

# Zera Shimshon

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## Chapter XVIII: Mishpatim (Ex. 21:1–24:18)

### Essay 6. Admission of guilt of theft is a mitigating factor

The Torah states: “In all charges of misappropriation—pertaining to an ox, a donkey, a sheep, a garment, or any other loss, whereof one party alleges, ‘This is it’—the case of both parties shall come before G-d: he whom G-d declares guilty shall pay double to the other” (Ex. 22:8).

**מדרש** ילקוט על פסוק "הֲנִנִּי גִשְׁפֹּט אוֹתְךָ עַל-אֲמָרְךָ לֹא חָטָאתִי", ר' שמעון בר חלפתא אומר אמר הקב"ה לירושלים על מה הבאתי כל המשפטים הללו? בשביל שאמרת "לא חטאתי" שנאמר "הֲנִנִּי גִשְׁפֹּט אוֹתְךָ" וכו'. והוא תימא מה הוסיף ר' שמעון בר חלפתא על פשט הפסוק.

There is a **midrash Yalkut Shimoni** (Jeremiah remez 268:2) **on the verse**, “You say, ‘I have been acquitted; surely, His anger has turned away from me.’ **Lo, I will bring you to judgment for saying, ‘I have not sinned’**” (Jer. 2:35). **R. Shimon bar Chalafta says: The Holy One, Blessed be He, said to Jerusalem,<sup>1</sup> Why did I bring all these sentences [against you]? It is because you said, “I have not sinned,” that it is said, “Lo, I will bring you to judgment.” This is astonishing, for what did R. Shimon ben Chalafta add to the plain meaning of this verse?**

וגיש לומר דקימא לן אשור ירשיעון אלהים פרט למרשיע את עצמו, ואף מי שעשה תשובה נקרא מודה בקנס והוא פטור. וזה ניקח אם לא באו עדים, אבל אם באו עדים אחר כך יש מחלוקת בגמרא אם פטור או חייב.

**It can be said that we hold in accord** with the *halacha* regarding admission of guilt of theft. **That is, one whom G-d holds guilty** is obligated to pay not only principal but also punitive damages; but this **excludes one who incriminates himself**, who only has to repay the principal.<sup>2</sup> **So one who repents is called to acknowledge** liability to pay **punitive damages** is actually only liable to repay the principal value of the property, **and then he is exempt** from payment of the punitive damages. **This is correct if witnesses didn't come** to testify to his guilt, **but if witnesses**

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<sup>1</sup> Here “Jerusalem” is symbolic of the Jewish people.

<sup>2</sup> Bava Kamma 64b.

came after his self-incrimination, there is a disagreement in the Gemara if he is exempt or obligated regarding the punitive damages.<sup>3</sup>

ואף כּאן הוּי כּמוּ מוּדָה בּקִנּוּס נֶאֱחָר כּף בּאוּ עֵדִים, שְׂאֵף עַל פּי שְׁעֵשָׂה תְּשׁוּבָה, כּל הַמְקַטְרְגִים שְׂפָרָא בְּעוֹנוֹתָיו יְכוּלִים לְקַטְרֵג עָלָיו, שְׁהָרִי הוּא לֹא עֵשָׂה אֶלָּא תְּשׁוּבָה גְּרִידָתָא, וּבְשִׁלְמָא הֵיכָא שְׂמַקְבֵּל עָלָיו אֵינָה צַעַר וְיִסּוּרִין נִיחָא, דְּאֶמְרִינּוּ הֵתֵם בְּבָבָא קַמָּא (דף ע"ד)<sup>4</sup> אָמַר ר' הוּנָא אָמַר רב מוּדָה בּקִנּוּס נֶאֱחָר כּף בּאוּ עֵדִים פְּטוּר.

Here, too, it is as if he acknowledges liability to pay a punitive damage and afterward witnesses come, for even though he has repented, all of the accusing spiritual forces that were created by his sins are able to prosecute him, for he has only accepted a regular repentance. Granted, where he accepts upon himself whatever trouble or torment, it is fine, for it says there in tractate Bava Kamma (74b): Rav Huna says that Rav says that one who acknowledges liability to pay punitive damages and afterward witnesses come to testify against him, he is only obligated to pay the principal, but he is exempt from paying the punitive damages.

אָמַר ר' הַמְנוּנָא מִסְתַּבְּרָא מִלְתִּיהָ דְּרַב בְּאוּמְרֵי גְּנֻבְתִּי וּבְאוּ עֵדִים שְׁגֻנְבִי, פְּטוּר שְׁהָרִי חַיִּיב עֲצָמוּ בְּקִרְוֹ, אֶבֶל אָמַר לֹא גְּנֻבְתִּי וּבְאוּ עֵדִים שְׁגֻנְבִי וְחִזְרִי וְאָמַר טְבַחְתִּי וּמְכַרְתִּי וּבְאוּ עֵדִים שְׁטַבַּח וּמְכַר חַיִּיב, שְׁהָרִי לֹא חַיִּיב עֲצָמוּ לְכֹלָם. וְלִכְּן קָשְׁמוּדָה וּמִתְחַרְט וּמְקַבֵּל עַל עֲצָמוּ אֵינָה עוֹנֵשׁ, אֲזִי אֶפִּילוּ אִם יְבוֹאוּ עֵדִים, פְּטוּר. אֶבֶל אִם לֹא יְקַבֵּל עַל עֲצָמוּ שׁוּם עוֹנֵשׁ, אֵינּוּ בְּכֻלָּל: מוּדָה בּקִנּוּס, פְּטוּר.

The Gemara continues on page 75a: **Rav Hamnuna said: Rav's statement is reasonable where [the thief] says: I stole, and afterward witnesses came and testified that he stole that item.** He is exempt from paying the punitive damages, as he obligated himself to pay the principal by his admission. **But if he says: I did not steal, and witnesses came and testified that he did steal, and subsequently he says: I slaughtered [the animal], or I sold it, and witnesses came and testified that he slaughtered or sold it, he is liable to pay the penalty, for he hadn't obligated himself to any payment whatsoever.** I.e., in order for an admission to exempt the perpetrator from punitive damages, it must include an admission that he is liable to at least pay the principal, and he had not admitted to the theft (which would have obligated himself to the principal), but only to the slaughter or sale (which would not have obligated him). **Therefore, when he confesses and repents and accepts some punishment, then even if witnesses come, he is exempt from the punitive damages, but if he does not accept any punishment, he is not included in the rule that one who acknowledges punitive damages is exempt from them, only being obligated in the principal amount.**

<sup>3</sup> Bava Kamma 75a.

<sup>4</sup> The first edition incorrectly shows "page 75."

וְזוֹ הִיא דְקָשָׁיָא לִיהּ לִר' שְׁמַעוֹן עַל פְּשַׁט הַכְּתוּב "הִנְנִי גֹשֶׁפֶט אוֹתָךְ עַל-אֲמָרְךָ לֹא חָטָאתִי", דְּמִשְׁמַע הָא אִם הִיְתָה אוֹמְרַת חָטָאתִי לֹא הִיְתָה שׁוֹפֵט אוֹתָהּ. וְהָא אֲמָרִינָן דְּמוֹדָה בְּקִנְס וְאַחַר כֵּךְ בָּאוּ עֵדִים אִינוּ פְּטוּר אֱלָא אִם חֲזִיב עֲצָמוּ בְּקִרְוֹן? וְאַחַר כֵּךְ לְעוֹלָם הִיְתָה צָרִיךְ לְשַׁפוֹט אוֹתָהּ.

**This is the question R. Shimon ben Chalafta has on the plain meaning of the Scripture, “Lo, I will bring you to judgment for saying, ‘I have not sinned,’ ” that the meaning is that if [Jerusalem] had said, “I sinned,” [G-d] would not have judged her. For don’t we say that one who acknowledges liability of paying a fine and afterward witnesses come is not exempt, unless he has obligated himself to payment of the principal? So afterward, after Jerusalem’s false claim that she had not sinned, it would always be necessary to judge her and find her guilty to pay both the principal and punitive damages.**

וְלָזָה תִּירֵץ וְאָמַר עַל מָה הִבְאֵתִי כָּל הַמְשַׁפְּטִים הָאֵלֶּה, כְּלוֹמַר דְּקָרָא כְּתִיב "כִּי לִקְחָה מִיַּד ה' כְּפָלִים בְּכָל-חַטָּאתֶיהָ". וְלָמָּה כְּפָלִים? בְּשִׁבִיל שְׁאֲמָרָה "לֹא חָטָאתִי". הָא אִם הִיְתָה אוֹמְרַת חָטָאתִי, הִיְתָה עוֹשֶׂה תְּשׁוּבָה וּמִקְבֵּלָת עַל עֲצָמָה אִיזָה עוֹנֵשׁ, כְּמוֹ מִי שְׁאוֹמֵר גְּנָבְתִי שְׁמַתְחִיב עֲצָמוֹ בְּקִרְוֹן. וְאַפִּילוּ אִם לֹא יִרְצָה אַחַר כֵּךְ לְשַׁלֵּם, בֵּית דִּין יִקְפּוּהוּ לְשַׁלֵּם, אָבָל לֹא יִשְׁלַם אֱלָא קִרְוֹן. וְהִכָּא נָמִי אִם הִיְתָה אוֹמְרַת חָטָאתִי, בְּנֹדָאֵי שְׁהִיְתָה צָרִיכָה לְקַבֵּל עַל עֲצָמָה אִיזָה עוֹנֵשׁ, וְאַף אִם לֹא תִקְבַּל עוֹנֵשׁ מִסְּפִיק מְעַצְמָה וְהִיָּה הַקַּב"ה שׁוֹלֵט לָהּ יִסּוּרִין כְּדִכְתִּיב "בְּתוֹכָחֹת עַל-עוֹן יִסְרֹת אִישׁ", לֹא יִהְיוּ אֱלָא כְּמוֹ מִי שְׁאוֹמֵר גְּנָבְתִי שְׁחִיב בְּקִרְוֹן לְבַד. וְעַתָּה שְׁאֲמָרָה "לֹא חָטָאתִי" נִתְחַיֵּבָה כְּפָלִים.

**To this question, he solved it and said, “Why did I bring all these sentences [against you]?,” as if to say, as Scripture says, “Speak tenderly to Jerusalem, and declare to her that her term of service is over, that her iniquity is expiated; for she has received at the hand of the L-rd double [punishment] for all her sins” (Isaiah 40:2). Why double [punishment]? Because [Jerusalem] said, “I have not sinned.” But if she had said, “I sinned,” [then] she would have effected repentance and accepted upon herself some punishment, like one who says, “I stole,” who obligates himself in payment of the principal. Even if afterwards he doesn’t want to pay, a court forces him to pay, but only to pay the principal and not any punitive damages. Here too, if she had said, “I sinned,” certainly she would have needed to accept some punishment upon herself,<sup>5</sup> and even if she hadn’t accepted sufficient punishment upon herself,<sup>6</sup> and the Holy One, Blessed be He, had sent torments upon her, as it is written, “You chastise a man in punishment for his sin” (Ps. 39:12), it would have only been like one who says, “I stole,” who is obligated only in the principal. But now that she said, “I have not sinned,” she is obligated in a double punishment, i.e., the principal and punitive damages.**

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<sup>5</sup> I.e., this is not like an individual who is pleading guilty to a theft, or who is saying he is liable to punitive damages, who in fact would therefore only be liable to restitution of the principal value. Rather, we are talking about the various sins of the entire community. That is why *Zera Shimshon* speaks here of “some punishment” instead of “the principal” or “punitive damages.”

<sup>6</sup> For what would constitute “sufficient” could not be calculated by the nation, not knowing the sins of each member, or the appropriate punishment for each sin.