

על פי התורה אשר יורוך

Yorucha

weekly overview

A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY OVERVIEW VIDEO

GEZEL PART 1

The Prohibition of Stealing

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SOURCES FOR THE PROHIBITION OF STEALING

There are 3 biblical prohibitions of stealing:

1. **Lo Sigzol** Taking an object that belongs to another person with the victim's knowledge using force.
2. **Lo Signovu** Taking an object that belongs to another person without the victim's knowledge.
3. **Lo Sa'ashok** Withholding someone else's money in one's possession (e.g., not paying a worker on time).

There is an additional prohibition related to stealing, namely, the prohibition of *Lo Tachmod*, [lit. not being jealous of another.] According to the Gemara, this primarily refers to pressuring someone unduly to sell an item when the owner does not wish to do so. Moreover, even one that merely plots to pressure another violates the prohibition of *Lo Sisaveh*.

PARAMETERS OF THE PROHIBITION OF STEALING

Our sages teach us that a *sho'el shelo mida'as*, one who borrows an object without permission, is also a *gazlan*. However, it seems that it is a *machlokes* whether the issur is *deoraisa* or *derabanan*. Thus, using the property of another, even temporarily, without retaining the object is also included in the prohibition of stealing.

The Gemara in Bava Metzia also indicates that even stealing simply in order to bother someone else (*l'meikat*) is forbidden, as well as *geneivah* with intent to pay back double or four or five times. Moreover, the Gemara states that stealing as a joke is *assur*. The Ketzos HaChoshen adds that stealing as a joke is forbidden even if one plans to return it.

The Shulchan Aruch rules that the prohibition applies even in a case that one intends to repay the owner with an item of greater value. However, the Shulchan Aruch cites some opinions that this only applies when one returns the item at a future date, but if one immediately replaces the object taken with an object of clearly greater value, then it is permitted. The Shach notes that this allowance is limited to where the object returned is clearly of greater value to the owner than the object taken.

PRACTICAL EXAMPLES

- Therefore, for example, one may not take the tallis of another that has sentimental value even if one replaces it with a tallis of a higher value.
- We can further illustrate this with another example. If the owner of a small family-owned grocery store has stepped out for a few minutes and one wishes to purchase a number of groceries. In this case, since it is clear that the owner desires that customers purchase his products, it would be permitted to take the items one needs and leave cash at the cashier for the owner when he returns (though one should write a list of the items taken for the owner so that he can keep track of his inventory. (On the other hand, if one doesn't have cash, it would be forbidden even according to the lenient opinion in the Shulchan Aruch, since that is not considered immediate payment.)

Another practical example of "stealing" with intent to repay would be where one is holding onto a few dollar bills for someone else (e.g., one was asked to give money to *tzedakah* for another or purchase something in the store for them). In such a case, if one needs to get change for a larger bill, it is permitted to use the other person's money and since one receives the larger bill immediately

and the owner of the money does not mind (see Pischei Teshuvah to C.M. 359 who uses the formulation of *zeh neheneh v'zeh lo chaseir*).

When stealing an object is necessary to save a life, it is permitted to steal, as long as, he intends to return or replace the item at a later time. However, one may not steal even in such circumstances if one has no intent to return or repay the item at any point.

ALTHOUGH STEALING IS STRICTLY PROHIBITED, BELOW ARE SOME POSSIBLE EXCEPTIONS

1. Assumed Allowance from the Owner of the Item

The Shulchan Aruch (C.M. 359) rules that although it is forbidden to steal even a small amount (*kol shehu*), it is permitted to take something that no one is *makpid*. Thus, it would be permitted to take a small splinter from a bundle of wood or a wooden fence to clean one's teeth, since this is a small amount of an item about which no one is *makpid* (the same would apply to taking a small amount of money, such as a few pennies). The Shulchan Aruch adds, however, that the Yerushalmi states that even in such a case, stealing should not be done due to *midas chasidus*.

The Sma explains the reason for this *midas chasidus* as being that if it is permitted, everyone would proceed to take a small amount, and the owner will be left with nothing, thereby leading to a loss for him. According to the Sma, it would seem that in cases where the small amounts taken do not add up, such that the owner would not suffer any loss, no *midas chasidus* would exist to take small amounts.

In contrast, the Chazon Ish (Demai) claims that the purpose of the *midas chasidus* is not to prevent the owner from suffering a loss, but rather for the benefit of the one taking the item. In the Chazon Ish's opinion, all instances of appropriating something from another person cause harm to one's *ruchniyus* and should be avoided.

The Rema states that people may grab things from each other on Purim as part of the festivities of the day, and there is no prohibition of stealing; and "*nahagu kach*" (this is the custom). Thus, as long as the local Jewish residents accept such a practice, it is permitted to take property of others on Purim when done in jest. The Mishnah Berurah, though, cites the Shelah who notes that this practice is not a "*mishnas chasidim*" and one who is "*shomer nafsho*" (guards his soul) should be careful not to do so. Apparently, the *mechila* given by many people in this case is not absolute and is therefore not considered to be

entirely one of *eino makpid*. As such, this practice should be avoided according to the Shelah.

2. Taking or Borrowing an Item When One Knows the Owner Will Not Mind

According to Tosafos, it is forbidden to borrow or take anything without explicit consent from the owner even if the taker knows that this specific owner will not mind. This is different than the case in the Shulchan Aruch (that permits taking when no one minds, according to strict halacha) where no one is *makpid*, since here most people would not allow others to use the object without permission, only a specific person, such as a close friend or relative, would allow it. The Shach (C.M. 358), though, argues that the owner's subsequent *da'as* is effective retroactively as well, and one may take small amounts of food or borrow items provided that he can be certain that the owner will not mind. The practical halacha concerning this issue is also subject to *machlokes*. The Ketzos HaChoshen follows Tosafos that it is prohibited to borrow or take even when it is clear that the owner does not mind, while the Nesivos HaMishpat rules in accordance with the Shach that it is permitted to do so. The Shulchan Aruch HaRav presents conflicting rulings on the issue, and later Acharonim suggest that he is of the opinion that it depends on whether the items get used up. If they are, such as eating another's food, it is forbidden (like Tosafos), but if they are returned, such as borrowing, it is permitted (like the Shach).

To illustrate the above, according to some opinions one may borrow his brother's USB drive without permission if borrower knows that his brother will not mind.

3. Taking to Avoid Financial Loss

The Gemara states that Yehoshua instituted a *takana* upon the Jews' entry to Eretz Yisrael that if one's barrel of honey (which was quite expensive in those days) is leaking, one may take another's barrel of wine (which is less expensive), pour out the wine, in order to use the barrel to preserve the honey, and later return the wine to the owner. The reason being, that if one stands to suffer a significant financial loss, he can assume that another Jew is willing to help prevent the loss, provided that the victim is compensated for his goods. This *takana* is accepted as the practical halacha by the Tur, Shulchan Aruch, and Aruch HaShulchan (who discusses it at length).