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***Estimating Pain***

The *Mishnah* had stated: [*Tza’ar* – pain. If a person caused pain to another – even without permanent damage to his body (e.g., *burned him, even on his fingernail*)] We estimate how much a person would be willing to be paid to undergo such pain.

The *Gemora* asks: How do we evaluate pain when (a *permanent*) damage was done?

Shmuel’s father says: We estimate how much money a person would be willing to take in exchange for having his hand cut off.

The *Gemora* asks: To cut off his hand!? This would not be pain alone, but all five things (*that result because of having one’s hand cut off; how would we measure the pain alone*)! Additionally, are we talking about fools (*who would give their hand for money*)!?

Rather, the *Gemora* answers: We estimate how much a person would be willing to take in exchange for having his hand that is already essentially severed. [*Rashi explains that it is merely attached by some sinews and cannot be used for work.*]

The *Gemora* asks: A hand that is essentially cut off as well – it is not pain alone!? There is pain and embarrassment involved, as it is embarrassing for him that his hand will be like a piece of meat that is thrown

to dogs. [*So once again, how would we measure the pain alone?*]

Rather, the *Gemora* answers: We estimate how much a person would be willing to take to have his hand that is ordered by the king to be cut off, to be cut off with a sword (*which would be painful*) instead of by an ointment (*which is painless*).

They said: A person would never be willing to have his hand cut off with a sword!?

Rather, the *Gemora* answers: We estimate how much a person would be willing to give to have his hand that is ordered by the king to be cut off, to be cut off with an ointment instead of a sword.

The *Gemora* asks: However, the *Mishnah* says, “to take.” According to this explanation, it should say “to give”!?

Rav Huna the son of Rav Yehoshua says: The *Mishnah* means how much the one damaged should take from the damager, based on what a person would give to the king (*to avoid the pain*). (85a1 – 85a2)

***Estimating Healing***

The *Mishnah* had stated: *Ripui* – medical expenses. If a person struck another, he must ensure he is healed.

The *Gemora* cites a *Baraisa*: If sores develop due to the injury or the sores return (*after healing*), he must heal him and give him the money for his resulting unemployment (*due to the sores*). If sores develop, but not due to the injury, he is not obligated to pay for these things. Rabbi Yehudah says: Even if it is because of the injury, he is liable to pay for healing, but not for unemployment. The *Chachamim* say: Unemployment and healing are linked. If he is liable for the unemployment, he is liable for healing. If he is not liable for unemployment, he is not liable for healing.

The *Gemora* asks: What is the crux of their argument?

Rabbah answers: I found students in the house of Rav who were sitting and saying the following. Their argument is regarding a wound that is bandaged (*in order to prevent pain*). The Rabbis hold: One may bandage a wound (*due to the cold, even if it might result in sores*). Rabbi Yehudah holds: One may not bandage such a wound. Accordingly, he is only obligated to heal the wound as stated by the Torah, not pay for the resulting unemployment (*due to the bandaging*).

Rabbah said: I told these students that if Rabbi Yehudah holds that he is not liable because the bandage was not supposed to be applied; he should similarly not be liable for the healing!

Rather, everyone agrees that a wound may be bandaged, but not in an excessive manner. Rabbi Yehudah says: It cannot be bandaged excessively. Therefore, he is liable to heal the wound, but not pay for unemployment (*explained further below*). The Rabbis hold: Being that he is obligated to heal, he is also obligated in unemployment, which is compared to healing.

Rabbi Yehudah holds: He does not have to pay for the resulting unemployment, as the Torah says "Only" (*implying that he only has to pay for unemployment for a patient who does exactly what he should*).

The Rabbis say: "Only" excludes a case where the sores develop, but not on account of the wound (*i.e. a patient who does not heed the instructions of his doctor*).

The *Gemora* asks: The last Rabbis (*Chachamim*) in the *Baraisa* say: If he is liable for the unemployment, he is liable for healing. If he is not liable for unemployment, he is not liable for healing. According to them, why does it say healing (*implying it has its own laws*) in the verse (*if it simply has the same law as unemployment*)?

The *Gemora* answers: They require it for the teaching from a Tanna in the academy of Rabbi Yishmael, for it was taught in a *Baraisa*: A sage in the academy of Rabbi Yishmael said: "And he will surely heal." This teaches that a doctor has permission to heal. (85a2 – 85a4)

The *Gemara* cites a *Baraisa*: How do we know that if sores develop due to the injury or the sores return (*after healing*), he must heal him and give him the money for his resulting unemployment (*due to the sores*)? The verse states, "Only his unemployment he will pay, and he will surely heal." One might think that this is even if it is not because of the wound (*that he must pay*). This is why the verse says, "Only." Rabbi Yosi the son of Rabbi Yehudah says: Even if it is because of the wound, he is exempt, as the verse states, "Only."

Others say: Even if it is because of the wound, he is totally exempt. This is as per the opinion of the second Rabbis mentioned in the *Baraisa* above.

Others say: Even if it is because of the wound, he is exempt from unemployment and liable to pay for healing. This is according to the father (of *Shmuel*). (85a4)

It was stated above: One might think that this is even if it was not because of the wound. The verse therefore says, “Only.”

The *Gemora* asks: Do we need a verse to teach that he does not have to pay for damage that was not done by the wound?

The *Gemora* answers: What does it mean “not because of the wound?” The *Baraisa* states: If the person disobeyed the doctor’s orders and ate honey or other sweets, as they are harmful for wounds, and his wound grew a *gargusni* (see below), one might think he should have to heal him. The verse therefore says, “Only.”

The *Gemora* asks: What is a *gargusni*?

Abaye says: It is dead skin. How is it healed? It is healed using aloe, wax, and tree sap used in wine barrels. (85a4)

### **Damage Rulings**

The *Gemora* issues several rulings: If the one who damaged says, “I will heal you (i.e. I will be your doctor instead of paying),” tell him, “To me you are like a lion waiting in ambush.” If he says, “I will bring a doctor who will heal you for free,” tell him, “A doctor who heals for nothing is worth nothing.” If he says, “I will bring a doctor who lives far away (but gives me a discount),” tell him, “A doctor who lives far away doesn’t mind blinding one’s eye.” If the one who was damaged says, “Leave me to my own devices and I will heal myself,”

tell him, “You will be negligent with yourself and take too much money from me.” If he says, “Let us settle on a sum,” tell him, “Certainly you will be negligent with yourself and they will call me a damaging ox.” (85a4 – 85a5)

The *Gemara* cites a *Baraisa*: All of them (the other four payments) are paid even when there is damage.

The *Gemora* asks: How do we know this?

Rav Zevid answers in the name of Rava: The verse says: “A wound for a wound.” This teaches us that there is a payment of pain when there is damage.

The *Gemora* asks: Don’t we need this verse to teach us that accidental damage is like purposeful damage, and that forced circumstances are like wanton circumstances?

The *Gemora* answers: If this were the case, it should say, “A wound in a wound.” Why does it say, “A wound for a wound?” It must be to teach both teachings. (85a5 – 85b1)

Rav Pappa says in the name of Rava: The verse says, “And he will surely heal.” This teaches us that one must pay for healing when there is damage.

The *Gemora* asks: Isn’t this verse required for the teaching of a Tanna in the academy of Rabbi Yishmael, for it was taught in a *Baraisa*: A sage in the academy of Rabbi Yishmael said: “And he will surely heal.” This teaches that a doctor has permission to heal.?

The *Gemora* answers: If so, it should say, “And the doctor should heal.” Why does it say, “And he will surely

heal?" This must be to teach us that a person must pay for healing when there is damage.

The *Gemora* asks: We still require it for the teaching we said above – for the verse to repeat the payment of healing!!?

The *Gemora* answers: If so (*that the teaching of Rabbi Yishmael was not included in the verse*), it should say “*rapo rapo*” or “*yerapei yerapei*.” Why does the verse say, “*v’rapo yerapei*?” This teaches us that a person must pay for healing when there is damage (*as well as the teaching of Rabbi Yishmael*).

The *Gemora* asks: This implies that there is healing that could apply when there is no damage. What is the case where there is no damage?

The *Gemora* answers: Pain is as our Mishnah taught: What is a case of pain? If someone burned another person with a metal spit or a nail, even if he burned him on his fingernail where a wound was not formed (*this constitutes pain*).

What is a case of healing? If someone had a wound that was getting better, and then another person made him take a medicine that turned the skin so that it looked like it was stricken with leprosy, he must pay for a medicine that will turn the skin back to its original color.

What is a case of unemployment? He locked him in a room and did not let him go to work.

What is a case of embarrassment? A person who spits in someone else’s face must pay for causing embarrassment. (85b1 – 85b2)

### ***Estimating Unemployment***

The *Mishnah* had stated that we calculate unemployment as if he was a cucumber watcher.

The *Gemara* cites a *Baraisa*: How do we calculate unemployment? We calculate unemployment as if he was a cucumber watcher. If you will say that this is unjust ... [The *Gemara* explains the *Baraisa*:] As when he is healed, he will not just watch cucumbers but will draw water with a pail and take higher wages, or become a messenger and earn more money. [The *Gemara* returns to the *Baraisa*:] This is not unjust because the one who damaged already paid for the value of the damaged hand or foot.

Rava says: If he cut off his hand, he pays for his hand. Regarding unemployment, he is viewed as a cucumber watcher. If he broke off his foot, he pays for his foot. Regarding unemployment, he is viewed as a person who guards an entrance. If he blinded his eye, he pays for the eye. Regarding unemployment, he is viewed as someone who can grind in the mill. If he caused him to be deaf, he pays for everything (*as he can no longer work effectively*).

Rava inquired: If he cut off his hand and the damage was not yet estimated by *Beis Din*, and then he broke his foot. He then blinded his eye, and then caused him to be deaf, and *Beis Din* never estimated any damage. What is the *halachah*? Do we say that he is only estimated one time and must pay for his whole value? Or do we say that each incident of damage is viewed separately, and he must pay accordingly for each incident (*instead of simply paying for his whole worth due to making him deaf*)? The difference is that he will have to pay pain and embarrassment for each incident. It is understood that there is no difference regarding

damage, healing, and unemployment. He will not have to pay separately, as being that he is paying his entire worth, it is considered as if he is paying as if he killed him (*in a monetary sense there is nothing else to pay*). However, it is possible that the pain and embarrassment should be evaluated based on each separate incident. If you will say that he does not look at each incident separately, what if there was an evaluation of *Beis Din* between each case? Do we say that because there was an evaluation for each case he has to pay each separately? Or do we say that being that he hasn't paid yet, he can just pay for his entire value? The *Gemora* leaves this question unresolved. (85b2 – 85b4)

## DAILY MASHAL

### *Permission to Heal*

The *Gemora* states that from the verse, “*v’rapo yerapei*” teaches us that a doctor is given permission to heal a sick person.

Rashi explains that if not for that verse, I might have thought that the doctor would be forbidden from healing him, for Heaven has decreed that he should be ill; it would be contrary to his destiny. The Torah teaches us that he may be cured.

The Rishonim ask from the *Gemora* above (81b) which cites a *Baraisa*: How do we know that one must return another lost person? The verse says, “*And you will return it to him.*” Is it not obvious then that a doctor is Biblically obligated to save a person from dying?

The Moishav Zekeinim answers that the Torah is teaching us that the doctor is allowed to charge for his

services, for otherwise, I would have thought that since it is a *mitzvah*, he must do it for free.

Tosfos HaRosh answers that without the extra verse, I would have thought that a doctor may only heal a person when the sickness was man-induced. However, an illness that emanated from Heaven, it would be forbidden for the doctor to heal him, for it might be as if he is nullifying the word of God. The Torah teaches us that all sicknesses may be cured.

Tosfos Rabbi Yehudahh Hachasid explains why the Torah wrote “*v’rapo yerapei*” twice: The Torah is teaching us that a second doctor may heal an ill person even after a first doctor was unsuccessful, for we might have thought that by the fact that the first doctor was unable to cure him, this is a proof that Hashem does not want him healed and it is forbidden for the second doctor to attempt to heal him. The Torah teaches us that even the second doctor is permitted to cure him.

The Hadar Zekeinim answers that if not for the extra verse, we would think that only a person who is drowning, where he is dying at that moment, is it permitted to save him. However, if one is sick and is dying slowly, perhaps it is forbidden to heal him. The Torah teaches us that even this is allowed.

The Ramban adds that this verse is necessary to teach the doctor that he should not say, “Why should I get involved? Perhaps I will err and cause the person to die.” The Torah is telling him that he need not be concerned for this.