

AN EYE FOR AN EYE: WHAT CAN WE LEARN?

CASE STUDY

A number of players on the Wolverines, a tier one hockey team, were the victims of equipment sabotage. After six different players broke their skates over the course of a few games, it was discovered that the culprits were a few players on the Jaguars who thought that they could gain an advantage by tampering with the mounting screws on the Wolverines' skates. Now the Wolverines are left with hundreds of dollars of damage. The Jaguars offered to pay for the damage but the Wolverines refused the payment, insisting that the Jaguars should have to play a few games with tampered skates.

As you read the discussion below, what lessons regarding "an eye for eye" can be used to bring the conflict between the Wolverines and the Jaguars to a peaceful resolution?

THE SOURCE

עֵין תַּחַת עֵין שֵׁן תַּחַת שֵׁן יָד תַּחַת יָד רֶגֶל תַּחַת רֶגֶל

שמות כא:כד

רש"י: עין תחת עין-עין חבירו נותן לו דמי עינו ... וכן כולם ולא נטילת אבר ממש.

AN EYE FOR AN EYE, A TOOTH FOR A TOOTH, A HAND FOR A HAND, A LEG FOR A LEG.

SHEMOT 21:24

RASHI: AN EYE FOR AN EYE- IF A PERSON CAUSES SOMEONE TO LOSE AN EYE, HE MUST PAY FOR THE VALUE OF THE EYE ... AND THIS APPLIES TO THE OTHER CASES AS WELL, AND THE VERSE DOES NOT DEMAND THAT THE AGGRESSOR LOSE AN ACTUAL LIMB.

WHAT DO YOU THINK?

- 1) If the Torah wants the aggressor to pay money, why not state it explicitly?
- 2) Which punishment would better appease the victim: receiving monetary compensation or having the aggressor lose the same limb?

Insight #1

The aggressor requires a punishment to atone for causing someone to lose a limb. The punishment should really be the loss of the aggressor's limb. However, since the value of each person's limbs may vary (a basketball player may value his hand more than a soccer player), the Torah requires a monetary payment as atonement instead.

*Bava Kama 83b and
Rambam, Hilchot Chovel UMazik 1:2-3*

Digging Deeper: Whose limb should we assess in determining the payment, the aggressor's or the victim's? What are the arguments for each perspective?

Insight #2

Whether an injury is caused by accident or intentionally, it requires payment. When done by accident, the primary goal of the payment is restitution - to help complete that which was lost. However, when intentional, the primary goal of the payment is a punishment for the aggressor.

*See Talmud Yerushalmi, Bava Kama 8:1
and R. Yisrael Zev Gustman's
Kuntrusei Shiurim, BK no. 21 (3)*

Digging Deeper: If the Jaguars never intended to cause any damage to the skates, only to slow them down, should that change their punishment? Would you call that accidental damage?

Insight #3

The Torah formulates the law as "an eye for eye" because the aggressor must realize that his rights are only protected to the extent that he respects the rights of others.

The aggressor can restore his rights through an atonement process which involves making the victim feel whole.

*R. Samson Rafael Hirsch, Commentary to
Bereishit 9:6 and Shemot 21:24*

Digging Deeper: Which method would be more effective in appeasing the Wolverines: the Jaguars paying for the damage or playing with tampered skates?

Additional Texts for Further Exploration

It was taught: R. Eliezer said: An eye for an eye is literal. Can it really be literal? R. Eliezer doesn't follow the opinion of all of the rabbis of the Mishna? . . . Rather, R. Ashi said: [R. Eliezer] is teaching that one does not assess the value of the limb of the victim, but rather of the aggressor.

Bava Kama 84a

תניא ר"א אומר עין תחת עין ממש ממש סלקא דעתך רבי אליעזר לית ליה ככל הני תנאי ... אלא אמר רב אשי לומר שאין שמין אותו בניזק אלא במזיק.
בבא קמא פד.

Most authorities, including Rambam, Hilchot Chovel UMazik 1:2, are of the opinion that we assess the value of the victim's limb, not the aggressor's. If the payment is a means for the aggressor to atone, why not assess the aggressor's limb? What do you think R. Hirsch would answer?

If one will ask: Why didn't the Torah state explicitly to pay for the hand or the wound? This is not a question because if it would have been expressed in that manner, I might have said that just as when someone kills an animal and pays for the damage, there is no longer punishment, so too when someone pays for the limb, he is now completely exempt. However, this is not true because even though he pays for the damage, he is not exempt until he asks forgiveness and is forgiven [by the victim] ... For this reason, the Torah states that the punishment is to cut off his hand, if it were possible, even though it is not possible.

Maharal of Prague, Gur Aryeh, Vayikra 24:20

ואם תאמר, למה לא כתבה התורה ישלם לו ידו או מומו בפירוש, ואין זה קשיא, שאם כתב כך הייתי אומר כמו שאם הרג בהמתו ושלם לו - פטור, ושוב אין לו עליו עונש, והוא אמינא שאם שלם עליו דמי ידו - פטור מכל וכל, ואין הדבר כן, שאף על פי ששלם לו דמי חבלה שלו, אינו נפטור הימנו, ויבקש ממנו מחילה וימחול לו, כדאיתא בפרק החובל (ב"ק צב.), לכן אמרה תורה שהעונש הוא עליו לקטוע ידו אם היה אפשר, אלא אי אפשר
מהר"ל, גור אריה, ויקרא כד:כ

Do you think Maharal requires the aggressor to apologize only in situations of bodily harm or even when there is damage to property? Why?

Damage to a person's body cannot be compared to damage to a person's property. If one damages a person's property, once he paid for what he owes, he has received atonement. However, if one wounded another person, even if he paid him for the five forms of damage, he does not receive atonement. Even if he offered all of the rams of Neviot, he does not receive atonement and his transgression is not forgiven until he asks for appeasement from the victim and the victim forgives him.

Rambam, Hilchot Chovel UMazik 5:9

אינו דומה מזיק חבירו בגופו למזיק ממונו. שהמזיק ממונו חבירו כיון ששלם מה שהוא חייב לשלם נתכפר לו. אבל חבל בחבירו אע"פ שנתן לו חמשה דברים אין מתכפר לו. ואפילו הקריב כל אילי נביות אינו מתכפר לו ולא נמחל עונו עד שיבקש מן הנחבל וימחול לו.
רמב"ם הל' חובל ומזיק ה:ט

Do you think Rambam always exempts someone from apologizing when the damage is only to the victim's property? Do you think there are exceptions? Why?

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We'd love to hear your feedback on the Shabbat Table Discussion Project. Please be in touch at shabbattable@yu.edu