



Volume 3. Issue 12.

Shame

The first *Mishnah* learnt this week (3:7) detailed how the component of compensation referred to as *boshet* (shame) is calculated. This was raised because it is one of the components of compensation that a rapist is required to pay¹. *Boshet* is also included as one of the five basic forms of compensation placed on one that inflicts physical injury on another.² The *Mishnah* explains its calculation as follows:

What is *boshet*? It is according to the person that caused the shame and the one who was shamed.

The above *Mishnah* describes that the social standing of the two parties influence the calculation. As the *Rambam* (*Na'arah Betulah* 2:4) explains, the greater social standing of the victim and the more base the offender, the greater the shame.³

With the above information noted, we are still left wondering how exactly to place a monetary value on the shame caused. The *Rambam* (*ibid.* 2:5) explains:

Accordingly, the judges assess the standings [of the victim and offender] and evaluate how much the father and family would be willing to pay to avoid this incident from such a person, and this is what [the criminal] is obligated to pay.

The *Ramah*⁴ however argues that such a manner of assessment does not isolate the *boshet* component and would also include *tza'ar* (anguish) as well. Furthermore in the hypothetical scenario, for example, of a hand being severed, it may be insignificant if the crime occurred in secret, as the embarrassment of having a severed hand is enduring beyond the incident itself.

The *Ramah* therefore suggests the use of other hypothetical cases in order to isolate and assess the value of the *boshet*. For example, in the case of a severed hand, how much would this person be willing to be paid in order to have his shrivelled hand (that no longer has any sensation) that required severing be severed by such a person? Or alternatively, how much would he be willing to pay such that his hand, that the courts ruled must be severed, not be severed by such a person.

He brings a support for this means of assessing *boshet* as the *Gemara* uses a similar means when assessing *tza'ar* in the case where there is physical damage. Once again using the example of a severed hand, the *Gemara* (85a) writes that the judges assess how much a person would be willing to pay to have a hand that had to be severed by court ruling, be removed with anaesthetic (ie painlessly) or in the manner in which the criminal severed it.

In defence of the *Rambam* one could suggest that *boshet* is different to *tza'ar*. The monetary value of physical pain can be isolated as the potential pain experienced in the hypothetical scenarios may be equal to the case in question. In other words the physical pain to be endured by this victim who had his hand severed by the criminal would be equal irrespective of the reason why it was being severed as long as the method employed was the same. Shame however is far more complex. One cannot be certain that the shame experienced in any hypothetical case would be equal to the shame endure as a result of the crime. Consequently the *Rambam* does not employ any hypothetical tools and simply charges the judges to assess how much one would wish to pay to avoid the entire incident.

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¹ This is amongst other obligations – see 3:4 for more details.

² See *Bava Kama* 83b, which lists *nezek* (physical damage), *tza'ar* (pain), *ripui* (medical costs), *shevet* (lost labour opportunity) and *boshet* as the five principle elements of compensation.

³ See also *Rashi* (*Ketubot* 40b) who writes the criminal being a *beinoni* (regular person) can be more shameful than if the criminal was an important person or a base person. The *Bach*

(*Choshen Mishpat* 420:24) suggests that perhaps *Rashi* is allowing for a different measure of *boshet* in the case of rape than a regular case of inflicting bodily harm. Nevertheless, he cites the *Ran* who dismisses this *Rashi* as referring to something else and notes that the *Rambam* and *Tur* seem to treat the calculation of *boshet* in the same manner across the board.

⁴ See the *Shitah Mekubetzet Bava Kama* 85a and *Ketubot* 40b.

Revision Questions

כתובות ג' ז' – ד' י"א

- How is *boshet* (shame) compensation calculated? (ג' ז')
- How is *pegam* compensation calculated? (ג' ז')
- What relationship does the *Mishnah* draw between the rights of the father in *mecher* and *kenas*? (ח' ג')
- What is a person obligated to pay if they confess that they stole an object? (ג' ט')
- Complete the following principle: (ג' ט')
זה הכלל: _____ אינו משלם על בי עצמו
- In a case of *pitui*, to whom are elements of compensation paid: (ד' א')
 - If the father is alive during the trial?
 - If the father died after the trial?
 - If the father died prior to the trial?
 - If she became a *bogeret* prior to the trial?
- On which of the cases in the previous question does *R' Shimon* argue? (ד' א')
- In what case is the *ketubah* payment paid to someone else other than the divorcee? (ד' ב')
- What is different from a regular case of *na'arah meorasah she'zinta* when: (ד' ג')
 - The *na'arah* converted?
 - The *na'arah's* mother converted whilst pregnant with her?
- What are the five rights listed in the *Mishnah* that a father has whilst his daughter has not yet become a *bogeret*? (ד' ד')
- What is the difference between the rights of a father and husband? (ד' ד')
- What are the three obligations placed on a husband? (ד' ד')
- At what point is a girl transferred from the *reshut* of the father to the *reshut* of the husband? (ד' ה')
- Complete the following statement analysed by *R' Elazar ben Azaria*: (ד' ו')
"_____ והבנות _____ והבנים"
- What was the implication of the above statement? (ד' ו')
- Can a woman still claim the money of a *ketubah* if she never had one written for her? (ד' ז')
- What are the four conditions that even if they are not written into the *ketubah* are considered as if they have been written? (ד' ז'-ח', י-י"א)
- Can a husband alleviate the responsibility of redeeming his captive wife by sending her a *get* and *ketubah*? (ד' ט')

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Next Week's Mishnayot...

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29 th October ז' חשוון	30 th October ח' חשוון	31 st October ט' חשוון	1 st November י' חשוון	2 nd November י"א חשוון	3 rd November י"ב חשוון	4 th November י"ג חשוון
Ketubot 4:12-5:1	Ketubot 5:2-3	Ketubot 5:4-5	Ketubot 5:6-7	Ketubot 5:8-9	Ketubot 6:1-2	Ketubot 6:3-4

