

# **Biblical Tort Law — Remedies for Bodily Injury**

## **A D'var Torah on *Parashat Mishpatim* (Ex. 21:1 – 24:18)**

**By Frances Fried**

*“Veileh ha-mishpatim asher taseem lif'neihem.”*  
*“And these are the ordinances that you shall set before them.”*

*Parashat Mishpatim* is a rather long, involved chapter dealing primarily with civil and tort laws pertaining to worship, serfdom, injuries, property, and moral behavior. The parashah also deals with the penalties for violating these laws.

*Mishpatim* means rules or ordinances. The Hebrew root of *Mishpatim* is *shafat*, which means to judge, govern, or rule. *Shafat* can also mean to vindicate or punish.

This parashah addresses how to deal with slaves, strangers, widows and orphans; punishment for killing and physically hurting others; personal liability for injuring animals; the need for treating people fairly; lending money; performing certain rituals; and treating our enemies. *Parashat Mishpatim* also enumerates the rules for observing Shabbat, the three pilgrimage festivals, and kashrut. God tells the people that if they serve God they will be blessed; the people respond, “All that God has spoken, we will do.”<sup>1</sup> Also in this parashah, Moses ascends Mount Sinai and remains there for forty days and forty nights.

The laws in *Mishpatim* don't appear to be organized in any logical pattern. They include civil, criminal, ethical and cultic laws. They also include safekeeping of property, seduction, sorcery and bestiality. I have elected to concentrate on four well-known verses,<sup>2</sup> which state, “When men fight ... if other damage ensues, the penalty shall be eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise.”

Taken literally, the Torah says that, if bodily injuries occur when men fight, the perpetrator is to be punished with a mutilation equivalent to the one that the victim suffered. Tradition teaches us that demanding an eye for an eye (or injury for injury) might not be equitable. Were there extenuating circumstances? Was the injury intentional act or was it accidental? How severe was the damage? How long was the injured party incapacitated? Did the injured party suffer monetary losses? Will the injured person be able to continue working at his chosen craft or profession? Nahum Sarna in his

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<sup>1</sup> Exodus 24:3 and 24:7.

<sup>2</sup> Exodus 21:22-25

JPS Torah Commentary<sup>3</sup> suggests that an exact equivalent in respect to bodily injury is inherently unattainable. Therefore the only available avenue of redress is monetary compensation.

Biblical law accepts the principle that assault and battery are public crimes, not just private wrongs. However it instituted monetary compensation not retribution for bodily injury, and equal justice for all citizens (including slaves); and it outlawed vicarious punishment. The Torah itself does not answer how the amount of restitution is to be calculated. However, rabbinic tradition bases restitution for injury to a slave on the diminution in value of a slave who sustained a similar injury.<sup>4</sup>

Leviticus 24:18, says that one who kills a beast shall pay for it (meaning monetary compensation). In Judges 15:11, Samson butchered the Philistines, justifying his act because they had burnt his wife and father alive (“As they did to me so I did to them.”), even though the punishment he inflicted was not entirely the same as the crime committed. However, a law in Numbers 35:31 forbids accepting ransom for a murderer in lieu of punishing the murderer by death for his crime. The clear implication is that monetary compensation was the usual practice for nonfatal physical injuries.

As I see it, today’s personal-injury laws and or practices need severe revamping. Current practice allows attorneys to obtain outrageous fees for so-called pain and suffering for their clients. Medical insurance and car insurance are skyrocketing due to the large awards given. In fact, the attorney is usually the one getting the benefit of the large awards. Malpractice should be based on just that. A master list of incompetent physicians and attorneys should be maintained. A method for determining just compensation should be set, and the payment should go to the insured party. It would require compromise by all parties, but it would also provide us with better medical care, and it would be more in keeping with the intentions of the laws set out in the Torah.

I would like to suggest that we include a “table talk” during Friday-night dinners for our younger children and grandchildren on each D’var Torah. This could be used by our nursery school teachers after the lighting of the candles and the blessing over the wine.

Example: Children, tomorrow when the Rabbi reads from the Torah, he/she will be talking about *Mishpatim*, the laws or rules. Every person has rules he or she must follow, and when they break these rules, there will be consequences. What does this mean? How many of you have ever bitten another person, friend, brother, sister? Raise your hand. How many of you

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<sup>3</sup> *The JPS Torah Commentary: Exodus*, by Nahum M. Sarna; Jewish Publication Society; 1991.

<sup>4</sup> *Sforno on Torah*; Translated and edited by Rabbi Raphael Pelcovitz; Artscroll; 1997.

have been bitten by a friend, brother, sister? Raise your hand. How did you feel when this happened? Did your hand, arm, foot bleed? Do you think you should bite him/her back? Why? That was not nice was it? Does your teacher, mommy, daddy have rules about biting? What can you do for the person you bit to make him, her feel better? Discuss possible consequences.