

THE  
MAHARSHAM  
PROJECT



שו"ת מהרש"ם

Issue No. 12 · Teshuvos Maharsham, *chelek III, siman 190*

## The Thief Who Paid It Back

*A man stole, then returned every cent. The money was restored. But was the thief?*

A man steals. Later, whether from regret, fear, or pressure, he gives back every cent. The person he robbed has been repaid, and by any ordinary measure the matter is closed. Yet the Rambam rules that this man still may not serve as a witness, not until he has done teshuvah. If the money is already back in the victim's hands, what more does the Torah ask of him? The question troubled the Tur and the commentators who followed. **The Maharsham answers in a few quiet lines, and shows that the Rambam had already pointed to the answer himself.**

### TRANSLATOR'S NOTE

*Wieliczka is the famous salt-mining town near Kraków in Galicia. The questioner is addressed as "he'charif," the sharp one, a title of respect for a keen talmid chacham. This is one of the Maharsham's shorter teshuvos. Its lesson is quiet but lasting: an answer that the commentators searched for was waiting in the Rambam's own words.*

To **the sharp-minded Reb Berel Weinberg**, of *Wieliczka*, near Kraków.

### THE QUESTION

Take the case in plain terms. A man took what was not his. Time passes, and he returns it in full. In money, nothing is owed. And yet the halachah will not let him walk back into the beis din as though nothing had happened.

The Rambam rules (Hilchos Eidus, codified in Shulchan Aruch, Choshen Mishpat 34:6) that a thief or robber who returns the stolen money remains pasul l'eidus, disqualified as a witness, until he can show that he has done teshuvah.

This puzzled the Tur and those who followed. The man has returned what he stole. He has fulfilled hashavah, the Torah's duty of restitution. He holds nothing that is not his, and he has made the victim whole. In what sense is he still a rasha, unfit to

testify?

Reb Berel Weinberg offered an answer from the Gemara in Bava Kamma (60a). There the Gemara teaches that a man who strikes another and then pays the damages is still called a rasha. The blow itself leaves a stain that money cannot wash away. Perhaps theft is the same. Returning the money settles 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 grants that the reasoning from Bava Kamma is sound. But it is not new. The Hagahos Asheri Betzalel had already cited that passage, and the Maharsham found it again in the Maharit (Teshuvos, second edition, Choshen Mishpat Siman 90).

### 2. The Answer Within the Rambam

Then the Maharsham makes the point that is the heart of the teshuvah. With all due respect to our teachers, he writes, the answer escaped them: the Rambam explains his own ruling.

In Hilchos Teshuvah (1:1), the Rambam derives the requirement from a verse: **כָּל עֲוֹנוֹתָאֵי אֲשֶׁר עָשִׂיתָ לְאִישׁ אֶחָד מֵעַמִּי כִּי לָשְׁטַלְתָּ אֹתוֹ**, "any sin that a person commits" (Bamidbar 5:6). The Kesef Mishneh and the Tiferes Yisrael point to the Yalkut Shimoni on Parshas Naso, which cites the Sifrei Zuta: the verse speaks of sins bein adam l'chaveiro, "the thefts and the robberies," and it asks for vidui and teshuvah alongside the return of the money.

Here is the distinction the Torah draws. Making another person financially whole and making oneself spiritually whole are two different acts. Returning the money discharges the first. The verse requires the second: vidui, spoken confession, and teshuvah for the wrong done to a fellow. Until that is done, the man stands in spiritual debt, and so he remains pasul l'eidus.

### 3. A Distinction That Does Not Exist

Weinberg had also suggested distinguishing between a thief who returns the very object he took and one who pays its value instead. The Maharsham sets this aside. Since the Rambam's source is a verse that asks for teshuvah on every sin bein adam l'chaveiro, the manner of repayment makes no difference. Hand back the stolen animal or pay what it was worth; either way the Torah still asks for an independent act of teshuvah. The debt of money and the debt of the soul are settled separately.

## THE P'SAK

**The Rambam's ruling rests on its own verse, and the difficulty that troubled the commentators falls away the moment one looks where the Rambam himself pointed.**

A thief who returns what he stole has paid his financial debt. He has not yet paid his spiritual one. Until he shows genuine repentance, not only restored property but a changed heart, he remains unfit to testify.

The Torah asks for both: the money returned and the person repaired. "They troubled themselves for nothing," the Maharsham concludes, "and the answer was in the Rambam's own words all along."

## HISTORICAL CONTEXT

This short teshuvah carries a quiet lesson in humility. The Maharsham does not press the point or sharpen it. He simply observes, with measured surprise, that the Tur and the commentators labored over a question the Rambam had already answered, in a different corner of his own code. The Sifrei Zuta, preserved in the Yalkut Shimoni, had spelled it out.

There is a wider lesson here. The Rambam's Mishneh Torah is arranged by subject, and a ruling in Hilchos Eidus, the laws of testimony, may find its reason in Hilchos Teshuvah, the laws of repentance. A scholar searching only the page in front of him, the Tur, the Beis Yosef, the nosei keilim on that siman, can miss what sits in plain view two volumes away.

The Maharsham's message is gentle and exact: before declaring a Rambam difficult, one must first search the Rambam in his full breadth.

### KEY TERMS

**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 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.

### A TORAH THOUGHT

- 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? Is giving back what you stole not already an act of repentance?

## תכלת מרדכי

### The Name That Is Placed Upon Us

The closing line of Birkas Kohanim is a marvel. The kohanim do not bless on their own authority. They place Hashem's Name upon Klal Yisrael, and Hashem Himself supplies the brachah. The Maharsham asks: what does it mean that the Name is placed upon us? He answers from a remarkable Gemara in Bava Basra: הוא עתידין צדיקים שיקראו על שמו של הקדוש ברוך הוא, "in the future, tzaddikim will be called by the very Name of the Holy One," as it says, כל הנקרא בשמי ולכבודי בראתיו, "all who are called by My Name and for My honor will be created."

On the surface this is hard to understand. The Gemara in Kiddushin teaches that even if a king wishes to waive his honor, כבודו אינו מחול. His honor is not waived, because the kavod belongs to the kingship itself. How then can the Ribono shel Olam allow His Name to be carried by mortal men?

The answer, says the Maharsham, is precisely the opposite of what it first appears. He is מלך הכבוד, the King to Whom the honor belongs in essence. Because it is wholly His, He alone has the right to lend a portion of it to those who fear Him. And the lending itself is His glory. A tzaddik called by Hashem's Name is not a diminishment of the kavod. It is the kavod's greatest expression in the world.

Now the words of the brachah become precise. ישא ה' פניו אליך, "may Hashem turn His face toward you." A faithful servant watches his master's face to know what he wants. So too, kaviyachol, Hashem turns His face toward His servants to know their will and to grant it. וישם לך שלום, because He is the One who is complete, the King to Whom peace belongs. In His hand alone lies the right to call Yisrael by His Name.

And so the closing words come into focus. ושמו את שמי על בני ישראל ואני אברכם. The kohen places the Name. Hashem Himself blesses. But the deepest brachah is hidden inside the placing of the Name. To be a Yid is to be נקרא בשמו, to carry a kavod that originates with the King of glory and reflects back to Him each time we live up to the Name we bear. The Maharsham closes with a single line: זהו רצוני וכבודי. "This is My will, and this is My glory." That a Yid should be called by My Name.

\* During weeks when Eretz Yisrael and Chutz La'aretz read different parshiyos, this section features a general piece from the Techeiles Mordechai rather than a selection tied to the weekly sedra.

#### COMING NEXT WEEK

*A loan goes bad, and the guarantor points to a single word in his signature.*

*The Maharsham brings a raya from the splitting of the sea.*



#### WHO WAS THE MAHARSHAM?

Rabbi Shalom Mordechai HaKohen Schwadron, ben HaRav Moshe (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.

#### PRINCIPAL SOURCES

**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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***Hashavah repairs the loss. Teshuvah repairs the person. The Torah asks for both.***

*This translation is presented for Torah study and enrichment purposes only. It is not intended as halachab 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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