

The Arab Archbishop and the Mafia Don Who Love Mishpat Ivri

Source Sheet by Ian Pear

1. Ancient Jewish law, too, did not tolerate defamation. In chapter 19 (Verse 16) of Leviticus, the precept "Do not go about as a talebearer among your countrymen" is immediately followed by the precept "Reprove your kinsman" (Verse 17). The first precept became the foundation in Jewish law for the prohibition of defamation, and the second became the foundation for the freedom of public debate. There is no need in this House to belabor the fact that sharp public debate has freely taken place among the Jewish since the beginning of Jewish history. The prohibition of defamation has not prevented free debate, inasmuch as freedom of debate does not necessitate freedom to defame. These principles are undisputed. Any disagreement concerns the balance to be struck between the two principles - where to set the boundary between them. In the Defamation Bill, which I now have the honor to present on behalf of the Government, we have attempted to draw the correct boundary line." *Minister of Justice Duv Yusef*

2. The Israeli civil law of defamation was first embodied in sections 16 to 22 of the Civil Wrongs Ordinance of 1944, which essentially reflected English common law. In 1965, these sections were struck from the Civil Wrongs Ordinance and were replaced by Israel's Defamation (Prohibition) Law. Defamation law in Israel "seeks the right balance between two basic values, the freedom of speech on one end of the spectrum and the protection of one's honor and reputation on the other." Israeli courts have struggled with creating a hierarchy of value with respect to these two basic rights. Much of the courts' struggle arises because Israeli law in general, and defamation law in particular, has been modeled after a combination of both English common law and American law. In general, American law tolerates a greater degree of freedom of speech than has been acceptable to English law and its Israeli counterpart. While the United States seeks to secure "uninhibited, robust and wide-open" debate on public issues, Israeli defamation law has historically valued one's reputation and dignity over freedom of speech. However, the American approach has affected and helped shape the development of Israeli defamation, especially with respect to fair comment and public officials.

The Defamation Law defines defamation as "anything the publication of which is likely (1) to degrade a person in the eyes of human beings or to make him the object of hatred, contempt or ridicule on their part; (2) to cause a person to be regarded with contempt for acts, conduct or characteristics imputed to him; (3) to injure a person in his office, whether a public office or any other office, or in his business, occupation or profession; (4) to cause a person to be regarded with contempt because of his origin or religion." "Defamation in Israel is actionable per se, meaning no damage is required for liability to arise." Liability for defamation is strict in the sense that good faith or reasonableness is not a defense unless pleaded within the framework of an enumerated statutory circumstance.

Similar to American defamation law, the defamatory matter must bear a defamatory meaning or be capable of being understood in a defamatory manner. Although Israeli law does not make a distinction between defamation per se or defamation per quod, the concepts are codified in the Defamation law. Section 3 of the of the defamation law deals with innuendo, an **apparently innocent statement which bears an inner meaning that is defamatory**. Israeli courts have recognized that criticism of public figures may often be robust and satirical in nature and consistently hold that satirical or hyperbolic language does not constitute defamation. To determine if a statement bears a defamatory meaning, Israeli courts use a "right thinking members of society" standard. The objective "right thinking member of society" standard parallels that of the "reasonable person" standard used in American courts. (Todd Harris Fries)

3. **Leviticus 19:16**

(16) Do not deal basely with your countrymen. Do not profit by the blood of your fellow: I am the LORD.

ויקרא י"ט:ט"ז
(טז) לא תלך רכיל בעמך לא תעמד על-צדם רעה אני יהוה:

4. **Mishneh Torah, Human Dispositions 7:1**

(1) One who spies on his fellow transgresses a negative commandment, as it states (Leviticus 19:27), "Do not go talebearing among your people." And even though we do not give lashes on the thing, it is a great transgression and it causes the killing of many souls in Israel. Therefore, it is adjacent [in the same verse] to, "do not stand upon the blood of your neighbor." Go out and learn [this] from that which happened to Deog the Edomite.

משנה תורה, הלכות דעות ז':א'

(א) המכביל בתכרו עובר בלא פעשה שצאטר (ויקרא יט טז) "לא תלך רכיל בעמך". ואף על פי שאין לוקין על דבר זה עון גדול הוא (גורם להקריב נפשות רבות כישוראל. לכה נקמד לו (ויקרא יט טז) "ולא תעמד על צדם רעה". צא ולמד מה ארע לזאג האדומי:

5. **Mishneh Torah, Human Dispositions 7:2**

(2) Who is a talebearer (*rachil*)? One who carries things and goes from one to another and says, "So did x say, such and such did I hear about x." Even though it is the truth, he destroys the world. There is a much greater sin than this - and it is included in this negative commandment - and that is evil speech (*lashon hara*). And that is the one who speaks disparagingly about his fellow, even though it is true. But one who speaks falsely is called the producer of a bad reputation (*mozi shem ra*) about his fellow. But about this master of evil speech that sits and says, "X did so and so; so and so were his ancestors; so and so did I hear about him," and says disparaging things - about this one, the verse states (Psalms 12:4), "May the Lord cut off all flattering lips, every tongue that speaks arrogance."

משנה תורה, הלכות דעות ז':ב'

(ב) אי נזה רכיל. זה ששוען דברים והולך מזה לזה ואומר כה אומר פלוני כה וכה שמעתי על פלוני. אף על פי שהיא אמת הרי זה מקריב את העולם. יש עון גדול מזה עד מאד והוא בקלל לאו זה והוא לשון הרע. והוא המספר בגנות חברו אף על פי שאומר אמת. אבל האומר שקר נקרא מוציא שם רע על חברו. אבל בעל לשון הרע זה שישב ואומר כה וכה עשה פלוני וכה הוי אבוסיו וכה וכה שמעתי עליו ואמר דברים של גנאי. על זה אמר הכתוב (תהילים יב ד) "קרת ה' כל שקטני תלקות לשון מדברת גדלוה":

6. **Kiddushin 28a**

The Gemara asks: But the court ostracizes one who says this to another, as it is taught in a *baraita*: One who calls another a slave shall be ostracized. One who calls another a *mamzer* incurs the punishment of forty lashes. If one calls another a wicked person then the insulted person may harass him in all aspects of his life. In light of this *halakha*, it is clear that the court will not force the accused to respond to this insult by taking an oath.

קידושין כ"ח א

ההוא שמותי משמתין ליה דתניא הקורא לחבירו עבד יהא בנידוי ממזר סופג את הארבעים רשע יורד עמו לחייו

רש"י על קידושין כ"ח א

רשע יורד עמו לחייו - כלומר לזו אין ב"ד נוקמים אבל הוא מותר לשנאתו ואף למעט פרנסתו ולירד לאומנתו:

8. **Temurah 4b**

Said Abaye: Any act that the Torah says should not be done, if one did that act - it is effective because if you claim it is not effective, why would the transgressor be punished with lashes? Rava said: (The sinful act) is not at all effective. The reason the transgressor is punished with lashes is because he transgressed the word of the Torah

תמורה ד' ב

אמר אבאי כל מילתא דאמר רחמנא לא תעביד אם עביד מהני דאי סלקא דעתך לא מהני אמאי לקי רבא אמר לא מהני מידי והאי דלקי משום דעבר אמימרא דרחמנא הוא

משנה תורה, הלכות מלווה ולווה ד'ו'

(ו) שטר שקחוב בו רבית בין קצוצה בין של דבריהם גובה אף הפקר ואינו גובה אף הרבית. קנם ונכה הכל מוציאין מקצו הרבית קצוצה. אכל אבק רבית שהוא מדבריהם אינו גובה מן הלנה לפלגה ואין סחוריון אוחז מן הפלגה ללנה:

10. **Mishneh Torah, Sales 30:7**

Whoever sells, or gives a gift, on Shabbat ... even though he is flogged, his act is valid. If anyone performs an act of acquisition in due legal form on the Shabbat, the acquisition is valid, and the document confirming the transaction is written and delivered after the Shabbat.

משנה תורה, הלכות מכירה ל'ז'

(ז) המוכר או הנותן בשבת ואין צריך לומר כיום טוב אף על פי שפסין אוחז מעשיו קמיין. וכו' כל מי שקנו מידו בשבת הקנו קנם וכאמבין לאתר השבת ונותניו: קליקו להו הלכות מכירה ב"ד

הושן משפט קצ"ה: י"א

(יא) אין קובין בשבת קנו סגור; ואם קנו, אף על פי שקשו עברה, קנו:



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