

CHAPTER 16

Maintaining Peace in Society by Forbidding Acts Similar to Theft

1. There are actions that are not fully considered theft, yet the Rabbinical Sages forbade them because they are a danger to peaceful society. In particular, these are actions that involve a perpetrator and a victim, in which the victim will feel as though he was robbed. This may lead to the victim killing or stealing from the perpetrator in revenge. Although the following wrongful actions are not fully considered to be theft, if a person uses one of these tactics to receive an object, he must return it in order to maintain a peaceful society.⁵⁰¹

2. It was explained in Chapter 15 that seas, open rivers and open forests are ownerless, and a person may hunt in them or set out traps for fish or animals (subject to the government's restrictions). Therefore, if someone set out a trap that does not have the legal status of being a vessel (for example, a fishnet), and then another person came and took a captured animal or fish from the trap before it was found and retrieved by the trap's owner, this is not fully considered as theft. Why? The trapper has not yet acquired it because (a) it has not yet come into his hand, and (b) this trap is not a complete vessel, so something in it does not automatically become his. Nevertheless, it is forbidden for another person to take the trapped creature, so that a breakdown in the peace of the society will be avoided.

If, however, the trap was a complete vessel and an animal or fish entered it and was trapped, the owner of the vessel acquires it. The acquisition takes place by the Torah law that a person's vessel acquires

⁵⁰¹ See Rambam *Laws of Acquisition and Gifts* 1:3; *Shulhan Aruh Hoshen Mishpat* ch. 273 and 370; *Shulhan Aruh HaRav Hilhot Hefker* topic 6. And even though in *Shulhan Aruh Hoshen Mishpat* ch. 370 it is written that an acquisition that is decreed by the Sages to be forbidden cannot be reclaimed in court, it is nevertheless an obligation on the person to return it, as explained in *Shulhan Aruh HaRav Hilhot Hefker* *ibid*.

It is clear that a Gentile who commits this type of immoral acquisition, which was forbidden by the Sages, is exempt from liability to capital punishment for theft, as in all these cases, the item being taken is not really owned by anyone else. Rather, the Sages only placed it in one person's possession at the outset, to promote the ways of peace between people.

for its owner something ownerless that comes into it. Therefore, one who takes a trapped animal from another person's trap that is a complete vessel is fully liable for the transgression of theft.⁵⁰²

3. However, it is forbidden to hunt in a field, forest or river that is privately owned, as this would be using the other's property without permission. Nevertheless, if one traps an animal, bird or fish in one of these places, it belongs to the intrusive trapper.

However, if someone traps creatures that are constrained to be in a corralled area, such as a fish hatchery, or a fenced-in valley that contains animals, since the area is closed off and guarded, the area and all that is in it belongs to the owner, and the trapper does not acquire anything.⁵⁰³ This applies even if effort would be needed to trap the animal or fish, such as in a case where the enclosure was very large.

4. Doves in a dovecote and pigeons living on a roof typically have come freely from elsewhere and are now dwelling on a person's private property. Although they are currently within the owner's property, they can still go and come freely since they are not being constrained. Therefore, they are not completely considered as belonging to the property owner, even though they are inside his dovecote, or living on his roof. Likewise, the bees in a hive that they have made in a beekeeper's field are not constrained. Nevertheless, it is forbidden to take any of these birds or bees from another person's property, and not even when they go out from that property into a third person's property. In order to establish a more moral world, the Rabbinical Sages decreed that these valued creatures (bees for their honey, and birds which are taken for food) are considered to belong to

⁵⁰² *Shulḥan Aruḥ Ḥoshen Mishpat* 273:13 and 370:4; *Shulḥan Aruḥ HaRav Hilḥot Hefker* topic 3.

⁵⁰³ *Shulḥan Aruḥ Ḥoshen Mishpat* 273:13; *Shulḥan Aruḥ HaRav Hilḥot Hefker* topic 4. Even though for a Jew, his real-estate property acquires for him any ownerless thing that comes into it, and one who then takes that object is fully a thief, this does not apply for a Gentile's real-estate property, because it does not acquire ownerless objects. (This is learned from the Torah laws of a representative messenger (a *shaliaḥ*), which do not apply to Gentiles). Nevertheless, taking an ownerless object from the property of a Gentile was forbidden by the Sages, since doing so could result in a breakdown of a peaceful society.

the owner of the property where they make their nests.⁵⁰⁴

5. If one person shakes fruits from an ownerless tree with intention to collect and acquire them, and then a second person comes and picks them up from the ground, the second person acquires them for himself according to Torah Law. (Since the first person did not yet establish his ownership by lifting up the fruit from the ground for himself – or by placing them into his vessel, or letting them fall into his vessel – therefore the second person acquires them by his act of lifting them for himself.) Nevertheless, to preserve the ways of peace, this was decreed as forbidden, and the fruit must be treated as belonging to the person who shook them off from the tree with the intention that he would take them for himself.⁵⁰⁵

6. Any object that was previously ownerless or lost, that a person finds within four cubits (about six feet) of himself, belongs to him (provided that he intends to acquire it), even if he has not yet picked it up. This Rabbinical enactment was made for the sake of peace in the world. Once a person is standing close to an ownerless object that he desires (although he has not yet technically done an action to acquire the object), he has already established in his mind that he has acquired it. If anyone else would then step up and take it, this would begin a quarrel. Therefore, a second person may not take it at that point, and if he does, he must return it to the first person.

This only applies in an open area that is ownerless and which is not crowded with many people, such as a public field or the sides of a public domain. In the middle of a public path where the passersby are walking close to each other, and each one does not have his own personal space of four cubits in which to be able to acquire an object through its close distance to him alone, one only acquires an object through raising it. Even if he spread his garment over it, or it struck him while it was falling from above, he does not acquire it until he raises it.

If the object is on another person's property, even if the property

⁵⁰⁴ Rambam *Laws of Robbery* 6:14; *Shulḥan Aruḥ Ḥoshen Mishpat* ch. 370; *Shulḥan Aruḥ HaRav Hilḥot Hefker* topic 6.

⁵⁰⁵ *Shulḥan Aruḥ Ḥoshen Mishpat* ch. 370; *Shulḥan Aruḥ HaRav Hilḥot Hefker* topic 5.

owner is not present in order to see it, the finder cannot acquire a nearby lost object only by virtue of it being within his four cubits.⁵⁰⁶

There are some Torah authorities who, regardless of the situation, forbid a person to take an object that another is trying to pick up and acquire, and someone who does this is called a sinful person. Anyone who pushes ahead and takes a lost object or a business opportunity that another person is trying to acquire is a sinful person.⁵⁰⁷ See topic 8:17.

7. It is forbidden to steal an object found by a young child, as this destroys peaceful society.

If the child received an item as a gift, or as payment for work, and he is at the stage of maturity when he can discern between a coin and a plaything, such an act is full theft. If he has a lower level of maturity, the prohibition is only one of destroying peaceful society.⁵⁰⁸

8. A guest who eats a meal from a homeowner which he knows is more than the homeowner can afford has committed an act akin to theft, since the homeowner does not want to give him that much food, or food which is that expensive, and only does so since he is embarrassed to tell the guest otherwise.⁵⁰⁹

9. It is forbidden to steal another person's advantage, such as one who jumps ahead in a line in which others are waiting, as he is stealing their advantage and time.⁵¹⁰

⁵⁰⁶ Rambam *Laws of Robbery and Lost Property* 17:9; *Shulhan Aruh Hoshen Mishpat* ch. 268; *Shulhan Aruh HaRav Hilhot Hefker* topic 7.

⁵⁰⁷ *Shulhan Aruh Hoshen Mishpat* ch. 237.

⁵⁰⁸ *Ibid.* 243:15 and ch. 370; *Shulhan Aruh HaRav Hilhot Hefker* topic 8 and *Hilhot Mehira* topic 10.

⁵⁰⁹ Rambam, *Laws of Repentance* 4:4.

⁵¹⁰ Rabbi Zalman Nehemiah Goldberg notes that the rule "first comes, first served" is said in reference to litigants coming before a court for a judgment (*Shulhan Aruh Hoshen Mishpat* ch. 15), but that is only after the judge has started to judge one case, he may not stop and take another case instead. But if he didn't start yet, he may take a different case than the one that is waiting next in line. Still, it is probable that jumping ahead in a line is forbidden since it disturbs the business; for example, if one jumps ahead in a line at a bank, it disrupts the business and causes a loss to the bank.

10. Those who make profits from gambling are not committing theft. Nevertheless, it is not fitting that a person should be involved in such pursuits, but rather with matters which establish a productive world order.⁵¹¹

11. It is forbidden for one to raise a type of dog or cat that is dangerous for young children. If such an animal gets loose, it is forbidden for one to return the animal to the owner, and anyone who finds it may kill it, and use its fur, as it is considered ownerless.⁵¹² The same applies for anything which is a danger for the public. Since it is permitted for one to kill it or destroy it, therefore if someone steals it for himself, a Torah-based court cannot force him to return it or pay restitution.

12. It is unclear if it is permissible for a Gentile to steal or rob an idol or another prohibited object that is linked to idol worship, even if his intention is to destroy it or to turn the owner away from idol worship. Either way, it appears that the thief is not liable to capital punishment for theft, and he need not return the prohibited object that he stole.⁵¹³ (See Part II, “The Prohibition of Idolatry,” topic 7:2.)

13. One is obligated to be extremely careful regarding the prohibition of theft, as there are many details, and the nature of a person is to covet

⁵¹¹ See *Shulhan Aruh Hoshen Mishpat* ch. 370.

⁵¹² Rambam *Laws of Robbery and Lost Property* 15:17, *Shulhan Aruh Hoshen Mishpat* ch. 266.

⁵¹³ It seems from the story of Rachel (Genesis 31:19) – “And Rachel stole the idols that belonged to her father” – as Rashi comments there based on *Midrash Rabbah*, that she intended to separate her father from idol worship, and *Gur Aryeh* explains there that therefore, this is not considered theft, so it appears that it is permissible.

It appears that since there is an obligation to destroy idols, and when they are existent they are a stumbling block for those that serve them, so this is comparable to a dangerous thing, as explained above in topic 11. Therefore, one who steals or damages them is exempt. Although the owner of the idols is able to nullify them and use their monetary value, and therefore one who damages them would be stealing from the owner, the same can be said for a dangerous pet, which is worth money but is nevertheless considered ownerless. Surely, one can say this about idols.

the money of others, so his evil inclination tricks him with various excuses for why it is permissible.

Therefore, one should make extra effort to be careful about this prohibition, and he should learn and know its details very well, in order not to transgress it even by mistake. It has already been explained in Part I, “Fundamentals of the Faith,” Chapter 4, that one who transgresses a Noahide commandment because he was negligent and did not learn, and therefore thought that it was permitted, is liable to punishment, for he was obligated to learn and know what he is prohibited from doing.

Likewise, a person is obligated to contemplate and judge the actions he is doing, in order that he not fall mistakenly into theft, as this is likely to occur when one is not being careful.

14. We see how harsh the punishment for theft can be from the Generation of the Flood. The Sages teach⁵¹⁴ that although the people of the generation were very sinful, God’s decree of their annihilation was sealed only due to their sins of robbery, as it says,⁵¹⁵ “God said to Noah, ‘The end of all flesh has come before Me, for the earth is filled with robbery; and behold, I am about to destroy them from the earth.’ ”

There are cases in which a person will receive severe retribution from God for committing theft, similar to a kidnapper (see Chapter 9 above) or a murderer (see Part V).⁵¹⁶ When might this judgment be made? This can happen if his theft left the victim with no money, which caused the victim to die of hunger, or similar cases in which the robber causes the victim to die from other circumstances, because of his financial loss. Since these situations can’t be fully evaluated by mortals, it is understood that God will consider any theft according to His true understanding of the situation – which may be as severe as a case of murder or manslaughter – and He will judge accordingly.⁵¹⁷

⁵¹⁴ Tractate *Sanhedrin* 108a, cited by Rashi on Genesis 6:13.

⁵¹⁵ Genesis 6:13.

⁵¹⁶ See Tractate *Bava Kama* 119a, and *Sifri Devarim* 32:43 – all *extortion* that the Babylonians committed against the Jews is considered as if they spilled innocent blood (i.e., a capital sin). See also Rambam, *Laws of Robbery and Lost Property* 1:13; *Shulhan Aruh Hoshen Mishpat* 359:3.

⁵¹⁷ See Rashi’s explanation of Deuteronomy 1:9.