

Why was the *Torah* stricter, etc.

מפני מה החמירה תורה כולי -

Overview

explains the reason why the תורה is stricter by a גנב (obligating him to pay כפל), more than by a גזלן, is because the גנב did not give equal honor to the master as it gave to the slave; he is worried about people seeing him, but not that ה' sees him. תוספות points out that this reasoning is not universally applicable.

בטוען טענת גנב¹ וטענת גזלן לא שייך² האי טעמא כלל:

Regarding a שומר who either claims טענת גנב, or טענת גזלן, this reasoning (given by ריב"ז³) does not apply at all. תוספות does not offer an alternate explanation.

Summary

The reasoning of ריב"ז does not apply to a שומר who is טוען either טענת גנב or טענת גזלן.

Thinking it over

Is there a greater difficulty why the טוען טענת גנב is liable for כפל, or why the טוען טענת גזלן is exempt from כפל?

¹ If one deposits an item by a שומר חנם and he claims the item was stolen, the שומר is פטור (provided that he takes an oath [that he was not negligent, etc.]). However, if it turns out that the שומר has the item, so it depends; if he claims that it was stolen by a גנב (meaning טענת גנב), he pays כפל, however if he claims it was taken by force from a robber (טוען טענת גזלן) the שומר is exempt from כפל.

² This שומר is not more or less afraid of people than from ה'. There was no גנב or גזלן, it is all made up.

³ See # 68. אוצר מפרשי התלמוד.