



## **Sicha Summary**

Chelek 16 | Mishpatim | Sichah 3

### **The verse:**

If a man steals an ox or a lamb, and slaughters it or sells it, he shall pay five oxen in place of the ox, and four lambs in the place of the lamb. (*Shemos* 20:37)

### **The Rashi:**

*Five oxen, etc.* — Rabbah Yochanan ben Zakkai said: “G-d is concerned about people’s dignity. For an ox, which walks on its own feet... he pays five. But for a lamb, which he carries on his shoulder, he pays four, since he was humiliated by it.” Rabbi Meir said: “Come and see how great the power of work is. For an ox, which the thief stopped from working, he pays five. But for a lamb, which he did not stop from working, he pays only four.”

### **The Explanation:**

It may seem that Rabban Yochanan and Rabbi Meir disagree as to what the standard penalty is for a thief who steals animals. According to Rabban Yochanan, the standard is five times the principal, but in the case of a lamb, the Torah is lenient (because of the thief’s dignity) and reduces the penalty to four times. According to Rabbi Meir, the standard is four times the principal, but in the case of an ox, the Torah awards the victim with additional compensation (because of the value of work that was lost).

This is not the case, however. There is no single, standard penalty. Rather, when considering a thief’s culpability, his crime warrants a penalty five times the value of the stolen animal. And when considering the loss of the victim, it is only a loss that warrants four times the value of the animal.

Rabban Yochanan evaluates the penalty based on the perspective of the thief and therefore, he explains that the penalty is indeed five times the amount, but it is reduced in the case of a lamb, in light of the thief's humiliation. Rabbi Meir evaluates the penalty based on the perspective of the victim, and therefore, he explains that the penalty is four times the amount, but is increased in the case of an ox, in light of the victim being stopped from working.

### **The Talmudic Link:**

The positions of these two Sages are presented in tractate *Bava Kama* directly after another pair of their statements.

“Rabban Yochanan ben Zakkai's students asked him: Why was the Torah stricter with a thief than with a robber? [Only a thief is required to pay the double, fourfold, or fivefold payment; a robber merely pays the principal.] He said to them: The robber equated the honor of the servant to the honor of his Master, and the thief did not equate the honor of the servant to the honor of his Master. [The robber fears neither G-d nor people, as he is not afraid to rob in public. The thief does not fear G-d, but he does fear other people, which demonstrates that he is more concerned about humans than God.]

To illustrate how a thief is worse than a robber, as per Rabban Yochanan ben Zakkai's explanation, Rabbi Meir said: They offered a parable in the name of Rabban Gamliel. To what is this matter comparable? To two people who were living in the same city, and both of them prepared a feast. One of them invited the people of the city to his feast but he did not invite the king's sons. And the other did not invite the people of the city and also did not invite the king's sons. Which of them deserves a greater punishment? You must say that it is this one who invited the people of the city but did not invite the king's sons. (*Bava Kama* 79b) Likewise, both the thief and the robber show disdain for God, but the robber does not display more respect for people.”

According to what we have explained above, the continuity in the Talmud is evident. Rabban Yochanan ben Zakkai views the crime of theft primarily from the vantage point of the thief. Therefore, in explaining the severity of the crime, he speaks of the relative insolence of a thief compared to that of a robber: “The robber equated the honor of the servant to the honor of his Master, and the thief did not equate the honor of the servant to the honor of his Master.”

Rabbi Meir views the crime of theft from the vantage point of the victim. Therefore, in explaining the severity of the crime, he speaks of the disrespect shown toward the “victim” of the crime, G-d: “One invited the people of the city, but he did not invite the king’s sons. The other did not invite the people of the city and also did not invite the king’s sons. Which of them deserves a greater punishment? You must say that it is this one who invited the people of the city but did not invite the king’s sons.”

### **Character and Consistency:**

Rashi does not usually name the authors of the teachings that he quotes. When he does so, it is in order to add clarity to the teaching itself. In this case, the identities of the authors help us understand the rationales behind each position.

Rabban Yochanan reasoned that the humiliation of the thief who had to carry the lamb on his shoulders is the reason his penalty is reduced. Because we are talking about a thief who steals stealthily, however, no one would see his humiliation. It would only come to light in court, when it becomes clear that he stole a lamb, and the public would understand that he had to carry it. Is such indirect embarrassment sufficient reason to reduce his penalty?

By naming the author, Rashi helps us understand this position better. The Talmud relates: “They said about Rabban Yochanan ben Zakkai that no one ever preceded him in issuing a greeting, not even a gentile in the marketplace.” (*Berachos* 17a)

Because Rabban Yochanan took human dignity so seriously, he considered even an indirect humiliation to be sufficient cause to reduce the thief's penalty.

Rabbi Meir reasoned that the thief's penalty should be increased from four times the value of the ox to five times its value because of the labor of the ox that was lost to its owner.

However, we must assume that the value of the lost labor was calculated as part of the principal; potential labor is as integral to the value of the ox as is its actual physical body. It follows that Rabbi Meir ruled that the thief must pay an additional sum of the **entire value of the ox** not just to compensate for lost labor, but to compensate for the very idea of labor that the ox represents. Now, an ox only plows a field two times a year, and only for a few hours daily. This seems to be a steep price for the work that comprises such a minuscule part of an ox's life. Furthermore, if the thief slaughtered the ox, we can assume that it was not fit for work, or else he would have kept it for himself. Why, then, would Rabbi Meir still mandate an increased penalty for the loss of work?

Rabbi Meir generally maintains that we are concerned for even unlikely, infrequent occurrences, and we factor them into any halachic decision. (*Yevamos* 61b) By quoting the author of this teaching by name, Rashi explains why the thief pays five times — even for labor which is but a blip in the lifespan of the ox, and even for the unlikely scenario in which a thief slaughters a viable ox — because Rabbi Meir is always concerned for a rare and unusual scenario.

### **The Deeper Dimension:**

In explaining the insolence of the thief, Rabban Yochanan concludes: The thief establishes the eye below, i.e., God's eye, as though it does not see....” He then cites three verses that describe people who imagine that G-d does not see their actions: “Woe to them who seek deeply to hide their counsel from the G-d; their works are in the dark, and they say: Who sees us, and who knows us?” (*Yeshayahu* 29:15); “And they say: G-d will not see....”

(*Tehillim* 94:7); and, “For they say: G-d has forsaken the land....” (*Yechezkel* 9:9).

With these three verses, Rabban Yochanan explains how a person devolves into a state of denying G-d’s knowledge of this world. 1) He assumes that G-d cannot see what he does in “the darkness” because, 2) he believes that G-d cannot “see” what takes place in the physical world because He is not corporeal and has no interest in descending to this world to know what transpires; in other words, 3) “G-d has forsaken the land.”

Rabbi Meir makes reference to the same mistaken conception by alluding to a host disinviting the “children of the king.” The thief in the analog does not believe that he has a relationship with the “King” Himself — G-d, but only with the “children of the king” — the world with its natural law.

However, we can also suggest that the feast in Rabbi Meir’s metaphor alludes to the eventual repentance of the thief. The feast and its delicacies allude to the pleasure that G-d receives from a person turning away from their past negative behavior and committing to more upright conduct, and to a more positive future.