception of a sheep or an ox. A person who steals an ox or a sheep and slaughters it or sells it must pay four times the amount of the sheep and five times the amount of the ox.

## King Shapur



Koren Talmud Bavli, The Noe Edition. Bava Kamma Volume 2. Koren publishers Jerusalem. Page 217.

Shapur was a name of several of the Persian kings. This King Shapur is King Shapur I (3901 –3932; 141–172 CE), the second ruler of the Sassanid dynasty and son of its founder. King Shapur continued the wars against the Romans and conquered extensive territory from them, reaching as far as Syria and beyond. In a battle near Odessa, he defeated the Roman emperor Valerian, took him into captivity, and kept him as a prisoner until the latter's death. He had his captives build several cities and dams. His domestic policy reflected tolerance toward other religions.

## Rashi on Pesachim 54a

שמואל קרי ליה רבא שבור מלכא משום דבקי היה בדינין והלכתא כוותיה בדיני כדן היוצא מפי המלך שמתקיים

Rashi referred to Shmuel as King Shapur because he [Shmuel] was an expert in financial law and the halacha is like him in such laws, like the laws that are established when uttered by the king.

## The Text: Babylonian Talmud Bava Kamma 96b

זֶה הַכֶּלֶל: כָּל הַגְזֵלָנִין מִשְׁלֵמִין בְּשַׁעַת הַגְזָלָה.  
"זֶה הַכֶּלֶל" לְאֵתוֹי מֵאֵי? לְאֵתוֹי הָא דְאָמַר רַבִּי אֶלְעָא: גָּנַב טֹלָה וְנִעְשָׂה אֵיל, עָגַל וְנִעְשָׂה שׂוֹר – נִעְשָׂה שִׁיבוּי בְּיָדוֹ, וְקָנְאוּ. טַבַּח וּמְכָר – שָׁלוּ הוּא טוֹבַח, שָׁלוּ הוּא מוֹכֵר.

הָהוּא גִבְרָא דְגָזַל פְּדָנָא דְתוֹרֵי מִתְבָּרִיה, אָזַל כָּרַב בְּהוּ כָּרְבָא, זָרַע בְּהוּ זָרְעָא. לְסוּף אֶהְדְרִינְהוּ לְמַרְיָה. אָתָּא לְקַמְיָה דְרַב נַחֲמָן, אָמַר לְהוּ: זִילוּ שׁוּמוּ שְׁבִתָּא דְאִשְׁבַּח.

אָמַר לִיה רַבָּא: תוֹרֵי אִשְׁבַּח, אַרְעָא לָא אִשְׁבַּח!?  
אָמַר: מִי קָאִמִינָא נְשִׁימוּ כּוּלִיָּה? פְּלָגָא קָאִמִינָא!

אָמַר לִיה: סוּף סוּף, גְּזִילָה הוּא – וְקָא הִזְרָה בְּעֵינָא, דְתַנּוּן: כָּל הַגְזֵלָנִין מִשְׁלֵמִין בְּשַׁעַת הַגְזָלָה!

אָמַר לִיה: לָא אִמִינָא לָךְ, כִּי תִיבְנָא בְּדִינָא לָא תִימָא לִי מִיָּדִי, דְאָמַר הוּנָא חֲבָרִין עֲלָאִי: "אָנָּא וְשִׁבּוֹר מְלָכָא – אַחֵי בְּדִינָא?" הָאִי אִינְשׁ גְּזֵלָנָא עֲתִיקָא הוּא, וּבְעֵינָא דְאִיקוּנְסִיָּה.

The mishna teaches: This is the principle: All robbers pay according to the value of the stolen item at the time of the robbery.

The Gemara asks: What is added by the phrase: This is the principle?

The Gemara replies: It serves to add that which Rabbi Ela says: If one stole a lamb and during the time that it was in the thief's possession it became a ram, or if one stole a calf and it became an ox, then a change occurred while the animal was in his possession, and he has acquired it due to the change. If he then slaughtered or sold the animal, he slaughters his own animal and he sells his own animal, and he does not become liable to pay the penalty of four or five times the value of the animal.

The Gemara relates: There was a certain man who robbed another of a pair of oxen. He then went and plowed his field with them, and sowed seeds with them, and eventually returned them to their owner.

The robbery victim came before Rav Nahman to claim payment from the robber. Rav Nahman said to the robbery victim and the robber: Go estimate the amount by which the value of the land was enhanced during the time that the pair of oxen was in the possession of the robber, and the robber must pay that amount.

Rava said to Rav Nahman: Did the oxen alone enhance the value of the land? Did the land not become enhanced in and of itself? Perhaps not all of the enhanced value of the land was due to the labor performed by the oxen.

Rav Nahman said: Did I say that they should estimate and give him all of the enhanced value? I said only half.

Rava said to him: Ultimately, it is a stolen item and is returned as it was at the time of the robbery, as we learned in a mishna: All robbers pay according to the value of the stolen item at the time of the robbery. Why should the robber also pay the owner half the value of the enhancement?

Rav Nahman said to Rava: Didn't I tell you that when I am sitting in judgment, do not say anything to me, i.e., do not question or comment upon my rulings. An indication that my rulings should not be questioned is as our friend Huna has said about me, that King Shapur (a reference to the Amora Shmuel) and I are brothers regarding monetary laws, i.e., with regard to monetary laws, my opinion is equal to that of Shmuel. This man is an experienced robber, and I wish to penalize him.



**Explaining the Story** - What is going on in our story? (Explain the sequence of events)

### Comprehension and Analysis Questions

**?** What is the law if a person steals a lamb and then it becomes a ram?

**Bonus ?** Why the certain man who robbed another of a pair of oxen is called a robber if eventually he returned them to their owner?

Answer 1 \_\_\_\_\_

Answer 2 \_\_\_\_\_

**?** What is Rav Nachman's ruling in the case of a certain man who robbed another of a pair of oxen?

**?** What is Rava's first challenge to Rav Nachman's ruling?

**?** How does Rav Nachman react to Rava's first challenge?

**Extra Bonus ?** Rav Nachman said: Did I say that they should estimate and give him all of the enhanced value? I said only half. We know that Rav Nachman didn't say "only half." Why did he adjust his words in his reply to Rava?

**?** What is Rava's second challenge to Rav Nachman's ruling?

**?** How is Rava "right" in his challenge to Rav Nachman?

**Extra Bonus ?** How is Rava "wrong" in his challenge to Rav Nachman?

Answer 1 \_\_\_\_\_

Answer 2 \_\_\_\_\_

Answer 3 \_\_\_\_\_

**Extra Bonus ?** In which way was the certain man who robbed another of a pair of oxen an experienced robber?

### **"The Twist" – Or the Lessons We Can Learn from This Text.**

**!** If you are dealing with smart robbers or with difficult situations, being intelligent and knowledgeable is not enough. You must also be smart, wise, and forceful!



How do you deal with an experienced robber? Rav Nachman understands that he cannot go by the book (the robber himself is an expert in the book) and decides to use his authority to punish the robber, and to restore order in his community.

In between Rav Nachman and the resolution of the problem, stands Rava, who is an expert in reading books, but very inexperienced in "reading situations."

At the end of the day, only through Rav Nachman's authority, forceful personality ("Didn't I tell you that when I am sitting in judgment, do not say anything to me?"), and deviation from the letter of the law, is order restored in the community.