



## Eye for an Eye

The eighth *perek* of *Bava Kama* begins by discussing the five elements of compensation one must pay for harming another – *nezek* (damage), *tza'ar* (pain), *ripui* (medical expenses), *shevet* (inability to work) and *boshet* (shame). A difficulty one might face is that the *Torah* states "an eye for an eye" (*Shemot* 21: 24). The simple understanding of the verse is that one is punished with the same physical injury that he caused. That is indeed the question of the *Gemara* (*Bava Kama* 83b).

The *Gemara* continues with several textual and logical proofs that the *Torah* in this instance is not meant to be taken literally and the compensation is monetary. For example, the *Rambam* (*Chovel U'mazik* 1:3) cites one of the textual proofs, where since the *Torah* states "Do not accept a ransom for the soul of a murderer", it implies that monetary payment would not be accepted to release a murderer, but payment would be accepted in the case of physical injury. In contrast, the *Ibn Ezra* cites the logical argument that it would be impossible to inflict the exact wound as the original one caused.

One may ask, if the *Torah* was not meant to be taken literally why then did the *Torah* write "an eye for an eye"? The *Torah* could have simply written that one must pay to compensate the victim. There are a number of answers to this question also, however I will present the answer I heard from R' Yehuda Amital ztz"l.

The *pasuk* in *Mishlei* (1:8) states, "hear, my child, the discipline of your father (*musar avicha*), and do not forsake the teaching of your mother (*torat imecha*)." The *Midrash* (*Mishlei* 1:8) explains that *musar avicha* refers to *torah she'bichtav* – the written text of the *Torah*. *Torat imecha* however refers to the oral tradition that was also given at *sinai*.

The *Midrash's* description of *torah she'bichtav* as *musar avicha* and *torah she'be'al peh* as *torat imecha* is

significant. It explains the relationship between the two and why specifically in our case both are needed and presented quite differently.

By way of example, if child misbehaves badly the reaction of the parent can necessarily differ. It may be that the father reacts very harshly threatening all forms of punishment, e.g. "I'm going to beat you! You are never leaving the house again!" The mother may present the calmer face tempering the father's response, e.g. "it's not so bad, we can fix this" etc. Why in some situations are both responses necessary? Because the child needs to appreciate the severity of what they have done even if not deserving a severe punishment.

Returning to our question. Had the *Torah* simply taught that compensation for a physical injury in monetary, then the severe nature of the crime would not be conveyed. It could give the impression that compensation in this case is no different to compensation when one damages another's property; both cases are resolved with a monetary payment. Consequently, *musar avicha* teaches that the crime is far more severe and having caused another harm, he really deserves the damage be reciprocated. Nevertheless, *torat imecha* tempers the punishment such that ultimately the matter is resolved commensurately with a monetary payment.

Indeed, the *Rambam* (cited above) explains in a similar manner:

That which the *Torah* states: "just as one caused any injury to a person, so you should give him" does not mean that you should injure him in the same manner as he injured the other. Rather that the person deserves to lose a limb or bear the same injury and must therefore pay for the damage he caused.

**Revision Questions**

בבא קמא ו' ד' – ח' ד'

- What is the law regarding one that handed a flame to minor, and this child went and caused fire damage? (ד': י')
- If one person brought kindling and another brought a flame and the resulting fire caused damage who is liable? (ד': י')
- Regarding the previous question, in what two circumstances will neither be liable? (ד': י')
- Provide the three cases where if the fire spreads beyond barriers the fire starter is not liable. (ד': י')
- How is liability calculated if a person lit someone's pile of wheat and there were other items hidden in the pile that were damaged as a result? (Include both opinions) (ה': י')
- Is one liable for a spark generated by the strike of an axe that caused a fire? (ו': י')
- When does *R' Yehuda* maintain that a shop owner who left candles outside his shop, and flax on a loaded camel caught fire and spread as a result of the camel's movement, is not liable for damages? (ו': י')
- What is the definition of a *ganav*? (ז': י')
- When is a *ganav* obligated to pay four times what he stole? (ז': י')
- When is a *ganav* obligated to pay five times what he stole? (ז': י')
- If someone stole from a *ganav* is he required to pay back double the value of what he stole? (ז': י')
- Is a person obligated to pay four of five times the value if: (ז', ב': י')
  - If he stole and sold the ox on *Shabbat*?
  - If he stole and slaughtered the ox on *Shabbat*?
  - If he stole and slaughtered the ox for medicinal purposes?
  - If he stole and slaughtered the ox in the *azarah*?
  - If he stole, sanctified then slaughtered the ox?
  - If he stole and slaughtered the ox from his father, then his father passed away?
- Which of the cases in the previous question is debated? (ז', ב': י')
- What is the law if two witnesses testified that a person stole an ox and two other witnesses testified that he slaughtered that ox and: (ח': י')
  - Both sets of witnesses are found to be *eidim zomemim* (false witnesses)?
  - One of the first two witnesses is found to be false?
- If witnesses testify that a person stole an ox and then he admits he consequently slaughtered that ox what is he liable? (ח': י')
- What is the law if a person stole an ox from his business partner then sold it? (ה': י')
- What is the law if a person stole an ox and then shot it? (ה': י')
- When is the thief not liable if the animal died as he was removing it from the owner's property? What other cases are similar to this one? (ו': י')
- Where can sheep be raised in Israel? (ט': י')
- Which animals cannot be bred in *Yerushalaim* and why? (ט': י')
- What are the five components of compensation one must pay if he injures another person and explain each of them? (י': י')
- What other component of damage (aside from those mentioned in the previous question) is a person liable to pay if he caused the damage but not liable if his animal caused the damage? (י': י')
- Is a child obligated to pay compensation if he hits his parent and does not cause a wound? (י': י')
- What component of compensation does *R' Yehuda* maintain is not applicable for injuries caused to *avadim*? (י': י')
- Explain why for the following people "*pegiatan ra*": (י': י')
  - *Cheresh, shoteh ve'katan*.
  - Women.

**Melbourne, Australia**

**Sunday -Thursday**  
10 minutes before *Mincha*  
Mizrachi Shul  
Melbourne, Australia

**Friday & Shabbat**  
10 minutes before *Mincha*  
Mizrachi Shul  
Melbourne, Australia

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**Next Week's Mishnayot...**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
9 December א' טבת	10 December ב' טבת	11 December ג' טבת	12 December ד' טבת	13 December ה' טבת	14 December ו' טבת	15 December ז' טבת
Bava Kama 8:5-6	Bava Kama 8:7-9:1	Bava Kama 9:2-3	Bava Kama 9:4-5	Bava Kama 9:6-7	Bava Kama 9:8-9	Bava Kama 9:10-11

