

The Geller Edition

שרשרת זהב

Stolen Once, Stolen Twice?

גונב מן הגנב

Can a man who split the loot still
be trusted as a witness?



לרפואה שלימה
שמואל יעקב בן רחל



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שרשרת זהב

These booklets are called **Sharsheres Zahav** (*Golden Chain*), based on the verse describing the golden chains of the Choshen (Shemos 28:13–14). Just as those chains connected the Choshen to its proper place, so too these works are intended to be small links in the golden chain of Torah transmission, connecting the learner to the teachings of Chazal, the Rishonim, the Acharonim, and the great Torah scholars of every generation.

In particular, these booklets seek to connect the reader to the illuminating Torah of the **Ketzos HaChoshen**, whose teachings serve as a central foundation throughout. Everything written here is based on the sacred words of our sages and was prepared through sincere effort to clarify and understand the sugyos in the light of their teachings.

May Hashem grant that these words find favor among those who study Torah, and may these works become worthy additions to the eternal chain of Torah transmission from generation to generation.

Amen.

How to Read This Sheet?

Each source appears first in the original Hebrew or Aramaic, with a plain English version directly underneath. A Sugya Note helps explain the source in everyday words.

A Term Note defines an important word or idea. A Takeaway sums up the main point in a line or two.

You do not need any background to follow along. Read each source, then the English, then the note. The sheet is built to walk you through the discussion one step at a time.

Do not worry if you do not finish the sheet in one sitting. A good Torah session is not measured only by how much you finish, but by how deeply you learn to think through the discussion.

Stolen Once, Stolen Twice?

גונב מן הגנב

Can a man who split the loot still be trusted as a witness?

Opening Frame

A man hears that his neighbor stole from a home, and he wants a share. He never breaks into anyone's house. He simply splits the stolen goods with the thief who did.

Years later, that same man is called to be a witness in an unrelated case. In a Beis Din, nearly everything stands on testimony. Two valid witnesses can establish a debt, clear a man, or take away his money. So the question is simple: can this court trust that man?

Two texts set the stage.

שמות כ"ג:א | Shemos 23:1

The Torah

"Do not carry a false report. Do not place your hand with a wicked man to be a witness of violence."

From this verse, the Sages derived that a person whose wickedness involves financial crimes loses the standing to testify in a Jewish court. The court cannot accept his words, even if they happen to be true.

לא תשא שמוע
שוא אל תשת
ידך עם רשע
להית עד
המס.

סנהדרין כ"ז. | Gemara, Sanhedrin 27a

The Talmud Bavli, the record of the discussions of the Sages of Sassanian Persia, 3rd to 6th centuries.

"Do not make a wicked man a witness; do not make one who commits monetary violence a witness — these are robbers and those who lend with interest."

"אל תשת רשע עד", "אל תשת חמס עד",
אלו גזלנים ומלוני רביות.

גנב / גולן | ganav / gazlan / thief / robber

Two people, two crimes, two legal identities. A *ganav* steals in secret, hiding from the owner while he takes. A *gazlan* robs openly, in front of the owner, without hiding. Both are disqualified from testifying.

I. The Ruling and the Problem

רמ"א | Rema, Choshen Mishpat 34:7

Rav Moshe Isserles of Cracow, Poland, 1530 to 1572. When Rav Yosef Karo wrote the Shulchan Aruch, the universal code of Jewish law, the Rema added the rulings of Ashkenazic Jewry on the same page, and the two have been printed together ever since.

החולק עם הגנב אינו פסול (שו"ת ריב"ש, סי' רס"ו).
One who splits with the thief is not *pasul l'eidus* — not disqualified from testimony (Responsa of the Rivash, siman 266)

פסול לעדות | pasul l'eidus / Disqualified

Unfit to serve as a witness in a *Beis Din*. The Torah requires that a witness not be wicked. Once a person is *pasul l'eidus*, even true testimony he gives cannot be accepted in court.

תומים | Tumim, Choshen Mishpat 34:5

Rav Yonasan Eibenschutz, 1690 to 1764, Rav of Prague and later of the triple community of Altona, Hamburg, and Wandsbek...

This ruling was written by Rivash about a man who witnesses testified against for sharing with a thief who had stolen from a Jewish home, and who will be forced by the court to return what he took. He is not disqualified from testimony, and the proof is from the rule that one who tells his agent "go and steal", the sender is exempt.

To me this needs explanation. There, the exemption concerns lashes or the fine that a thief receives. But either way, the sender still did something forbidden, he helped the thief and took part in the theft.

And more than this, the victim's property is sitting in his hand right now (after he split the loot with the thief). That makes him a *rasha d'chamas*, a Monetary wrongdoer

תמה וז"ל, דין זה כתבו הריב"ש (סי' רס"ו) באחד שהעידו עליו שחלק עם הגנב שגנב בבית ישראל, והיה מוכרח להחזיר מה שגנב ע"פ ב"ד, וכתב הריב"ש דלא מיפסל לעדות, וראיה דהאומר לשלוחו צא וגנוב מיפטר המשלח (ב"מ, י: ע"ש, ולדידי צ"ע, דהתם לענין מלקות או לענין תשלומי כפל וכדומה, אבל עכ"פ עביד איסורא, שלקח וסייע לגנב וכו', אלא אף בלי זה, הא בידו ממון של חברו מהנגזל, ולקחו בידו לעכבו, הרי הוא רשע דחמס, ולא ידעתי הבדל בין כופר בפקדון דבהיתר בא לידו, ומ"מ הואיל

which puts him in the same disqualifying category as a thief.

I do not know the difference between one who denies someone else's property that was entrusted for safekeeping, which came to him in a permitted way, and who is still disqualified once he denies it. And this man, who took money through a forbidden act of extortion and does not return it. Another person's property sits in his hand through outright robbery.

וכופר פסול, וזה לקח ממון באיסור בו ואינו מחזירו יהיה כשר לעדות, הא של חבירו בידו בגזל גמור ויותר רשע דחמס מן כופר בשל חבירו מה שהוא אצלו בהלואה ובפקדון במקום דלא שייך אשתמוט, ובזה לא שייך אשתמוט, דהא לוקחו משל גנב באיסור.

Term Note

רשע דחמס | rasha d'chamas / Monetary wrongdoer

Committing financial wrongdoing places a person in this category of wickedness — the legal status that strips the right to testify in court.

SUGYA NOTE

The Tumim has two separate questions on the Rivash's ruling.

Even if splitting with the thief brings no lashes and no fine, the man still did something clearly forbidden. He is an accomplice to the thievery by splitting the loot with the thief.

The victim's property is currently in his possession. Why is he not in this disqualifying category?

He should be no better than the guardian of someone else's property that was entrusted for safekeeping. That guardian received the object in a permitted way, and he is still disqualified once he denies that he ever had it. In our scenario, this man took the loot in a fully forbidden way and is still holding onto it. If anything, he should be worse.

In short, if a court cannot trust a man who denies that he received someone else's property for safe keeping, why can Bais Din trust a man who shared stolen goods?

דהיינו הקשה התומים על דברי הריב"ש, דכיון דסו"ס אותו אדם נטל ממון חבירו וסייע לגנב, אע"פ דליכא חיוב מלקות או כפל, מ"מ איסורא ודאי עביד. ועוד, הרי ממון הנגזל בידו, וא"כ אמאי לא חשיב רשע דחמס ויפסל לעדות, דלא גרע מכופר בפקדון, דאע"פ דבהיתר בא לידו מ"מ כיון שכופר פסול לעדות, כ"ש הכא שלקח הממון באיסור גמור ובידו.

Takeaway

The opening question is not only about what this man did. It is about what kind of person he became. He may owe money and may have done something forbidden. But the sugya asks whether this act gave him the specific legal identity that removes his voice from court.

II. Not a Robber at All

The Ketzos answers: once the object left the owner's house, the second taker never became a robber.

משנה | Mishnah, Bava Kamma 62b

The first written record of the Oral Torah, organized by Rabbi Yehudah HaNasi in Eretz Yisrael in the 2nd century. Every page of the Talmud is a discussion of it.

אין הגונב אחר הגנב משלם תשלומי כפל.
One who steals from the thief does not pay the double payment.

Term Note

גונב מן הגנב | *goneiv min haganav / Re-theft*

One who takes something that was already stolen.

Term Note

כפל וקרן | *kefel and keren fine / principal*

Kefel is the double payment a thief pays as a fine. The full value of the stolen object plus a second equal amount.

Keren is the what we will call the principal, the value of the object itself

קצות החושן | Ketzos HaChoshen, Choshen Mishpat 34:3

Rav Aryeh Leib Heller, 1745 to 1812, a Rav in the small towns of Galicia who wrote in poverty and changed how the Talmud is studied. Two centuries later, the Ketzos HaChoshen remains the crown jewel of conceptual analysis in monetary law. Yeshivos simply call him the Ketzos.

The comparison the Tumim draws, between the one who splits with the thief and holds back another's property that was entrusted to him, has no comparison at all.

One who splits with the thief is certainly not a robber. Since the first thief already took the object, and it is no longer in the victim's *reshus* — his legal domain — the one who robbed the robber is not liable under the laws of robbery.

This is exactly why one who steals from the thief does not pay the double payment (fine). The verse says "and it is stolen from the man's house," as taught in the chapter Merubeh: it excludes stealing from

והנראה לי בזה דמה שמדמה בתומים חולק עם הגנב ומעכב של חבירו בידו לכופר בפקדון, אבל אין זה דומה כלל לכופר בפקדון וכו', וא"כ ודאי החולק עם הגנב לא הוי גזלן וכו', כיון דכבר גזליה ואינו ברשותו דנגזל תו לא מיחייב משום גזילה אלא בתורת מזיק, והיינו טעמא דאין הגונב אחר הגנב משלם

the thief's house, because the object is no longer in the owner's domain. So the second man carries no status of robber at all. True, if the object still exists the victim can recover it (from the second robber), because he never lost ownership. But the second "robber" is neither thief nor robber. Once the object was already stolen from the owner's house and left his domain, the second man does not violate "do not steal" or "do not rob."

Someone's property that was entrusted for safekeeping is different. A deposit always remains in its owner's legal domain wherever it is. The owner can even consecrate it, and one who steals it from the guardian's house pays the double payment (fine), as Tosafos writes in the first chapter of Bava Metzia. That is why denying a deposit creates the status of robber and leads to disqualification. The Rivash and the Rema now sit well.

תשלומי כפל, משום דכתיב וגונב מבית האיש, וכדאיתא בפרק מרובה, ומשום דאינו ברשותו ע"ש דף ס"ט ע"ב, וא"כ לא הוי על השני תורת גזלן כלל, אלא אי איתא בעינא דכיון דלא קנאו דנגזל, הוי כל היכא דאיתא כיון דלא קנאו, אבל עכ"פ השני אינו גזלן ולא גנב, דכיון דכבר נגנב מבית הבעלים ואינו ברשותו תו לא עבר השני משום לא תגנוב או משום לא תגזול, משא"כ כופר בפקדון, דפקדון כל היכא דאיתא ברשותא דמאריה ויכול להקדישו והגונב מבית השומר משלם כפל, וכמש"כ תוס' בפ"ק דמציעא (ו. ד"ה הקדישה), משו"ה כופר בפקדון הוי עליו תורת גזלן ופסול לעדות.

Term Note

רשות | *reshus* / *legal domain*

Legal domain or control. An object can still belong to its owner while no longer being in his legal domain.

SUGYA NOTE

Splitting with the thief is not like denying a deposit. The guardian who denies a deposit counts as a robber because a deposit always stays in the owner's legal domain. We see this from the law that one who steals it from the guardian's house pays double payment, which means the Torah still reads it as "the man's house." So when the guardian denies it, he commits thievery and loses the right to testify.

Here (in our case, when one just splits the loot with the thief), the thief already removed the object from the owner's domain. The second man who splits the loot therefore never receives the name of robber. Even though the property is in the second man's hand, he is not a robber, and he cannot be disqualified.

מבאר הקצות דחולק עם הגנב לא דמי כלל לכופר בפקדון, דכופר בפקדון חשיב גזלן, משום הפיקדון לעולם ברשות בעלים קאי, דחזינן הגונב מבית השומר חייב כפל, אלמא עדיין נחשב בית האיש קרינן ביה. ומשו"ה שכופר, עבר משום גזילה ונפסל לעדות. אבל הכא החולק עם הגנב, כיון שכבר גנב הראשון הוציא החפץ מרשות הבעלים, שוב אין על השני שם גזלן כלל, דחזינן דאין הגונב אחר הגנב משלם כפל, ולכן אף אם הממון ביד השני, מ"מ לא חשיב גזלן לפוסלו לעדות, שלא נחשב גזלן כלל, ולפ"ז מיושבים היטב דברי הריב"ש והרמ"א.

Takeaway

The Ketzos shifts the question from ownership to legal domain. The victim still owns the object, but ownership and legal domain are two different things. Taking something counts as robbery only when it is taken from the owner's domain. Once the first thief has already transferred the object from the owner's domain, the second man can do something wrong, owe money, and still never become a robber. No robbery, no disqualification.

III. Still a Robber

The Kovetz Shiurim and the Brisker Rov reopen the question: the name of theft falls away, but something remains.

Term Note

גניבה וגזילה | *geneivah and gzeilah theft / robbery*

Two distinct legal categories.

Geneivah is hidden theft, stealing while concealing oneself from the owner. Punishment: Pays principal and additional fine valued at as the object he stole

Gzeilah is open robbery. Punishment: Pays back principal. No fine is required.

קובץ שיעורים | Kovetz Shiurim, Bava Kamma 41

Rav Elchonon Wasserman, 1874 to 1941, Rosh Yeshivah of Baranovich. His collected lectures are a staple of yeshiva learning to this day. He was murdered by the Nazis together with his students.

Regarding what the Ketzos HaChoshen writes, that one who steals from a thief was excluded even from paying the principal from the verse, "from the man's house" and not from the thief's house. We also derive from the same verse, "and not from the house of consecrated property."

(Meaning, one isn't technically considered a thief if he stole from consecrated property. Therefore he isn't obligated to pay a fine or any other means of punishment. The reason being, is that in order to be considered a thief, one must steal from private property, not concentrated property. He's still in fact obligated to repay what he stole once he has the means to do so.)

Yet the Rambam rules that if someone steals consecrated property and has

מ"ש בקצה"ח
סימן ל"ד דגונב
מן הגנב נתמעט
גם מתשלומי קרן,
הנה מהך קרא
דמבית האיש
ולא מבית הגנב
ילפינן ג"כ ולא
מבית הקדש,
ומבואר ברמב"ם
בגונב הקדש ואין

nothing to repay, he is not sold as a servant. When he later has the means, he pays what he took. This proves that his payment obligation is still that of a thief, for that is exactly why a verse was needed to say he is not sold for his theft.

If he were not classified as a thief at all, no verse would be needed to exclude him from being punished by being sold as a slave if he had no means of paying what he stole. (Since we have a verse to exclude him from punishment, logically that means that he's still considered a thief. He's only excluded from specific punishment.) You are therefore forced to say the verse (just) excluded him (punishment, for example) only from the double payment (fine). But is still labelled as a thief (and required to return the stolen property).

And the same applies to one who steals from a thief, since both are derived from the same verse. (Just as a person who steals for concentrated property is excluded from certain punishments but is still labeled as a thief, so too, a person who robbed stolen goods from a robber, is only excluded from certain punishments such as a fine, but is still labeled as a robber and must return the stolen property.)

לו לשלם דאינו
נמכר, וכשיהיה
לו ישלם,
ומוכח דחיובו
הוא משום
גנב, דמשו"ה
איצטריך קרא
לומר שאינו
נמכר בגניבתו,
וע"כ צ"ל דלא
נתמעט מקרא
דמבית האיש רק
לענין כפל, וה"ה
בגונב מן הגנב
דתרווייהו מחד
קרא נתמעטו.

Term Note

הקדש | *hekdesh / Consecrated*

Property consecrated to the Beis HaMikdash,
the Temple.

Term Note

ונמכר בגניבתו | *venimkar b'geneivaso / Sold for his theft*

The law states that a thief who cannot repay the principal may be sold as a servant by the court to cover the debt. This is a special consequence that belongs to the category of hidden theft only, not to robbery.

SUGYA NOTE

This proof from the Rambam puts pressure on the Ketzos's answer. Someone who steals from the thief still carries the payment obligation of a robber, not merely of someone who damages.

If this is the case, then Ketzos is wrong that his act leaves the world of theft entirely. And if the person who robbed stolen goods from the thief is still classified as a robber, the original question about testimony comes back with force. How can one who splits the loot with a thief be allowed to testify and not labeled as a thief on his own right.

מבואר
דמוכח
מהרמב"ם
דאף גונב מן
הגנב עדיין
חשיב גזלן,
ולא רק דין
מזיק.

שיעורי רבי שמואל | Shiurei Rabbi Shmuel, Bava Metziah vol. 2, siman 38

Rav Shmuel Rozovsky, 1913 to 1979, Rosh Yeshiva of Ponovezh in Bnei Brak and one of the great Talmud teachers of the past century. Here he preserves a teaching he heard from the Griz, Rav Yitzchok Zev Soloveitchik of Brisk and Yerushalayim, 1886 to 1959, the Brisker Rov,

I heard a beautiful idea from the Griz. There is a disagreement about the rule that one who steals from a thief is exempt. (We must ask ourselves), was he excluded only from the double payment (fine), while still owing the principal (therefore still labeled as a thief)? Or was he completely excluded from any repayment and therefore not considered a thief at all?

The view of the Ketzos HaChoshen and the Nesivos HaMishpat is that he was removed from the entire law of theft and robbery, so that if the object no longer exists he owes nothing even for the principal, and he did not even violate "do not steal" or "do not rob."

Most later authorities, however, assume simply that the exclusion is only from the double payment (fine), and he still does owe the principal. The Brisker Rov explained that even for those authorities, the verse is not a narrow exclusion from the double payment that leaves the principal sitting as a theft obligation. Rather, the verse removes this case from the entire passage of hidden theft.

The Torah is saying that one of the conditions for the name of hidden theft is that the stealing happens from the owner's domain. Why then does he (who robbed stolen goods) still owe the principal (it's no longer in the owner's domain)?

The reason one is liable is not because of the special laws of hidden theft - *Geneivah*, but because of the broader law of robbery - *Gzeilah*. Having someone else's property (without permission) in your possession is considered robbery. This requires no special conditions (such as limitations stealing specifically from the owner's domain).

Anyone who has another person's property in their possession has committed an act of robbery - *Gzeilah*. In truth, every hidden theft also includes this broader act of robbery.

The hidden act adds its own category with its own special laws, like the double payment and the law of being sold as a servant. But the basic act of robbery, having another person's property in your possession remains even when those special laws of hidden theft drop away.

This leads to a striking conclusion. Even those who say the one

שמעתי מהגרי"ז שאמר בזה דבר נחמד, דהנה נחלקו בדין גונב מן הגנב פטור אם נתמעט רק מחיוב כפל אבל קרן חייב או דנתמעט לגמרי ואפילו מקרן, דעת הקצה"ח והנה"מ דנתמעט לגמרי מכל דין גניבה וגזילה, ואי ליתיה בעינא אינו חייב אפילו בקרן, וגם לא קעבד על לאו דלא תגנוב ולא תגזול, אכן רוב האחרונים נוקטים בפשיטות דהמיעוט רק לענין כפל, אבל קרן חייב. וביאר הגרי"ז דאפילו לאחרונים הנ"ל אין הגדר דקרא דוגונב מבית האיש ולא מבית הגנב, הוא מיעוט רק מכפל וחייב הקרן נשאר מדין גנב, אלא באמת נתמעט מכל הפרשת גניבה, דאמרה תורה דאחד מתנאי הגניבה הוא וגונב מבית האיש, והא דחייב לשלם קרן אי"ז מדין גניבה, אלא מדין גזילה, דבגזילה אין תנאים מיוחדים כדי להתחייב, אלא כל הלוקח ממון חבירו לרשותו זהו גזילה, ובאמת בכל גניבה עובר גם בלא תגזול, ורק במיטמר מאינשי נתחדש גם איסור מיוחד של גניבה שיש בו דינים מיוחדים ככפל דו"ה וכו', אבל כל גניבה היא גם גזילה וכו', והנה להגרי"ז נמצא חידוש, דאפילו להדעות דגונב מן הגנב חייב בקרן, מ"מ לא יהא בו דין דונמכר בגנבתו, דהוא דין מדיני הגניבה וכו', הנה אמר לי הגרי"ז, דכן מוכח ברמב"ם דכתב (פ"ג מגניבה הי"ג) גנב את העכו"ם או הקדש אינו נמכר על הקרן

who robbed the stolen goods from the thief still owes the principal, the law of being sold does not apply to him. Since being sold belongs to the special laws of hidden theft. And this is proven in the Rambam, who writes that one who steals consecrated property or from a non-Jew is not sold as a servant, even though he owes the principal.

(He still owes the principal since he's still labeled as a robber. Robbery isn't about "taking" something that doesn't belong to you, rather it means having something that belongs to someone else in your possession. It's not about the act of "stealing," rather is the passiveness of having something that doesn't belong to you in your possession.)

וכו', ומבואר דגונב עכו"ם והקדש חייב בקרן ואעפ"כ לית ביה דינא דונמכר בגניבתו, וצ"ב טעם הדבר, והנו"כ לא כתבו מקור לדין זה, ואמר הגרי"ז, דלפי דבריו ניחא דהמיעוט דממעטינן מרעהו עכו"ם והקדש, זהו ג"כ מיעוט מכל הדין גניבה, ולהכי היה פשוט להרמב"ם דאין בהם דין דונמכר בגניבתו והקרן דחייב לשלם, הוא מחיובי גזילה, דבגזילה לא כתיב רעהו וכמש"נ עכ"ד.

חזון איש | Chazon Ish, Bava Kamma, siman 16:7

Chazon Ish, Rav Avrohom Yeshaya Karelitz, 1878 to 1953,
the quiet sage of Bnei Brak whose rulings guided a generation.

The Mishnah's rule (exemption of paying the fine) is only a condition in the category of theft. Only one who steals from the owner's domain is called a thief. But a robber, he certainly is, for in robbery the Torah gave no special conditions, and whoever has another person's property in his possession has robbed him.

חזו"א (ב"ק, סי' ט"ז סק"ז) דכתב וז"ל, ואע"ג דתנן (ב"ק) ס"ב: אין הגונב אחר הגנב משלם תשלומי כפל, זהו רק תנאי בגנבה, דדוקא גונב מרשותו מקרי גנב, אבל גזלו מיהא הוי, דבגזילה לא אמרה תורה תנאים מיוחדים, וכל שנוטל ממון חבירו, הרי הוא גזלו.

SUGYA NOTE

It emerges from the teachings of Rabbi Shmuel Rozovsky in the name of Rabbi Yitzchak Zev Soloveitchik that the exclusion of "*ve'gonav mibeit ha'ish*" ("and he stole from the house of the owner") is not merely an exemption from the obligation of double payment, but defines the very status of theft itself. In order for an act to be classified as *geneivah*, it must be a theft from the rightful owner's possession.

Accordingly, one who steals from a thief, as well as one who steals from a non-Jew or from consecrated property, is excluded entirely from the Torah's category of theft. Nevertheless, he remains obligated to pay the principal amount, not because of the laws of theft, but because of the laws of robbery, since anyone who has another's

מבואר ממרן הגאון רבי שמואל רוזובסקי זצ"ל בשם מרן הגרי"ז אב"ד בריסק זצ"ל, המיעוט ד"וגונב מבית האיש" אינו רק מיעוט מחיובי כפל, אלא מגדיר את עצם חלות שם גניבה, דבעינן דוקא גונב מבית הבעלים. וממילא הגונב מן הגנב, וכן הגונב מן העכו"ם או מן ההקדש, נתמעטו מפרשת גניבה לגמרי. אלא דאף על פי כן חייב בקרן, לא מדין גניבה אלא מדין גזילה, דכל הנוטל ממון חבירו לרשותו הוי גזלן. ולפי זה מבואר היטב מה שכתב הרמב"ם שאין בגונב מן העכו"ם או מן ההקדש דין ונמכר בגנבתו, דכיון שאין כאן חלות שם גניבה כלל אלא חיוב

property in his possession is considered a robber.

This is also stated explicitly by the Chazon Ish, who explains that the reason one who steals from a thief is exempt from double payment is because the act lacks the halachic status of hidden theft ; nevertheless, it still bears the status of *Robbery*.

גזילה בלבד, לא שייך בהו דיני גניבה המיוחדים. וכן מפורש בחזו"א, דהא דגונב אחר הגנב פטור מכפל הוא משום שחסר בשם גניבה, אבל מ"מ שם גזילה עליו.

SUGYA NOTE

According to these views, one who steals from a thief still counts as a robber. If so, the ruling of the Rema in the name of the Rivash needs to be explained. In the end, this man is holding someone else's property which still counts as robbery. Why is the person who splits the loot with the thief not labeled as a robber and losing the right to testify?

וממילא לפי הני שיטות דגם גונב מן הגנב חשיב גזלן, צ"ב על מה דפסק הרמ"א בשם הריב"ש דהחולק עם הגנב אינו נפסל לעדות. דלכאורה, כיוון דסו"ס בידו ממון של חבירו, דנחשב גזילה, א"כ אמאי לא יהא בכלל רשע ויפסל לעדות וצ"ע.

Takeaway

The sugya is now more demanding. Saying "he is not a thief" is no longer enough. Even when the special name of hidden theft falls away, robbery is still present. The final answer must explain why that act of robbery does not create the disqualifying status.

IV. Paying Does Not Make It Clean, But It Changes the Label

——— In a handful of words, the Vilna Gaon opens a new framework. The Gemara fills it in. ———

SUGYA NOTE

According to those opinions that hold that even one who splits with the thief is considered a robber, the words of the Rivash cannot be explained the way the Ketzos understood them.

The Ketzos's reading has been closed. The Brisker Rov and the Chazon Ish rule that the second man became a robber regardless. The Rivash still ruled he is not disqualified. A different explanation is needed.

והנה לפי הני שיטות דסבירא להו דאף החולק עם הגנב חשוב בכלל גזלן, על כרחך אין לפרש דברי הריב"ש כהבנת הקצות.

ביאור הגר"א | Biur HaGra, Choshen Mishpat 34:10

Rav Eliyahu ben Shlomo Zalman Kramer of Vilna, known to all as the Vilna Gaon or the GRA, 1720 to 1797. The greatest Torah scholar of the modern era, he wrote commentaries on the Talmud, the Shulchan Aruch, and the full range of Torah literature without ever holding a formal rabbinical post. The entire Lithuanian yeshiva tradition traces its methods to him.

"As it is written in Bava Metzia 5b: people understand 'do not covet' as applying only to taking without paying money."

כמ"ש בב"מ ה' ב' לא תחמוד לאינשי

SUGYA NOTE

The Gra explains the Rivash through another discussion in Bava Metzia 5b. A person who admits part of the claim is not treated as someone suspected of lying under oath. Why not? Because we do not assume he is trying to steal. We assume he is stalling and buying time.

The Gemara says a similar idea about a guardian. Even if he is suspected of acting wrongly with money, he is still not automatically suspected of swearing falsely. Why? Because he tells himself that what he is doing is permitted. He does not think he is doing anything wrong. The Gra applies this same logic to the man who splits with the thief. Even if what he did is really stealing, he tells himself that it is permitted. In his mind, he is not stealing from the owner. He is only splitting with the thief.

Because of that, he does not have the status of someone suspected of stealing money in a way that would disqualify him from testimony. That is why the Rivash ruled that he is not disqualified.

ביאור הדברים, שהגר"א זיע"א ביאר דברי הריב"ש על פי המבואר בסוגיא בפרק שנים אוחזין (ב"מ ה:), דהא דלא אמרינן במודה במקצת מיגו דחשיד אממונא חשיד אשבועתא, היינו משום דאשתמוטי קא משתמיט ואינו מתכוין לגזול. ועוד מבואר שם לענין שומר, דאף היכא דחשיד אממונא, מ"מ אינו חשוד אשבועתא, משום דמורה היתר לעצמו, דסבור שאין במעשיו משום איסור. ולפ"ז יש לומר אף בנידון דחולק עם הגנב, דאף אם באמת יש במעשיו משום גזל, מכל מקום כיון דמורה היתר לעצמו וסבור שאין הוא גוזל את הבעלים, אלא אינו אלא חולק עם הגנב, ממילא אין דינו כחשוד על הממון לענין פסול עדות. ומשום הכי שפיר כתב הריב"ש דאינו נפסל לעדות.

Takeaway

This is a second answer, and it stands even for those who reject the Ketzos. The Ketzos said the second man was never a robber. The Brisker Rov and the Chazon Ish disagreed. But even if they are right, the Gaon shows it does not matter for testimony. The disqualification from court is not triggered by what a person did. It is triggered by what kind of person he is. Someone who tells himself he is permitted is a different kind of wrongdoer from someone who knows he is sinning and does it anyway. The court does not trust the latter. It still trusts the former.

גמרא | Gemara, Bava Metzia 5b

The Talmud Bavli, the record of the discussions of the Sages of Babylonia, 3rd to 6th centuries.

When do we say that one who denies a deposit is disqualified from testimony? When witnesses came and testified that at that moment the deposit was in his house and he knew it, or that he was holding it in his hand. Only then is he treated as a robber and disqualified.

The Gemara asks: Rav Huna said we make a guardian swear that the object is not in his possession. Since he is suspected regarding thievery, let us say he is also suspected about a false oath.

The answer: Even there, he tells himself it is permitted. He is *moreh heter l'nafsheih* — he tells himself it is permitted. He says, "I will pay him its value." He does not see himself as a robber.

Rav Acha of Difti said to Ravina: but he violates "do not covet." The Gemara answers: people think "do not covet" means only taking without paying money.

כי אמרין הכופר בפקדון פסול לעדות, כגון לאחר סהדי ואסהידו ביה דההיא שעתא איתיה לפקדון בביתיה והוה ידע, אי נמי דהוה נקיט ליה בידיה.

אלא הא דאמר רב הונא, משביעין אותו שבועה שאינה ברשותו, נימא מיגו דחשיד אממונא חשיד אשבועתא.

התם נמי, מורה ואמר דמי קא יהיבנא ליה.

אמר ליה רב אחא מדיפתי לרבינא, והא קא עבר על לאו ד"לא תחמוד". "לא תחמוד" לאינשי בלא דמי משמע להו.

SUGYA NOTE

One who denies a deposit is disqualified only where there is full proof that he is lying: witnesses say the deposit was in his house at that moment and he knew it, or he was seen holding it in his hand. Only then is he treated as a robber and disqualified.

The Gemara asks: if he is suspected of thievery, why do we still allow him to take an oath that the object is not in his possession? He should be suspected of a false oath too. The answer: in his own eyes he is not a robber. He tells himself it is permitted, thinking, "I will pay him its value." So even though he is suspected of "keeping" the deposit, he is not suspected regarding oaths. He is not the kind of person who lies. He is the kind of person who convinces himself.

The Gemara pushes back: he is still violating "do not covet." The answer: people think "do not covet" means only taking without paying. Because of that mistake, he tells himself it is all permitted. A person who is genuinely mistaken about whether he is sinning is not the same as a

מבואר בגמרא, דהא דאמרין דהכופר בפקדון פסול לעדות, היינו דוקא היכא דאיכא בירור גמור דמשקר, כגון דאתי סהדי דהפקדון הוה ברשותיה באותה שעה והוה ידע מזה, או דחזינן דנקיט ליה בידיה. בכהאי גוונא חשיב גזלן ופסול לעדות.

ומקשה הגמרא, א"כ אמאי משביעין את השומר שבועה שאינה ברשותו, נימא מיגו דחשיד אממונא חשיד נמי אשבועתא. ומתרצת, דלא חשיב בעיני עצמו כגזלן, דמורה היתר לנפשיה ואמר דמי קא יהיבנא ליה, ולכן אף דחשוד על ממון, מ"מ אינו חשוד על שבועת שקר.

ועל זה מקשה הגמרא, דסוף סוף קעבר אלאו ד"לא תחמוד". ומשנינן, דלא תחמוד לאינשי בלא דמי משמע להו, וסברי דכל היכא דיהיב דמים ליכא איסורא. ונמצא דמחמת טעות זו מורה

person who knows he is sinning and does it anyway. That is the difference that matters for testimony.

היתר לעצמו, ומשום הכי לא אמרינן ביה מיגו דחשיד אממונא חשיד אשבועתא.

Term Note

מורה היתר לנפשיה | *moreh heter l'nafsheih* / *Self-permitted*

A person who convinces himself that what he is doing is permitted.

Term Note

לא תחמוד | *lo sachmod* / *Do not covet*

The Torah prohibition of coveting and pressuring another person to give up his property. People commonly misunderstand this prohibition, thinking it applies only when no money is paid.

Takeaway

A new tool is on the table. Whether a man is treated as a robber for testimony does not only depend on what his hand took. It depends on what he tells himself about it. One who thinks, "I am paying for it," is suspect about money but not about truth. He is a sinner who does not know he is sinning. Hold this, because it is about to carry the entire sugya.

V. The Brazen and the Quiet

Tosafos draws the line that saves the Rema, and ties the whole sugya together.

תוספות | Tosafos, Bava Metzia 5b, s.v. b'lo dami

Not one author but generations of them: the students and descendants of Rashi in the towns of France and Germany, 12th to 13th centuries, whose questions and answers are printed on every page of the Talmud.

One may ask: even when he pays money (for the object), he is still a forcible buyer, and a forcible buyer is disqualified from testimony, as the verse says, "do not place your hand with a wicked man to be a witness of violence."

Answer: a forcible buyer is disqualified only by rabbinic decree (since he paid for what he took). The Gemara does not object that a forcible buyer is disqualified from the Torah the way it objects about a robber. The forcible buyer mentioned in the verse is one who does not pay. If he does pay, the verse is only a support for the rabbinic disqualification. Although the Sages added forcible buyers to the list of those unfit to testify and unfit to swear. That decree applies to a forcible buyer who is brazen enough to snatch an object from hand to hand in front of the owner. Here (a guardian who denies that he ever received an object that belonged to someone else), he is not brazen. He hides what he is doing and says the object was lost. Such a person was not included in that decree.

וא"ת והא כי יהיב דמי נמי חמסן הוה, כדמוכח שלהי הכונס (ב"ק, ס"ב.), וחמסן פסול לעדות כדכתיב אל תשת ירך עם רשע להיות עד חמס, והפסול לעדות וכו', וי"ל דחמסן לא פסול לעדות אלא מדרבנן, מדתני בפרק זה בורר (סנהדרין, כ"ה:), הוסיפו עליהם החמסנים, ולא פריך חמסן דאורייתא הוא כדפריך אגזלן, וחמסן דקרא דלא יהיב דמי וכו', אי יהיב דמי אסמכתא בעלמא הוא, ואע"ג דהוסיפו עליהם החמסנים לפסול לעדות, וה"ה שפסול לשבועה היינו חמסן שחצוף לחטוף מיד ליד בידיעת הבעלים, אבל הכא לא חציף אלא מעלים חמסנותו ואמר שנאבדה לו לא פסיל.

SUGYA NOTE

The question: why is the guardian not disqualified anyway? Even if he pays, he is a forcible buyer, and a forcible buyer is disqualified. The answer: a forcible buyer who pays is disqualified only by rabbinic decree. From the Torah he is not a full robber. When the verse speaks of "a witness of violence," it means a forcible buyer who does not pay. And in the case of the guardian who denies a deposit, even the rabbinic decree does not apply. The Sages disqualified a forcible buyer who was brazen enough to grab directly from the owner's hand, with the owner watching. This guardian makes no open grab. He hides what he is doing and claims the object was lost. That hidden, self-justified taking was not included in the decree.

דהקשה תוס', דאכתי אמאי לא חשיב רשע, הרי אף היכא דיהיב דמי מ"מ חמסן הוי, וחמסן פסול לעדות. ותירצו, דחמסן דיהיב דמי אינו פסול אלא מדרבנן, אבל מדאורייתא לא חשיב גזלן גמור. ומה דכתיב עד חמס, היינו דוקא בחמסן דלא יהיב דמי. וממילא בפקדון, אף מדרבנן לא פסלוהו, דלא פסלו אלא חמסן דחציף לחטוף מיד הבעלים, אבל הכא אינו עושה מעשה חטיפה, אלא מעלים חמסנותו וטוען שנאבדה ממנו וכדו', ולכן לא ראו חכמים לפוסלו.

חמסן | *chamsan* / *Forcible buyer*

Money changes hands, but the owner never agrees to sell. The wrong is forcing the transaction, not withholding payment — which is why the chamsan sits in a different legal category from a robber.”

מהרש"א | Maharshal, Bava Metzia 5b

Rav Shmuel Eliezer Eidels, 1555 to 1631, Poland. His commentary is printed in the back of every standard volume of the Talmud, and for centuries the advice to look in the Maharshal has meant: now learn the page properly.

The Sages did not see fit to disqualify him (guardian). But this is only true because a forcible buyer (who plans to pay for the object) is disqualified by rabbinic decree. Had the disqualification been from the Torah itself, we wouldn't make this (brazen vs. denial) distinction.

ולא ראו בו
חכמים לפסלו
אבל אי הוה
חמסן דאורייתא.

SUGYA NOTE

This distinction works only because the forcible buyer disqualification is rabbinic. Then the Sages who issued that decree could limit it to the open, known forcible buyer, the one everyone sees grabbing. Had the disqualification been from the Torah, there would be no room to distinguish between the one who grabs in public and the one who hides his taking. The Torah would apply to both.

ביאר המהרש"א, דכל חילוק זה
שייך רק אם פסול חמסן הוא
מדרבנן, דאז חכמים לא גזרו אלא
על חמסן גלוי ומפורסם. אבל אילו
היה חמסן פסול מן התורה, לא היה
מקום לחלק בין חמסן בפרהסיא
לחמסן בצנעה.

מהר"ם שי"ף | Maharam Schiff, Bava Metzia 5b

Rav Meir Schiff, 1605 to 1641, Frankfurt and Fulda, Germany. He passed away young, and his comments on the Talmud are famously brief, prized for saying much in a few words.

What Tosafos wrote, "meaning a forcible buyer who is brazen," works only because this disqualification is rabbinic. But if it were from the Torah, this distinction would not sit well.

ומ"ש (תוספות) היינו חמסן שחצוף כו',
אבל אם הוא מדאורייתא לא ניהא להו
לחלק כן.

SUGYA NOTE

The same point, in even fewer words: Tosafos makes this distinction only because the forcible buyer disqualification is rabbinic. If it were from the Torah, there would be no distinguishing between one who grabs openly and one who hides his taking.

וכן כתב המהר"ם ש"ף, דהתוס' חילוק רק משום דסבירא להו שחמסן פסול מדרבנן. אבל אם היה פסולו מדאורייתא, לא לחלק בין חוטף בגלוי לבין מעלים את מעשיו.

SUGYA NOTE

Based on this, we can say the following.

Even if we say that one who receives stolen goods from a thief is also called a thief, that may not always make him invalid as a witness. If he does not keep the goods for himself, but later returns it or pays for it, he may not be the kind of thief who becomes invalid as a witness.

Look at the Rivash, Siman 266. He writes clearly that this was a case where "they forced him in court to return it."

Now we can understand a possible difference. One kind of forcible buyer grabs from the owner directly — he is bold enough to take from the owner himself. In that kind of case, the Sages made him invalid as a witness. But this person did not openly grab from the owner. He hid what he was doing, or he shared with the thief, and the court later forced him to return it. In that kind of case, the Sages may not have made him invalid as a witness. That is why the Rivash writes that he is not invalid as a witness.

Now look at the Rema in Choshen Mishpat 34:29. The Rema says that if someone stole or robbed only one time, then once he returns what he stole, that can count as repentance — but only if he returned it on his own. If the court forced him to return it, that does not fix him until he truly repents.

At first, this seems hard to understand. In the Rivash's case, the court forced him to return the stolen item. If being forced by the court does not fix a thief, how could he be valid as a witness?

The answer must be that in the case of the Rivash, he was never made invalid as a witness in the first place. The reason is that in the case of a forceable buyer, we only disqualify him from testimony if he didn't pay and he extorted directly from the owner in a bold manner — as we explained based on Tosafos. In our case, he didn't extort directly and openly from the

ולפ"ז י"ל, דאף אם נימא כדעת האחרונים דגונב מן הגנב חשיב גנב וגזלן, מ"מ היכא דאינו מחזיק את הממון לעצמו לגמרי, אלא סוף סוף מחזיר או משלם בעד מה שלקח, לא חשיב רשע דחמס לפוסלו לעדות. ועיין בשו"ת הריב"ש (סי' רס"ו), דכתב להדיא דמיירי באופן "שהכריחוהו בדין להחזירה". ומעתה אתי שפיר דשייך לחלק בין חמסן דחציף לחטוף מיד הבעלים, דבכהאי גוונא גזרו רבנן לפוסלו לעדות, לבין מי שאינו עושה מעשה חטיפה בגלוי אלא מעלים חמסנותו, או שחולק עם הגנב באופן שהכריחוהו בית דין להחזירה, דבכהאי גוונא לא גזרו עליו פסול עדות. ומשום הכי שפיר כתב הריב"ש דאינו נפסל לעדות.

ועיין עוד במה שפסק הרמ"א לעיל (סי' ל"ד סעי' כ"ט) וז"ל, מי שגנב וגזל באקראי בעלמא, מיד שהחזיר מה שגנב וגזל הוי תשובה, ודוקא אם החזירו מעצמו, אבל אם לא החזיר אלא על ידי כפיית בית דין, לא מהני החזרה עד שיעשה תשובה ע"ש. ולכאורה צ"ע, דבנידון הריב"ש הרי כתב להדיא שהכריחוהו בדין להחזירה, וא"כ האיך הוכשר לעדות על ידי כך, והלא כפיית בית דין אינה מועילה

owner; rather, he only split the loot with the thief after the thief stole from the owner. Additionally he was forced by the court to pay for what he split with the thief. In this case, he wouldn't be disqualified from testimony.

להכשיר גזלן לעדות בלא תשובה. אלא על כרחך צריך לומר, דמעולם לא חל עליו פסול עדות, וכמש"כ כסברת התוס', דבכהאי גוונא לא גזרו רבנן כלל פסול עדות.

Takeaway

Disqualification from testimony is not a punishment for doing something forbidden, and it is not a moral grade. It is a measure of one question: has money turned this man into someone who will lie? A man who pays and convinces himself it is permitted has sinned, and the court will make him pay. But he has not become a liar, and that is the whole difference.

AT A GLANCE

Three answers to the Tumim's challenge, in the order they appear in this sheet.

The Ketzos: He was never a robber. The thief emptied the owner's domain before he arrived. The second man took from the thief's possession, not from the original victim. Challenged by the Kovetz Shiurim, the Brisker Rov, and the Chazon Ish, who each argue that the second man carries the status of robber regardless.

The Vilna Gaon: Even if he is a robber, he is not disqualified from testimony. He told himself it was permitted and genuinely did not believe he was stealing. The Gemara in Bava Metzia

shows that *moreh heter l'nafsheih*, someone self-permitted, is suspected about money but not about truth. This answer holds even for those who side with the Kovetz Shiurim, the Brisker Rov, and the Chazon Ish.

Tsafos: The rabbinic disqualification targets only the forcible buyer who grabs in public, in front of the owner. The man who hides his taking, or who splits with the thief while telling himself he is paying, was never included in that decree.

The Rema rules: not disqualified. All three approaches explain why.

Conclusion

At first glance, the case sounded simple. A man shared stolen goods. He held the victim's money. Why would a court ever trust him as a witness? But the sugya refused to flatten every wrong into one word. It asked exactly where

the object was when the second man took it, exactly which legal name that act received, and exactly which kind of wrongdoer loses the right to testify. Three answers emerged.

The Ketzos argued that the second man never

became a robber at all. Robbery requires taking from the owner's domain, and the thief had already emptied it. When the second man arrived, there was nothing left to take from the original victim.

The Kovetz Shiurim raised a challenge. From the Rambam's ruling on one who steals consecrated property, the verse removes only the double payment, not the status of robber itself. The Brisker Rov and the Chazon Ish pressed further: Even when the name of hidden theft falls away entirely, the act of robbery remains. He is still a robber. A different approach was needed.

The Vilna Gaon opened one. With a handful of words, he pointed to the Gemara in Bava Metzia. People misread "Do not covet" as applying only to taking without payment. The Gemara shows what that means for testimony. A man who tells himself that he is paying does not see himself as a robber. He is *moreh heter l'nafsheih*, allowing himself to believe that his

actions are permitted. He is suspected when it comes to money, but not when it comes to the truth. Even if the Kovetz Shiurim, the Brisker Rov, and the Chazon Ish are right that he is a robber, he is not the kind of robber whose word the court can no longer hear.

Tosafos drew the final line. The Sages disqualified a specific kind of wrongdoer: the forcible buyer who is brazen enough to snatch in public, in front of the owner. The man who hides his taking, or who splits the goods with a thief while telling himself that he is paying, was never included in that decree. His act was not clean. But it did not give him the specific legal status that removes a person from court. Stolen once, stolen twice. The money may still belong to the original owner. The second man may still have done wrong. But the final question is the most exact one: Did this man become someone whose voice the court can no longer hear? The Rema answers no. Now we understand why.