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A Thief Must Certainly Make Restitution
21:33 to 22:15

A thief must certainly make restitution DIG: What various kinds of property are protected? From an inventory of the protected items, what things are most important to their society? What does that say about them? What role do *the judges* play and why are they needed? What extenuating circumstances limit liability? How would an oath settle an issue in a dispute?

REFLECT: If you were to rewrite the list of property protected under the Torah, what would you include from your possessions? Why? What does that tell you about today's society? What does this passage say about the role of personal integrity in any successful judicial system?

The fine distinctions in these mitzvot reveal the very nature of ADONAI and His relationship with mankind, who are custodians over God's property. All the He has given to us is given on loan. He holds mankind accountable according to that which He has entrusted us. To those who are given much, much will be required.

The Torah strongly affirmed the right to both life and property. These principles expand on the eighth commandment: **You shall not steal (20:15).** Our laws today say that if you destroy another man's property, you must pay the damages. All that our society demands, when you damage or destroy a man's property, is to replace the item or pay what it was worth. **God's** command of restoring fourfold was much better (with human nature being the way it is). If we had to restore four

times the amount that we destroyed or damaged, we would be much more careful. Human nature is always the same, and **ADONAI** is always the same. He deals with mankind on the basis of what is best for us.[419]

Damage to livestock (21:33-34): The reasons for digging **a pit** in antiquity were many. They are known to have been used as receptacles for grain storage, as cisterns, latrines, refuse dumps, and robber's pits. For purposes of safety, **the owner** of **the pit was** required **to cover it** up. **If**, due to negligence, **a man** uncovered **a pit or** dug **one and** failed **to cover it** up **and an ox or a donkey** fell **into it, the owner of the pit was** responsible **for the loss; he** needed to **pay its owner, and the dead animal was his (21:33-34).** This **was** important, because these animals were important property for the Israelites.

Having begun with human against human, the laws then treat in turn animal against human, human against animal, and now animal against animal.[420] **If a man's bull** injured **the bull of another and it** died**, they** sold **the live one and** divided **both the money and the dead animal equally. However, if it was known that the bull had the habit of goring, yet the owner did not keep it penned up, the owner must pay, animal for animal, and the dead animal will be his (21:35-36). The owner** took full responsibility; he **was** negligent and he **was** responsible to **pay** for the damages. Even these straightforward, mechanical mitzvot of liability and restitution are revelations of godliness. They are a distillation of heavenly wisdom.

Theft (22:1-4 and 9): In the Torah, incarceration is never used as punishment. It recommends a far more practical solution to **theft**. **The thief** must return what **he** has stolen and pay again the value of the object. **Restitution** for a **stolen ox was** more costly than for a **stolen sheep,** because a trained **ox was** more valuable than **a sheep**. **If a man** stole **an ox or a sheep and** slaughtered **it or** sold **it, he** had to **pay back five head of cattle for the ox and four sheep for the sheep (22:1).** No doubt this heavy compensation effectively deterred animal theft.[421]

If a thief was **caught breaking in and was struck so that he** died**, the defender was not guilty of bloodshed,** because he killed the intruder in self defense**; but if the thief** escaped unharmed and **was** caught later and killed in broad daylight, then **the** homeowner **was guilty of** premeditated murder. Evidently the homeowner could get help to arrest the **thief** more easily during the daytime. Since the Torah prescribes **restitution** for **theft**, when one is able to see who has stolen something, **restitution** can be exacted. As a result, daylight **theft**

would be far less in a society that constantly exacted **restitution**. **The thief** needed to **make restitution, but if he** owned **nothing** of value**, he was sold into slavery to pay for his theft (22:2-3). If the stolen animal** was **found alive in his possession – whether ox or donkey or sheep – he** had to pay **back double (22:4).** In other words, the **thief** must return the **stolen** beast, and **he** must also provide another beast of like kind to the original owner.[422]

Trust between fellow **Israelites** was also important. When there was a dispute regarding the ownership of an article, it would be brought **before *the judges*** for **them** to decide. **In all cases of illegal possession of an ox, a donkey, a sheep, a garment, or any other lost property about which somebody** said: **This is mine. Both parties** brought **their cases before *the elohim*. The one whom *the judges*** declared **guilty** had to **pay back double to his neighbor (22:9).** The penalty of **22:3 was** applied to the guilty party. **The thief** had to **make restitution, but if he** had **nothing, he was sold to pay for this theft.**

These mitzvot also reveal the mercy of **ADONAI**. Other Ancient Near Eastern legal codes mandated that **a thief's** hand be chopped off. But how does a severed hand compensate the victim, and how does it help to rehabilitate the **thief**? From these mitzvot we learn that **God** is interested in seeing the victim compensated and **the thief** restored to society. The means of redemption is established by spelling out a path of repentance. This concept is carried over to the B'rit Chadashah: **The thief must stop stealing; instead, he should make an honest living by his own efforts. This way he will be able to share with those in need (Ephesians 4:28).** This mitzvah is illustrated by **Zacchaeus the tax-collector** who, upon encountering **the Master**, chose the road of repentance and declared that **he** would repay **four times** the amount **he** had swindled from people (**to see link click Ip – Zacchaeus the Tax Collector**).

Restitution for grazing and fires (22:5-6): Negligence **was** also a crime. **Restitution** for destroyed property had to be made from **the best** of the guilty parties own resources, emphasizing the importance of quality and generosity.[423] **If a man** allowed **his livestock** to **graze in another man's field or vineyard, he** had to **make restitution from the best of his own field or vineyard (22:5).** But if damage **was** done through arson, the principle **was** also **restitution**. **If a fire** broke **out** accidentally **and spread into** a neighbor's **thorn-bushes (Micah 7:4) so that it** burned **shocks of grain or standing grain or the whole field, the one who started the fire** needed to **make restitution** since **thorn-bushes** were often used as hedges **(22:6).** Again, these mitzvot are more than merely legal

minutia; they are revelations of **God's** attribute of justice.

Custodianship and borrowing (22:7-8 and 10-15): In the ancient Near East there were no banks, so personal property **was** sometimes given to a **neighbor** for protection. But the person's liability was based upon whether or not he was **a contracted custodian** of the lost, damaged or stolen property being discussed. **A contracted custodian** of another's property was held far more liable than one who was simply doing a favor for a friend. **A contracted custodian** who could not prove his innocence in the **theft** of an object with which he was entrusted could take an oath in **the Name of God** before the court and he would be absolved of all liability.

If a man gave **his neighbor silver or goods for safekeeping and they** were **stolen from the neighbor's house, the thief, if he is caught, must pay back double. But if the thief was not found, the owner of the house** had to **appear before *the judges* (who were the representatives of God and called *the elohim*), and take an oath to** prove that he did not steal **the other man's property (22:7-8).**

If an **animal** in **safekeeping was** injured or lost, the one taking care of it had to give evidence that he **was** not negligent or he had to **pay double**. **If a man** gave **a donkey, an ox, a sheep, or any other animal to his neighbor for safekeeping and it** died, **was injured, or was taken away while no one was looking, the issue between them was settled by the taking of an oath before ADONAI that the neighbor did not lay hands on the other person's property. The owner was to accept this** testimony **and no restitution was required (22:10-11).**

But if the animal was stolen from the neighbor, the neighbor must make restitution to the owner. Negligence **was** assumed on **his** part because **he** did not properly care for what had been entrusted to **him for safekeeping**. **The neighbor** merely had to make good on what **was stolen**. However, if the **thief** was eventually caught, **he** had to **pay double** restitution. But no compensation was due to the owner if **the neighbor** could prove that a predatory **animal** killed **the owner's animal**.[424] **If it was torn to pieces by a wild animal, he** brought **the remains as evidence, and he was not required to pay for the torn animal (22:12-13).** These laws were evidently in force as early as the patriarchal period **(Genesis 31:39)**.

A person who **borrows** something; however, is fully responsible for the item which he **borrowed** unless **the owner** of the object was present with him when the damage occurred. **A renter** is not as liable as **a borrower** because **the rent** paid is meant to defer some of the risk of the rental. Thus, **a renter** is less liable than **a borrower**, but still has some liability for the object **rented**.

If an **animal was** borrowed, the borrower **was** responsible for its **safekeeping**. **If a man borrowed an animal from his neighbor and it was injured or** died **while the owner was not present, he** had to **make** full **restitution. But if the owner was with the animal, the borrower** did **not have to pay,** because it **was** assumed that he would watch over his own property**. If the animal was hired** there is no **restitution, the money paid for the hire covers the loss (22:14-15).** It **was** assumed that the one who **hired** the **animal** did not do so to kill or injure it, which would have been a complete waste of **his** money.[425]

Sins such as stealing have, by their very nature, an ironical quality about them in the Torah. **Theft** is a means by which people attempt to enrich themselves. However, if and when **they** were caught, **they** were required to repay at least **double** what was **stolen**. In this manner, **the thief** ended up actually impoverishing **himself**! This section also underscored the fact that **the Israelites** were accountable for other people's property. What was lent to a person needed to be taken care of. If it was not, then **restitution was** necessary.[426] What a concept!