

A בס"ד

Intro

Today we will Be"H learn פ"ה of קמא דף פה. Some of the topics we will learn about include:

צער

The payment for causing pain, whether

במקום נזק

When accompanying permanent damage, or

צער שלא במקום נזק

When he caused only pain;

The Gemara explains how it is possible to be liable for any one of the four types of compensation without causing an actual injury.

עלה בו צמחים

Whether he compensates for

ריפוי, healing expenses, and

שבת, loss of income, due to sores that arise

מחמת מכה, as a direct effect of the wound, and

שלא מחמת המכה, not as a result of the wound, but due to

אגד, binding the wound to ease the pain, or

אגד יתירה, excessive binding;

ריפוי

The Gemara defines ריפוי as paying for a doctor, and

neither the assailant nor the victim may demand any other arrangement.

שבת

The Gemara establishes the wages compensated for various injuries.

B חרשו

One who caused another person to become deaf, must compensated him for his full value as a slave, because a deaf person cannot earn any wages at all.

The Gemara sometimes uses the following terms:

שבת גדולה, in referring to נזק, compensation for the actual injury, and

שבת קטנה, compensation for his loss of income.

A

צער

עלה בו צמחים

ריפוי

שבת

B

חרשו

שבת גדולה

שבת קטנה

1 So let's review:

The Mishnah on ג"פ explained how to evaluate compensation for pain:

אומדין כמה אדם כיוצא בזה
רוצה ליטול להיות מצטער כך

We assess how much one would charge to agree to undergo such pain.

The Gemara asks

צער במקום נזק היכי שיימינן

How do we evaluate pain that accompanies a permanent injury? As Rashi explains, since

יש לו לקוצצה

בשביל הדמים שנוטל

He has already compensated him for undergoing the amputation, which includes the accompanying pain?

The Gemara answers

אומדין כמה אדם רוצה ליטול

לקטוע לו ידו המוכתב למלכות

בין סיף לסם

We evaluate how much someone, who was convicted by the authorities, would pay to have his hand amputated with a potion instead of it being severed with a sword.

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1

How to evaluate compensation for pain

אומדין כמה אדם כיוצא בזה
רוצה ליטול להיות מצטער כך

We assess how much one would charge to agree to undergo such pain.

?

צער במקום נזק היכי שיימינן

How do we evaluate pain that accompanies a permanent injury?

As Rashi explains,

יש לו לקוללה בשביל הדמים שנוטל

Since he already compensated him for undergoing the amputation, which includes the accompanying pain.

אומדין כמה אדם רוצה ליטול
לקטוע לו ידו המוכתב למלכות
בין סיף לסם

We evaluate how much someone, who was convicted by the authorities, would pay to have his hand amputated with a potion instead of it being severed with a sword.

2

The Mishnah continues

ריפוי

How do we calculate the cost of healing?

הכהו חייב לרפאותו

He must pay for a doctor to heal him.

עלה בו צמחים

If he developed sores,

אם מחמת המכה חייב

שלא מחמת המכה פטור

If they are a direct result of the injury, he must pay to heal them, but if not, he is exempt.

2

ריפוי

How do we calculate the cost of healing?

הכהו חייב לרפאותו

He must pay for a doctor to heal him.

עלה בו צמחים

If he developed sores,

אם מחמת המכה חייב

שלא מחמת המכה פטור

If they are a result of the injury, he must pay to heal them, but if not, he is exempt.

3 The Gemara cites 3 opinions regarding שבת, his loss of income, while recovering from the sores:
 עלו בו צמחים מחמת המכה
 חייב ליתן לו דמי שבתו
 The תנא קמא holds that he is also obligated to pay him for his loss of income, because
 מכה ניתנה לאגד
 The מוֹזֵיק may bind the wound to relieve the pain, even though it might cause sores. Therefore, the מוֹזֵיק is liable for both ריפוי and שבת of the sores.
 However, רבי יהודה maintains
 אינו חייב ליתן לו דמי שבתו
 He is NOT liable for the loss of income, because
 מכה לא ניתנה לאגד
 The מוֹזֵיק may not bind the wound to relieve the pain, because it might cause sores. Therefore, the מוֹזֵיק would theoretically not be liable for neither ריפוי nor שבת of the sores. However,
 ריפוי דתנא ביה קרא
 מיחייב
 שבת דלא תנא ביה קרא
 לא מיחייב
 The repetitious phrase ורפא ירפא holds him liable for healing the sores; but, the מוֹזֵיק is exempt for שבת that occurs as a result of the actions of the מוֹזֵיק.

3

Three opinions regarding שבת, his loss of income, while recovering from the sores

עלו בו צמחים מחמת המכה

<p><i>רבי ירמיה</i></p> <p>אינו חייב ליתן לו דמי שבתו</p> <p><i>He is not liable for the loss of income, because</i></p> <p>מכה לא ניתנה לאגד</p> <p><i>The מוֹזֵיק may not bind the wound to relieve the pain, because it might cause sores.</i></p> <p><i>Therefore, the מוֹזֵיק would theoretically not be liable for neither ריפוי or שבת of the sores.</i></p> <p><i>However...</i></p> <p>ריפוי דתנא ביה קרא - מיחייב</p> <p>שבת דלא תנא ביה קרא - לא מיחייב</p> <p><i>The repetitious phrase ורפא ירפא holds him liable for healing the sores; but, the מוֹזֵיק is exempt for שבת that occurs as a result of the actions of the מוֹזֵיק.</i></p>	<p><i>תנא קמא</i></p> <p>חייב ליתן לו דמי שבתו</p> <p><i>He is also obligated to pay him for his loss of income, because</i></p> <p>מכה ניתנה לאגד</p> <p><i>The מוֹזֵיק may bind the wound to relieve the pain, even though it might cause sores.</i></p> <p><i>Therefore, the מוֹזֵיק is liable for both ריפוי and שבת of the sores.</i></p>
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4 Alternately, the Gemara explains the מחלוקת as follows:
 לכולי עלמא
 מכה ניתנה לאגד
 ולא ניתנה לאגד יתירא
 All agree that the מוֹזֵיק may bind the wound, but not excessively. Therefore,
 According to תנא קמא, the מוֹזֵיק is liable for both, because
 תנא ביה קרא בריפוי
 ושבת איתקש לריפוי
 The repetitious phrase ורפא ירפא includes even such cases, and the Pasuk compares the obligations of ריפוי and שבת; therefore, he is liable for both.
 However, רבי יהודה maintains he is exempt from שבת, because
 מעטיה קרא רק
 The exclusionary term רק specifically exempts שבת in such a case.

4

The Gemara explains the מחלוקת as follows:

לכולי עלמא מכה ניתנה לאגד ולא ניתנה לאגד יתירא

All agree that the מוֹזֵיק may bind the wound, but not excessively

<p><i>רבי ירמיה</i></p> <p>המוֹזֵיק is exempt from שבת, because מעטיה קרא רק</p> <p><i>The exclusionary term רק specifically exempts שבת in such a case.</i></p>	<p><i>תנא קמא</i></p> <p>המוֹזֵיק is liable for both, because תנא ביה קרא בריפוי ושבת איתקש לריפוי</p> <p><i>The repetitious phrase ורפא ירפא includes even such cases, and the Pasuk compares the obligations of ריפוי and שבת.</i></p>
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5 A third opinion:
 חכמים אומרים
 שבתו ורפאותו
 The מו"ק is exempt from both, because the Pasuk groups
 the payment for lost income and healing together, to teach
 כל שחייב בשבת חייב בריפוי
 ושאינו חייב בשבת אינו חייב בריפוי
 One is only liable for ריפוי if he is liable for שבת; an since in
 this case he's exempt from שבת, he's also exempt from
 ריפוי.

According to the חכמים, we must say that the repetitious
 phrase ורפא ירפא teaches us
 מכאן שניתן רשות לרופא

A physician may heal the sick, as Rashi explains
 ולא אמרינן

רחמנא מחי ואיהו מסי

This does not contravene the will of Hashem, who caused
 him to become ill in the first place.

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5

חכמים אומרים

שבתו ורפאותו

*The מו"ק is exempt from both, because the Pasuk groups
 the payment for lost income and healing together,
 to teach*

**כל שחייב בשבת חייב בריפוי
 ושאינו חייב בשבת אינו חייב בריפוי**

*One is only liable for ריפוי if he is liable for שבת;
 an since in this case he's exempt from שבת,
 he's also exempt from ריפוי.*

*According to the חכמים, we must say
 that the repetitious phrase ורפא ירפא teaches us*

מכאן שניתן רשות לרופא
A physician may heal the sick

6 The Gemara now establishes the precise obligation of
 ריפוי:
 1.
 The assailant cannot say
 אסייך אנא
 "I will heal you personally," because the victim can claim
 דמית עלי כאריא ארבא
 "I don't trust you."
 2.
 He also may not say
 מייתינא אסיא דמגן במגן
 "I will bring a doctor who will heal you for free," because
 the victim can claim
 אסידא דמגן במגן
 מגן שוה
 "A doctor, who heals for nothing, is worth nothing."

6

The precise obligation of ריפוי

2

**מייתינא אסיא
 דמגן במגן**

*"I will bring a doctor
 who will heal you for free,"
 because the victim can claim*

**אסידא דמגן במגן
 מגן שוה**

"A doctor, who heals for nothing, is worth nothing."

1

אסייך אנא

*"I will heal you personally,"
 because the victim can claim*

**דמית עלי
 כאריא ארבא**

"I don't trust you."

7 3.
He also may not say
מייתינא לך אסיא רחיקא
"I will bring a doctor from afar who will give me a discount," because the victim can claim
אסיא רחיקא עינא עוירא
"He will not care for me properly," since he will then leave the area and his reputation will not suffer regardless of the outcome.

4.
The victim cannot demand
הב לי לדידי ואנא מסינא נפשי
"Pay me directly, and I will heal myself," because the assailant can claim
פשעת בנפשך ושקלת מינאי טפי
"You will not be careful and will overspend on the expenses."
Furthermore, even if he says
קוץ לי קץ
"Let's agree to a set price," the assailant can claim
כל שכן דפשעת בנפשך
וקרו לי שור המזיק
"If you run out of funds and do not heal yourself, people will disparage me."
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8 The Gemara cites a Braisa;
וכולן משתלמין במקום נזק
All four forms of compensation are paid even if he is also paying for an actual injury, as the Pasuk says
פצע תחת פצע
ליתן צער במקום נזק
He must compensate for the pain even when paying for the injury, and Tosfos on כ"ו explains that the other forms of compensation are derived from צער.

The Gemara cites an alternate source for this Halachah:
ורפא ירפא
ליתן רפואה במקום נזק
He must compensate for the healing expenses even when paying for the injury, and the other forms of compensation are derived from ריפוי.

7

4

The victim cannot demand
הב לי לדידי ואנא מסינא נפשי
"Pay me directly, and I will heal myself" - because the assailant can claim
פשעת בנפשך ושקלת מינאי טפי
"You will not be careful and will overspend on the expenses."
Furthermore, even if he says
קוץ לי קץ
"Let's agree to a set price" the assailant can claim
כל שכן דפשעת בנפשך וקרו לי שור המזיק
"If you run out of funds people will disparage me."

3

He also may not say
מייתינא לך אסיא רחיקא
"I will bring a doctor from afar who will give me a discount," because the victim can claim
אסיא רחיקא עינא עוירא
"He will not care for me properly," since he will then leave the area.

8

ברייתא

וכולן משתלמין במקום נזק
All four forms of compensation are paid even if he is also paying for an actual injury as the Pasuk says

פצע תחת פצע
ליתן צער במקום נזק
He must compensate for the pain even when paying for the injury

An alternate source. . .

ורפא ירפא
ליתן רפואה במקום נזק
He must compensate for the healing expenses even when paying for the injury, and the other forms of compensation are derived from ריפוי.

9 The Gemara points out that we derive three separate Halachos from the Pasuk **ירפא**:

1. The repetitious phrase teaches us שניתן רשות לרופא
A doctor may heal. However, the Pasuk could have said **ירפא**, the doctor may heal;
2. Therefore, the dual instructive expression **ירפא** teaches us עלה בו צמחים מחמת המכה
חייב לרפאותו
He must pay to heal sores that developed as a result of the injury.
However, the Pasuk could have said **רפא** or **ירפא** or **ירפא**;
3. Therefore, the change in expression teaches us ליתן רפואה במקום נזק
He must compensate for the healing expenses even when paying for the injury.

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9 **Three Halachos from the Pasuk **ירפא****

<p>1</p> <p>The repetitious phrase teaches us</p> <p>שניתן רשות לרופא לרפאות</p> <p>A doctor may heal.</p>	<p>However, the Pasuk could have said ירפא, the doctor may heal;</p> <p>2</p> <p>עלה בו צמחים מחמת המכה חייב לרפאותו</p> <p>He must pay to heal sores that developed as a result of the injury.</p>	<p>However, the Pasuk could have said רפא or ירפא or ירפא;</p> <p>3</p> <p>ליתן רפואה במקום נזק</p> <p>He must compensate for the healing expenses even when paying for the injury.</p>
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10 The Gemara earlier discussed צער שלא במקום נזק
Pain that is not accompanied by damage;
The Gemara now explains how one incurs the other forms of compensation שלא במקום נזק, without inflicting real injury:

1. צער כואו על צפורנו
He caused him pain by burning him on his fingernail;
2. ריפוי דהוה כאיב ליה מידי וסליק אייתי ליה סמא חריפא ואחוויריה לבישריה
He applied an ointment to alleviate pain, which whitened a patch of skin;
דצריך לאותבי לה סמא לאנקוטיה גוונא דבישריה
And he now needs to provide for another ointment to restore his skin to its normal color;
3. שבת דהדקיה באינדרונא ובטליה
He caused him a loss of income by locking him into a room;
4. בושת דרק ליה באפיה
He humiliated him by spitting in his face.

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10 **Other forms of compensation **נזק**, without inflicting real injury**

<p>2</p> <p>ריפוי</p> <p>דהוה כאיב ליה מידי וסליק אייתי ליה סמא חריפא ואחוויריה לבישריה</p> <p>He applied an ointment to alleviate pain, which whitened a patch of skin; דצריך לאותבי לה סמא לאנקוטיה גוונא דבישריה</p> <p>And he now needs to provide for another ointment to restore his skin to its normal color.</p>	<p>1</p> <p>צער</p> <p>כואו על צפורנו</p> <p>He caused him pain by burning him on his fingernail</p>
<p>4</p> <p>בושת</p> <p>דרק ליה באפיה</p> <p>He humiliated him by spitting in his face.</p>	<p>3</p> <p>שבת</p> <p>דהדקיה באינדרונא ובטליה</p> <p>He caused him a loss of income by locking him into a room.</p>

11 The Mishnah earlier explained שבת
 רואין אותו כאילו הוא שומר קישואין
 He pays him the wages of a watchman of cucumbers.

The Braisa qualifies this statement:
 קטע את ידו
 רואין אותו כאילו הוא שומר קישואין
 If he cut off his hand, he can indeed guard vegetables.
 However,
 שיבר את רגלו
 רואין אותו כאילו הוא שומר את הפתח
 If he broke his foot, he cannot walk around the garden,
 and so he is only compensated for the lower wages of a
 door watchman. Furthermore,
 סימא את עינו
 רואין אותו כאילו הוא מטחינו בריחים
 If he blinded him and he cannot serve as a watchman at
 all, he only pays him the wages of someone who grinds at
 the millstone.
 The Braisa concludes
 חירשו
 נותן לו דמי כולו
 If he deafened him, he pays his entire worth, because he
 cannot earn any wages at all.
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11 *The Mishnah earlier explained*
שבת
רואין אותו כאילו הוא שומר קישואין
He pays him the wages of a watchman of cucumbers

<p>שיבר את רגלו רואין אותו כאילו הוא שומר את הפתח <i>If he broke his foot, he cannot walk around the garden, and so he is only compensated for the lower wages of a door watchman.</i></p>	<p>קטע את ידו רואין אותו כאילו הוא שומר קישואין <i>If he cut off his hand, he can indeed guard vegetables.</i></p>
<p>חירשו נותן לו דמי כולו <i>If he deafened him, he pays his entire worth, because he cannot earn any wages at all.</i></p>	<p>סימא את עינו רואין אותו כאילו הוא מטחינו בריחים <i>If he blinded him and he cannot serve as a watchman at all, he only pays him the wages of someone who grinds at the millstone.</i></p>

12 The Gemara inquires:

שבת הפוחתתו בדמים

כגון שהכהו על ידו

וצמתה ידו וסופה לחזור

If he was injured in a way which in addition to loss of employment he also decreased in temporarily, because of the loss of the use of his hand while healing; does he also pay for נזק, damages?

כיון דסופה לחזור

לא יהיב לא ולא מידי

Perhaps he is exempt, because he will regain full use of his hand, OR

השתא מיהת אפחתיה

He is liable, because right now his value is decreased?

The Gemara cites two opinions:

אביי אמר

נותן לו שבת גדולה ושבת קטנה

He pays the value of the hand AND the loss of income;

רבא אמר

אינו נותן לו אלא דמי שבתו שבכל יום ויום

He only pays שבת, but NOT the value of the hand.

12

שבת הפוחתתו בדמים
כגון שהכהו על ידו
וצמתה ידו וסופה לחזור

If he was injured in a way which in addition to loss of employment he also decreased in value temporarily, because of the loss of the use of his hand while healing; does he also pay for נזק, damages?

השתא מיהת
אפחתיה

He is liable, because
right now his value
is decreased?

כיון דסופה לחזור
לא יהיב לא ולא מידי

Perhaps he is exempt, because
he will regain full use of his
hand.

רבא אמר
אינו נותן לו
אלא דמי שבתו
שבכל יום ויום

He only pays שבת,
but not the value
of the hand.

אביי אמר
נותן לו
שבת גדולה
ושבת קטנה

He pays the value of
the hand AND the loss
of income;