

Can we undo our own wrongdoing? לעשה לאו הניתק לעשה - Chullin 141a

1. משנה חולין יב:ד (גם משנה מכות ג:ד)

הנוטל אם על הבנים, רבי יהודה אומר, לוקה ואינו משלח. וחכמים אומרים, משלח ואינו לוקה. זה הכלל, כל מצות לא תעשה שיש בה קום עשה, אין חיבין עליה:

With regard to one who takes the mother bird with her fledglings, thereby violating the Torah prohibition: "You shall not take the mother with her fledglings; you shall send the mother, and the fledglings you may take for yourself" (Deuteronomy 22:6–7), Rabbi Yehuda says: He is flogged for taking the mother bird, and does not send the mother, and the Rabbis say: He sends the mother and is not flogged, as this is the principle: With regard to any prohibition that entails a command to arise and perform a mitzva, he is not liable to receive lashes for its violation.

2. מכות יד: טו.

אמר רבה בר בר חנה אמר רבי יוחנן: כל לא תעשה שקדמו עשה – לוקין עליו...

Rabba bar bar Hana says that Rabbi Yohanan says: With regard to any prohibition that has a positive mitzva that preceded it, everyone agrees that one is flogged for its violation, as it is not classified as a prohibition that entails fulfillment of a positive mitzva...

אלא אמר רבא: כל ימיו בעמוד והחזר. וכן כי אתא רבין אמר רבי יוחנן: כל ימיו בעמוד והחזר.

Rather, Rava says: From where is it derived that a rapist must remarry his victim if he divorced her because the positive mitzva rectifies the prohibition "He may not send her away"? It is derived from the superfluous phrase: "All his days" (Deuteronomy 22:29), indicating that all his days, even after he marries and divorces her, he is obligated to arise and remarry her and is consequently not liable to receive lashes. The Gemara adds: And likewise, when Ravin came from Eretz Yisrael to Babylonia, he said that Rabbi Yohanan says: All his days he is obligated to arise and remarry her.

אמר ליה רב פפא לרבא: והא לא דמי לאויה ללאו דחסימה! אמר ליה: משום דכתב ביה רחמנא עשה יתירא מגרע גרע?

Rav Pappa said to Rava that a question arises with regard to Rabbi Yohanan's statement that one is flogged for violating a prohibition preceded by a positive mitzva: But isn't its prohibition dissimilar to the prohibition of muzzling an ox while it is threshing grain (see Deuteronomy 25:4), which is the paradigm for all prohibitions for whose violation one is flogged, as no positive mitzva is stated in conjunction with the prohibition of muzzling? Rava said to him: Is it reasonable to say that due to the fact that the Merciful One wrote in its regard an additional positive mitzva, the stringency of the prohibition lessens, so that no lashes are administered?

אי הכי, לאו שניתק לעשה נמי, לימא: משום דכתב ביה רחמנא עשה יתירא מגרע גרע? אמר ליה: ההוא לנתוקי לאו הוא דאתא.

Rav Pappa objected to this claim: If so, with regard to a prohibition that entails fulfillment of a positive mitzva as well, let us say: Is it reasonable to say that due to the fact that the Merciful One wrote in its regard an additional positive mitzva, the stringency of the prohibition lessens, so that no lashes are administered? Rava said to him: In that case, the transgressor is not flogged because the mitzva comes to sever the prohibition from the punishment of lashes.

הנִיחָא לְמֵאן דְּאָמַר בִּיטְלוּ וְלֹא בִיטְלוּ,

The Gemara returns to the statement of Rava, who said with regard to the rapist: All his days he is obligated to arise and remarry her, and that is why he is not flogged for violating the prohibition "He may not send her away," and asks: This works out well according to the one who says that the criterion for determining whether one is flogged for violating a prohibition that entails fulfillment of a positive mitzva is whether he nullified the mitzva or did not nullify the mitzva. According to this opinion, one is flogged only if fulfillment of the mitzva is no longer possible, e.g., a priest who divorced the woman whom he raped. By contrast, a non-priest would not be flogged, because the option of remarriage remains viable.

אֲלֵא לְמֵאן דְּאָמַר קִיָּמוֹ וְלֹא קִיָּמוֹ, מַאי אֵיכָא לְמִימַר?

But according to the one who says that the criterion for determining whether one is flogged in that case is whether he fulfilled the mitzva or did not fulfill the mitzva, and if he did not immediately fulfill the mitzva he is flogged, what can be said? Even in the case of a non-priest who divorced the rape victim, once he fails to remarry her immediately, he is liable to receive lashes.

3. רמב"ם הל' גזילה ואבידה יא:ב

לְקַח אֶת הָאֲבֵדָה וְלֹא הִשְׁבִּיחָהּ בְּטֵל מִצְוַת עֲשֵׂה וְעִבַר עַל שְׁנֵי לֵאמֹין עַל (דְּבָרִים כב ג) "לֹא תִוָּלֵךְ לְהִתְעַלֵּם" וְעַל (וִיקְרָא יט יג) "לֹא תִגְזֹל". אֲפִלּוּ הָיָה בְּעַל הָאֲבֵדָה רָשָׁע וְאוֹכֵל נִבְלָה לְתַאֲבוֹן וְכִיּוֹצֵא בּוֹ מִצְוָה לְהִשְׁבִּיחָהּ לֹא אֲבֵדְתָּ. אֲבָל אוֹכֵל נִבְלָה לְהִכְעִיס הָרִי הוּא אֲפִיקוּרוֹס וְהָאֲפִיקוּרוֹסִים וְעוֹבְדֵי עֲוֹנוֹת וּמַחֲלֵי שַׁבָּת בְּפֶרֶה־סֵּיא אֲסוּר לְהַחְזִיר לָהֶן אֲבֵדָה כְּעֶכְשִׁיָּם:

If a person takes a lost object and does not return it, he negates the fulfillment of a positive commandment and transgresses two negative commandments: "You may not ignore it" *Ibid.*:3 and Leviticus 19:13: "Do not rob."

Even if the owner of the lost object is wicked and eats non-kosher meat for his own satisfaction and the like, it is a mitzvah to return an object that he lost. If, however, he eats non-kosher meat as a conscious act of rebellion against God, he is considered a non-believer. And just as it is forbidden to return a lost object belonging to a gentile, it is forbidden to return a lost object belonging to a Jew who is a non-believer, heretic, idol-worshiper or violator of the Sabbath in public.

4. רמב"ם הלכות גזילה ואבידה יד:ו

הַרּוּאָה חֲבֵרוֹ שֶׁנִּפְל מִמֶּנּוּ דִּינָר עַל הָאֶרֶץ וְלֹא יָדַע בּוֹ וְנָטַל הַדִּינָר קִדָּם יָאוּשׁ עוֹבֵר עַל עֲשֵׂה וְעַל שְׁנֵי לֵאמֹין כְּמוֹ שֶׁבִּאֲרָנוּ. וְאֲפִלּוּ הַחְזִיר לוֹ הַדִּינָר לְאַחַר שֶׁנִּתְיָאֵשׁ מִתְּנָהּ הִיא זוֹ וְכִבֵּר עֹבֵר עַל הָאֲסוּרִים:

When a person sees a colleague drop a *dinar* on the ground without being aware of it and takes the *dinar* before his colleague despairs of its recovery, he transgresses a positive commandment and two negative commandments, as we have explained.

Even if he returns the *dinar* to his colleague after the latter has despaired of its recovery, the return of the money is not significant. It is as if he is giving him a present, and he is considered to have already violated the transgressions.

5. לחם משנה (שם)

Abraham de Botton - Rabbi and rosh yeshiva in 16th-century Greece. Author of the comprehensive commentary *Lechem Mishneh* on Rambam's *Mishneh Torah*. He also wrote *novellae* on the Talmud, of which his commentary on *Bava Kamma* has been published, as well as *responsa* entitled *Lechem Rav*.

מתנה היא זו וכבר עבר על האיסורים. לשון הגמרא בפ' אלו מציאות מתנה הוא דיהיב ליה ואיסורא הוא דעבד עבד. והקשו שם בתוס' ז"ל והלא לאו דלא תגזול מקרי ניתק לעשה פ' שלוח הקן א"כ כיון דלענין גזילה לא מקרי מתנה גם השב תשיבם למה לא תקן ותייצו דלא קאי אלא על לאו דלא תוכל להתעלם שעבר שלא החזיר קודם יאוש ע"כ. ואחריהם נמשך הטור ז"ל בסי' רנ"ט. אבל רבינו ז"ל כתב וכבר עבר על האיסורים. ונ"ל טעמו מפני שאע"פ שמתקן אח"כ הלאו דלא תגזול בהשבת גזילה כדכתיב והשיב את הגזילה מ"מ כבר עבר על לא תגזול וכן האיסור של השב תשיב שהיה לו להחזיר קודם יאוש ואח"כ הוא מתקן שכל מי שעובר לאו ואח"כ קיים העשה שנתקו הכתוב לא בשביל כן מקרי שלא עבר לאו וצריך תשובה גמורה:

It is considered a gift, yet he has already transgressed the prohibitions. The language of the Gemara in the chapter **Elu Metzi'ot** is: "He gave it as a gift, and as for the transgression—he committed it." The Tosafists raised an objection there: Is the prohibition against robbery (**lo tiggzol**) not classified as a prohibition "detached" (**nitak**) by a positive commandment—specifically, the commandment to return the item (**hashev teshivem**)? If so, just as the act is not considered robbery (but rather a gift), why is the positive commandment to return it not also considered "rectified" [or rendered inapplicable]? They answered that this applies only to the prohibition "you shall not ignore" (**lo tuchal lehit'alem**), which he transgressed by failing to return the item before the owner despaired of its recovery. The Tur followed this view in **Siman** 259. However, our Master (**Rabbeinu**) wrote: "and he has already transgressed the prohibitions." It seems to me that his reasoning is as follows: even though one subsequently rectifies the prohibition against robbery by returning the stolen object—as it is written, "and he shall return the stolen object"—he has nevertheless already transgressed the prohibition against robbery. The same applies to the prohibition regarding the duty to return the item (**hashev teshiv**)—which he should have fulfilled before the owner despaired—even if he rectifies it later; for anyone who transgresses a prohibition and subsequently fulfills the positive commandment to which Scripture had detached it is not thereby considered free of having transgressed the prohibition, and complete repentance is required.

6. בבא מציעא סב.

תנאי היא, דתנאי: רבי נחמיה ורבי אליעזר בן יעקב פוטרינן את המלוה ואת הערב, מפני שיש בהן קיום עשה. מאי קיום עשה? לאו משום דאמרין להו קומו אהדורו?

The Gemara answers: In fact, this issue is a dispute between *tanna'im*, as it is taught in a *baraita*: Rabbi Nehemya and Rabbi Eliezer ben Ya'akov exempt the lender and the guarantor from lashes for violating the prohibition of interest, because although they violated a prohibition, once they have done so they are commanded to arise and take action, and there is a principle that one is not flogged for a transgression that can be rectified by the performance of a mitzva.

The Gemara clarifies: What mitzva to arise and take action is there? Is it not due to the fact that we say to them: Arise and return it?

7. ויקרא כה:לה-לו

וְכִי-יָמוּךְ אֶחָיִךְ וַיִּמָּטֶה יָדוֹ עִמָּךְ וְהִחֲזַקְתָּ בּוֹ גֵּר וְתוֹשֵׁב וְחִי עִמָּךְ:

If your brother becomes poor and his means falter while with you, you shall uphold him—let him live with you as a stranger and a sojourner.

אַל-תִּקַּח מֵאֲתוֹ נֶפֶשׁ וְנֶפֶשׁ וְיִרְאַת יְיָ וְיָרֵאתָ מֵאֶחָיִךְ וְחִי אִתְּךָ עִמָּךְ:

Do not take interest or profit from him, but fear your God, that your brother may live with you.

8. רש"י שם ד"ה פוטרין

פוטרין את המלוה ואת הערב - מן לא תעשה ומלקות:

They exempt the lender and the guarantor—from the prohibition and from lashes.

מפני שיש בהן קום עשה - והוא ליה לאו הניתק לעשה:

Because they involve a positive requirement to act—thus constituting a negative commandment that is remediable by a positive commandment.

קומו אהדורו - מה שגביתם וזהו נתקו לעשה כדאמרינן אל תקח ואם לקחת החזר וחי אחיך:

"Rise and return it" — what you have collected, that is it; return it, as we say: "Do not take [it]," and if you have taken it, return it, "so that your brother may live."

9. ר' אברהם יצחק הכהן קוק, משפט כהן, כח

עד"ת שהעיר בקושית הגר"ח ד"א ז"ל (יעיר און, מדבר קדמות, מע' ת' או' טו"ב), דכל לאו ליהוי ניתק לעשה מחיוב תשובה... מתוך שסמכה תורה העשה להלאו גלתה דעתה שבאה העשה לניתוקי ללאו, וזה לא שייך בלאו שהעשה היא כללית ולא נסמכה לו ביחוד, דל"ש לומר שבאה לניתוקי לאוי...

Regarding the point raised concerning the difficulty posed by the Chida (in *Ya'ir Ozen* and *Midbar Kedamot*, entry *Tav*, section 152)—namely, that any prohibition (*lav*) might be considered "transformed into a positive commandment" (*nitak la-aseh*) regarding the obligation of repentance... [the principle is that] by juxtaposing the positive commandment with the prohibition, the Torah reveals its intent that the positive commandment serves to "transform" the prohibition; yet this logic does not apply to a prohibition where the positive commandment is general in nature and not specifically juxtaposed with it, for one cannot claim that it serves to "transform" the prohibition...

...ובעצם הדבר מאי דפשיטא ליה להג"ר חיד"א דתשובה קרויה מצות עשה אינו דבר פשוט. שהרי לשון הרמב"ם בריש הל' תשובה מורה שהתשובה אינה בכלל מצות עשה, אלא המצוה היא שכשיעשה תשובה אז יתודה, וכיון שאין התשובה מצות עשה ממילא אין גם הוידוי מכלל עשה המנתקת את הלאו, כיון שאין מצותה באה כי אם אחר התשובה, והתשובה עצמה אינה בכלל מצות עשה, דסבירא ליה להרמב"ם דלא מצינו בפירוש שאמרה תורה בלשון מצוה על התשובה, ואע"פ שהיא סגולה יקרה לכפר על העונות מכל מקום מצות עשה אינה... תשובה לאו מצות עשה כי אם עצה של חבה מאת אבינו שבשמים שידו פשוטה לקבל שבים...
...In fact, the point that seemed obvious to the renowned Rabbi Chida—namely, that repentance is classified as a positive commandment—is not at all self-evident. For the language used by

Maimonides at the beginning of the Laws of Repentance indicates that repentance itself is not included among the positive commandments; rather, the commandment is that one must confess *once* one performs repentance. Since repentance is not a positive commandment, the confession does not constitute a positive commandment that overrides the associated negative commandment—given that the obligation to confess arises only subsequent to repentance, and repentance itself is not a positive commandment. Maimonides holds that we find no explicit instance where the Torah mandates repentance using the language of a commandment; although it is a precious means of atoning for sins, it does not constitute a positive commandment...

Repentance is not a positive commandment, but rather a loving counsel from our Father in Heaven, whose hand is outstretched to welcome the penitent...