



Volume 4. Issue 5

## Full Compensation for Assault

We have been learning about the five different components of compensation one must pay in the event he physically injures another person: *nezek* (physical damage), *tza'ar* (pain), *ripui* (medical costs), *shevet* (lost labour opportunity) and *boshet* (shame). Following a discussion about calculating *boshet* the *Mishnah* teaches as follows (8:7):

Even though he pays him, he is not forgiven until [the offender] asks [the victim for forgiveness]...

A number of points need clarification. Firstly, what is not forgiven? If the offender has paid all components of compensation to the victim in full, why is there anything left for him to do? We do not find a requirement to ask for forgiveness after a person has paid compensation for damage caused to another person's property. Is the full responsibility of the offender not just a function of the liability?

The *Gemara* brings a *Beraitah* that presents this concept with different wording:

All fixed payments [described in the *Mishnayot*] are for *boshet* but for *tza'ar* even if he brings all [the sacrifices] in the world, he will not be forgiven until he asks the victim for forgiveness...

What is the *tza'ar* that is referred to in the *Beraitah*? If it is literally the component of compensation referred to as *tza'ar* then why did we learn that there are means of calculating its monetary value if it is dependant on receiving forgiveness from the victim?

*Rashi* explains that *tza'ar* referred to in the *Beraitah* is not the physical *tza'ar* that resulted from the injury. Instead he explains that it is the *tza'ar* that resulted from worrying about the *boshet*. In other words, once

the offender has paid the five components of compensation he has nearly completed everything necessary. There is one component of damage that has not been covered with monetary compensation and that is the enduring emotional strain and fear of embarrassment. In order for compensation to be complete, he must ask the victim for forgiveness.<sup>1</sup>

The *Rambam* (*Chovel U'Mazik* 5:9) however only refers to the five components of compensation cited above. Furthermore he explains that even though full compensation is paid, as apposed to when a person pays compensation for damaging his friend's property, atonement (for the entire incident) depends on whether he receives forgiveness from the victim.<sup>1</sup> Why?

To answer this we shall look at how the *Ra'avad* understood the above *Beraitah*:

The explanation is that *boshet* is like a sickness in that the person goes pale, his limbs are weak, and his heart is concerned. We said [that we can assess] how much one would be willing to be paid to endure such a "sickness." However the fact that [the offender] wanted to cause pain to another, Heaven will not forgive him until he appeases the victim...

This explanation of the *Ra'avad* relates to the point we raised two issues ago. In other words, with respect to the liability that the offender has to the victim, it can be fully satisfied with monetary compensation. However the fact that this offender engaged in such a crime, wanted to cause pain to another, demonstrates a deeper problem in the offender himself. For this Heaven will not forgive him, even though the monetary component is fully satisfied, unless he asks for forgiveness from the victim; unless he attempts to remedy the personal flaw.

David Bankier

<sup>1</sup> The *Tur* (*Choshen Mishpat* 412) rules according to *Rashi* the forgiveness for the pain resulting from the *boshet* is required for full atonement.

<sup>2</sup> The *Shulchan Aruch* (*Choshen Mishpat* 412) rules according to the *Rambam*.

**Revision Questions**

בבא קמא ח' ג' – ט' ט'

- Is a child obligated to pay compensation if he hits his parent and does not cause a wound? (ג': ח')
- What component of compensation does R' Yehuda maintain is not applicable for injuries caused to *avadim*? (ג': ח')
- Explain why for the following people "*pegiatan ra*": (ד': ח')
  - *Cheresh, shoteh ve'katan*?
  - Women?
- Why is a person who hits another person on *Shabbat* and causes a wound exempt from all forms of compensation? (ה': ח')
- Give the final ruling in the case where R' Akiva initially ruled that a man was obligated to pay compensation for the embarrassment caused when he uncovered a woman's hair in public, yet it was witnessed later that she readily uncovered her own hair in public. (ו': ח')
- Is there anything left for a person to do after they pay compensation for an injury they caused? (ז': ח')
- Is a person obligated to pay compensation if he was told by the victim to sever his hand? (ח': ח')
- What must a thief give the original owner if he stole:
  - Wood and crafted utensils?
  - A pregnant cow which subsequently gave birth?
  - A young calf which he subsequently raised? (ט': א')
  - Wine which subsequently went sour?
  - *Trumah* which subsequently became *tameh*?
  - *Chametz* that was in the thief's possession during *Pesach*? (ט': ב')
- What is a craftsman obligated to pay if he was given a raw materials to make a utensil, and he did so then broke it? (ג': ט')
- What is the law if a colour dyer dyed wool in a different colour than which he was instructed? (ד': ט')
- If someone stole an item and swore falsely that he did not steal it, then wishes to do *teshuvah* and return the item, can he send the item with another person to deliver it? (ה': ט')
- Regarding the previous case, when do we say that the thief does not need to travel to the victim and return the item? (ו': ט')
- How can the thief be obligated to pay "a fifth of the fifth"? (ז': ט')
- What other case is one also obligated to pay "*keren ve'chomesh*"? (ח': ט')
- Regarding the previous case, when would he be obligated to pay back double? (ט': ח')
- What is the law regarding a case where a son stole from his father and swore falsely that he did not steal from him, and then his father dies? What if the son has no money to pay back? (ט': ט')

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

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
24 <sup>th</sup> June ח' תמוז	25 <sup>th</sup> June ט' תמוז	26 <sup>th</sup> June י' תמוז	27 <sup>th</sup> June יא' תמוז	28 <sup>th</sup> June יב' תמוז	29 <sup>th</sup> June יג' תמוז	30 <sup>th</sup> June יד' תמוז Bava Kama 10:10 - Bava Metzia 1:1
Bava Kama 9:10-11	Bava Kama 9:12-10:1	Bava Kama 10:2-3	Bava Kama 10:4-5	Bava Kama 10:6-7	Bava Kama 10:8-9	

