

## CHAPTER AV: THE FAMOUS *An Eye for an Eye*

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**AV.1 – Overview:** We review a famous example today, the verse *An eye for an eye*. What is the *peshat*, the *natural spontaneous meaning of the text*. Does it literally mean that if I take someone else's eye out that they take my eye out? Does it mean as the Talmud interprets it, "The monetary value of an eye for damage to an eye? If so, is that *peshat*, or is it read into the text.

We shall have several opportunities today using this well-known example to clarify our approach to *Peshat*. To defend the *peshat* of the verse, we will use someone, the Rambam, who is not traditionally thought of as a biblical commentator. We will see that the Rambam had a deep understanding of *peshat*.

**AV.2 A Biblical Example:** The *eye for eye* theme occurs in several verses.

Ex21-24: An eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot. A burn for a burn, a cut for a cut, a wound for a wound

Lv24-19 And a person: When he places a blemish in his colleague, as he did so will be done to him A broken limb for a broken limb, an eye for an eye, a tooth for a tooth, as he places a blemish in a human so will be placed in him

Dt19-21 Have no mercy: A life for a life, an eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot

Rashi (all 3 verses combined: Not literally but (as) our sages have explained the monetary compensation for the losses inflict.

**AV.3 Rambam's Analysis:** (Laws of Wounder and Damager, Chapter 1:1-7). Rambam starts with a very important principle of *peshat*. One has to read verses in context. Even those who oppose *peshat* (e.g. Halivni) have emphasized the important of reading all verses in context.

Ex21-18:25

If two people fight, one hits the other, with a stone or fist, but there is no death, rather [the smitten] becomes bedridden. If he recovers and walks about in health then [the damager] only pays disability and medical (expenses).

If a person smites his slave or maid with a rod and the slave/maid dies from it, then he [ the smiter] will be avenged Provided the slave/maid does not delay death for 24 hours

And if two people fight and they hit a pregnant woman who miscarries, but there is no death, then he[the smiter] shall be published as the husband demands and he will give through judgement.

But if the woman dies then place a life for a life

An eye for an eye, a tooth for a tooth, a hand for a hand, a leg for a leg a burn for a burn a cut for a cut a wound for a wound

The indentations reflect the overall tone of this paragraph

Payments for wounds are *medical and disability* provided the victim does die  
This applies to people and pregnant women and with some added rules to slaves

The Rambam had before him many centuries of dealing with this verse and undoubtedly chose the simplest and most direct route. His basic position is that

If you hear pay disability and medical you understand that compensation is monetary  
If you hear out of context a wound for a wound you would think you have to wound the person

**AV.4 Further Complications:** We have not completed the analysis; we have only begun it. After all the paragraph doesn't only say *medical and disability* it also says *a wound for a wound*. How are we to understand the latter statement. True there is a contradiction and we have the right to hear whatever we want, but to qualify as *peshat* the text must be instantly and naturally heard this way to a native speaker an expert in the subject matter of the verse.

To understand the second statement, *a wound for a wound*, we visit a fundamental contrast between Jewish and Secular law.

In secular law a judge in delivering judgement must stick to the letter of the law. It is against the professional code for a judge to express his or her opinion

Contrastively, in Jewish law, *besides*, or *in addition to* the strict judgement, *disability and medical*, a judge should tell the defendant what the Judge thinks of him or her; what the person really deserves. We bring two examples.

Example 1: 2 Sam12-01:06

And the Lord sent Nathan to David. And he came to him, and said to him, There were two men in one city;

the one rich, and  
the other poor.

The rich man had very many flocks and herds;

But the poor man had nothing, save one little ewe lamb, which he had bought and nourished up; and it grew up together with him, and with his children; it ate of his own food, and drank of his own cup, and lay in his bosom, and was to him as a daughter.

And there came a traveler to the rich man, and he was unwilling to take from his own flock and of his own herd, to prepare for the traveler who came to him; but took the poor man's lamb, and prepared it for the man who came to him.

Notice how Kind David judges the story using both the strict requirement of the law as well as what the rich man really deserved. Here is the text:

And David's anger was greatly kindled against the man; and he said to Nathan, As the Lord lives, the man who has done this thing shall surely die;

And he shall restore the lamb fourfold, because he did this thing, and because he had no pity.

Example 2: Laws of Wounder and Damager, 3: 5-6.

It is an established judgement against any person who embarrasses a scholar, even verbally, that he is fined 35 Golden coins which is 8.75 dollar-equivalents. And it is established that this fine is done in all places whether in Israel or outside Israel. There were continually such incidents in Spain. Some scholars waived the fine and this is nice. Some made a compromise but the judges would tell the embarrasser, "You deserve to pay a *litra* of Gold."

These two examples establish a cultural background. They show how native speakers expert in their own culture heard the verses

If you fight and wound ...pay disability and medical.  
[But you deserve] to have a wound for a wound [inflicted upon you]

This establishes the spontaneous instant nature of response to the verses and qualifies the interpretation of monetary compensation as *peshat*.

**AV.5 Secular Accounts of *eye for an eye*:** Of course biblical scholars harp on the surrounding cultures of antiquity which did take an eye for an eye. That doesn't however mean this is the only way to read the text. It is a reading based on cultures of the time.

However we can have a reading based on comparative law. Without getting too technical, let us look at a few examples:

Jan Rothkamm (Talio Esto, 88) writes that there is no philological argument that may support the interpretation of the *lex talionis* as meaning financial compensation and not actual retaliation.

But at Rashiyomi we have two responses to this. First, *meaning* is only one of the exegetical pillars. In the account presented above based on the Rambam we have used the parallelism pillar, more specifically, we used the paragraph or context pillar.

Second, as we have said many times, *meaning* includes *figures of speech* including new idioms. In fact there are scholars, who like Rashiyomi, believe *eye for an eye* is an *idiomatic expression* which came to mean *eye value for eye damage*. In fact, this can be defended from the biblical pronouns *tachat* normally translated as *in place of* but could refer to monetary compensation. To Raymond Westbrook (“Lex Talionis and Exodus 21: 22-25,” *Revue Biblique* 93.1 (1986): 66) *eye for an eye* is an idiomatic expression that used to refer to monetary compensation. There was no need to mention the sum because judges had accurate cues in customary law. If understood as commending a financial compensation, the rest of the formula makes sense.

But there are deeper approaches to *eye for an eye*. Fish (Oxford Journal of Legal Studies, Volume 28, Issue 1, Spring 2008, Pages 57–71, ) for example first notes that *lex talionis* of the Old Testament has been widely perceived—understandably, but mistakenly—as a barbaric law of retribution in kind. But it is better understood as a seminal expression of restraint and proportionality as moral principles of punishment. This has been recognized from the earliest times and continues today in modern theories of punishment.

Continuing in this tradition we might mention Townsend’s approach (The Cambridge Papers, 6(1), March 1997) who identifies three separate trends in laws, 1) trends of retribution, 2) rehabilitation, and 3) societal betterment. In his rather beautiful article, Townsend shows how these approaches synergistically blend to form a unified whole, the whole that dictates both ancient and modern approaches to law. Thus for Townsend, *eye for an eye* is simply enunciating one of many principles. All this is consistent with the Bible who also paints numerous trends; the harmonization of trends is familiar to every student of Talmud. What is interesting here, is that secular scholarship uses the exact same approach. Finally, we mention an article with a similar flavor, Retributive Justice, in the Stanford Encyclopedia of Law. This article discusses the entire idea of punishment and lays down five principles.

Support for these approaches can be multiplied; these approaches can benefit from the historical development of them not to mention modern manifestations of them. They all have in common the holistic view of the verse *eye for an eye*; whether using the simple *figure of speech* approach or using the approach of underlying legal trends.

**AV.6 Summary:** We have said much but we can summarize succinctly.

Peshat is the instant spontaneous reaction of a native speaker familiar or expert in the culture to the text of a verse

The powerful parallelism pillar of exegesis requires that *peshat* be understood through surrounding context, the parallel sentences in the paragraph in which the text is embedded

Rambam paints the picture shortly but powerfully: The paragraph says 1) if you have a fight and non-lethally wound a person you must pay medical and disability and 2) the judge should tell the defendant, *you deserve to be wounded also*. Simple and to the point; this is the way all *peshat* should be understood.

Finally, we have highlighted that the dual nature of decision, requirements of law, exhortational reprimands on what the criminal deserves, is consistent with Jewish law but not secular law.