

# שו"ת מהרש"ם

## THE MAHARSHAM PROJECT

*Weekly Teshuvah Insights from the Maharsham of Brezhan*

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### THE THIEF WHO PAID IT BACK

A robber returns every penny he stole. Is he now a trustworthy witness, or does the Torah demand something more?

A scholar struggles with a famous Rambam: a thief or robber who returns the stolen money remains disqualified as a witness until he demonstrates genuine repentance. If he has already made financial restitution, what more does the law demand? The question troubled the Tur and generations of commentators. The Maharsham, in a few crisp lines, shows that the answer was provided by the Rambam himself, in a different section of the Mishneh Torah.

**To R' Berel Weinberg of Wieliczka (Vyelitchka).**

#### THE QUESTION

The Rambam rules (Hilchos Eidus, codified in Choshen Mishpat 34:6) that a ganav or gazlan who returns the stolen money remains disqualified from serving as a witness until he can demonstrate that he has done genuine teshuvah.

This ruling troubled the Tur and the meforshim who followed him. If the man has returned what he stole, he has fulfilled the Torah's requirement of hashavah, restitution.

**What further act of repentance could be required? He is no longer holding stolen property. He has made the victim whole. In what sense is he still a rasha, a person whose conduct disqualifies him from testifying?**

R' Berel Weinberg writes to the Maharsham proposing an answer: The Gemara in Bava Kamma (60a), states that a person who assaults another and then pays compensation is still called a rasha. The act of violence itself leaves a moral stain that payment alone cannot remove.

Perhaps the same logic applies to theft, he reasons: returning the money addresses the financial wrong but not the moral one?

## **THE MAHARSHAM'S ANALYSIS**

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### **1. A Good Idea, But Not a New One**

The Maharsham acknowledges that Weinberg's reasoning from Bava Kamma is sound in principle. But it is not original. The Hagahos Asheri Betzalel already cited this passage, and the Maharsham notes that the same point appears in the Maharit (Teshuvos, second edition, Choshen Mishpat Siman 90).

### **2. The Rambam's Own Source**

The Maharsham then makes his central point.

With proper deference to the earlier meforshim, the Maharsham observes that the Rambam himself explains his own source in a different section of the Mishneh Torah. In Hilchos Teshuvah (1:1), at the end of the halacha, the Rambam derives this requirement from the verse "kol chatas ha'adam," "any sin that a person commits" (Bamidbar 5:6).

The Kesef Mishneh and the commentary Tiferes Yisrael cite the Yalkut Shimoni on Parshas Naso, which quotes the Sifrei Zuta making this explicit: the verse refers specifically to sins between a person and his fellow, such as "the thefts and the robberies," and requires confession and repentance in addition to financial restitution.

The Torah itself distinguishes between making someone financially whole and making oneself spiritually whole. Returning the money fulfills one obligation. But the verse demands a separate act: vidui (confession) and teshuvah for the interpersonal sin. Until that is done, the person remains in a state of spiritual deficit, and therefore, he remains disqualified as a witness.

### **3. Why the Form of Restitution Does Not Change the Answer**

R' Weinberg had also proposed distinguishing between a thief who returns the exact stolen object and one who pays monetary compensation. The Maharsham sets this distinction aside. Since the Rambam's source is the verse requiring repentance for all interpersonal sins, the form of restitution is irrelevant. Whether one hands back the stolen cow or pays its value, the Torah still requires an independent act of teshuvah. The financial and the spiritual are separate obligations.



## **THE P'SAK**

The Rambam's ruling stands on its own scriptural foundation, and the difficulty that troubled generations of commentators dissolves once you look where the Rambam himself pointed.

A thief who returns stolen money has discharged his financial obligation. He has not yet discharged his spiritual one. Until he demonstrates genuine repentance, not merely

restoration of property but transformation of character, he remains unfit to testify. The Torah demands both: the money back and the heart changed.

The answer, the Maharsham concludes, was sitting in the Rambam's own words all along.



## HISTORICAL CONTEXT

This teshuvah is brief, but its insight is striking. The Maharsham does not elaborate or belabor the point. He simply observes that the answer to a difficulty which occupied generations of meforshim had been provided by the Rambam himself, in a different section of the Mishneh Torah, with the derivation made explicit in the Sifrei Zuta preserved in Yalkut Shimoni.

The lesson extends beyond this particular ruling. The Rambam's Mishneh Torah is organized by topic, and a ruling in Hilchos Eidus (laws of testimony) may find its explanation in Hilchos Teshuvah (laws of repentance). When searching for the background of a halacha, it is natural to look first at the Tur, the Beis Yosef, and the nosei keilim on that siman. The Maharsham reminds us, respectfully, that the Rambam is sometimes his own best mefaresh, and that a difficulty in one section of the Mishneh Torah may be resolved by a passage the Rambam places in another.

The brevity of the teshuvah is itself a statement. "There is no more time to elaborate," the Maharsham writes, not because the subject is unworthy, but because the answer is complete.

### KEY TERMS

**Ganav / Gazlan:** A thief (ganav) steals covertly; a robber (gazlan) takes by force or openly. Both are disqualified from testifying. The distinction matters elsewhere in halacha, but here the Rambam treats them identically.

**Hashavah:** Restitution. The return of stolen property or its monetary equivalent. A necessary but, as this teshuvah demonstrates, insufficient condition for the thief's rehabilitation.

**Pasul l'eidus:** Disqualified from serving as a witness. A person who has committed

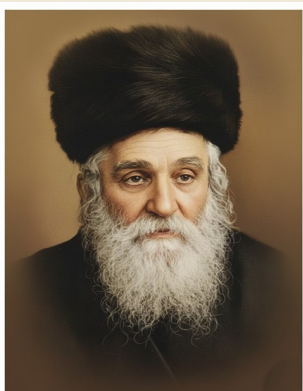
### FOR THE SHABBOS TABLE

- The Maharsham shows that the answer to a famous difficulty was sitting in the Rambam's own code, just in a different section. Have you ever spent a long time searching for an answer that turned out to be right in front of you?
- The Torah requires both returning stolen money and doing teshuvah. Why do you think these are treated as separate obligations? Isn't giving back what you stole already an act of repentance?
- The Maharsham says, with evident respect, that the Tur and his successors did not rely on the source in Hilchos Teshuvah. Why

certain sins loses the legal standing to testify in beis din until the disqualification is removed through repentance.

**Vidui:** Confession. The Rambam, based on the Sifrei Zuta, requires verbal confession of interpersonal sins as a component of teshuvah, separate from financial restitution.

do you think a ruling placed in one section of the Mishneh Torah can be overlooked by those searching in another, and what does that teach about how we learn?



### WHO WAS THE MAHARSHAM?

Rabbi Shalom Mordechai HaKohen Schwadron (1835-1911) served as the Rav of Brezhan in Galicia for over 40 years. He is best known for his seven-volume Shut Maharsham, containing thousands of teshuvos on every area of halachah, and his Da'as Torah commentary on Shulchan Aruch. Regarded as one of the foremost poskim of his generation, his rulings are cited in halachic works to this day.

**Coming next week: A prayer space empties out after twenty years. Can the owner rent it to a non-Jew, or must he watch his investment crumble?**

### PRINCIPAL SOURCES CITED

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Gemara: Bava Kamma 60a.

Rishonim: Rambam (Hilchos Eidus via Shulchan Aruch CM 34:6; Hilchos Teshuvah 1:1); Tur (CM 34).

Shulchan Aruch & Nesei Keilim: CM 34:6; Kesef Mishneh (Hilchos Teshuvah); Tiferes Yisrael.

Midrash: Sifrei Zuta (Parshas Naso), cited in Yalkut Shimoni.

Acharonim: Maharit (Teshuvos, CM 90, second edition); Hagahos Asheri Betzalel.

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Returning the money makes the victim whole. Only teshuvah makes the thief whole.

*Please note that in the previous issue, we gave a teaser as to what would be the content of this week's teshuvah. We decided going forward to randomize the teshuvos and not go in order, so it should be different every week and not grouped by having several weeks of the same type of teshuvah one after the other.*

**This translation is presented for Torah study and enrichment purposes only. It is not intended as halacha l'maaseh. The translator has made every effort to render the Maharsham's words faithfully, but this English adaptation may contain errors or imprecisions. For any practical halachic question, consult your own Rav.**

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