

**JCI CURRICULUM: UNIT 1: CHAPTER 3 – MISHPAT VS. TZEDEK**  
**LESSON 1: “EYE FOR AN EYE” – WHAT’S IT WORTH?**

**Lesson 1: “Eye for an Eye” – What’s it worth? (45 mins – 1 hour)**

**Goals**

**For students to:**

- Examine the evolution of injury law in Jewish sources.
- Understand the concept of *mishpatim* as laws that are designed to implement justice.
- Understand that these kinds of laws can only go so far in making the outcome “just.”
- Compare the Jewish sources to contemporary American law.

**Materials:**

- Pens
- Paper / journals
- Printouts of body parts posted around the room.
- Text handouts
  - Exodus, Ch. 21\*
  - Mishna, Bava Kama 8:1\*
    - \*These texts also appear in Chapter 5 lesson 3.

**Procedure**

**1) Framing exercise (10 mins)**

- a) Have students examine the body parts around the room. (You may want to explain that the hand & fingers were made for movie props).
- b) Have students journal about what they would do if they lost one of these body parts.
- c) Ask students the question: What if someone intentionally caused you to lose the use of one of these body parts? What should be their punishment?

**2) Text Study (15-25 mins)**

- a) Divide students into *chevrotot* and distribute the text sheets with questions.
- b) During the text study, have students brainstorm questions for the speaker on U.S. law. Each chevruta should come up with 3 questions they would like to ask.

**3) Speaker (20-25 mins)**

- a) Invite a speaker who has expertise in personal injury law (and can relate well with teens) to explain how the U.S. legal system approaches these kinds of questions.
- b) Instruct the speaker to talk for about 10 minutes and then take questions from the students for about 15 minutes.

**4) Conclusion (10 mins)**

**Journal/Discussion Questions:**

- What are the differences in approach by the Biblical, rabbinic, and American legal

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systems?

- Do you think the restitution offered by each makes up for the loss?
- If not, what would be the best way for justice to be served?

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Let’s look at an idea called “mishpat.” The following text, found in the Book of Exodus, is from the first body of legislation presented in the Torah.

כא פרק שמות  
-לִידוֹ אֲנִי וְהָאֱלֹהִים קִים, צָדָה ל' אֶ וְאֶשֶׁר יג. יוֹמֵת מוֹת, נִמֵּת אִישׁ מִכֶּה יב...לְפָנֶיהֶם, תְּשִׁים אֶשֶׁר, הַמִּשְׁפָּטִים, וְאֵלֶּה א  
שְׁמָה יָנוּס אֶשֶׁר, מְקוֹם לְךָ וְשִׁמְתִי-  
...לְמוֹת תִּקְחֶנּוּ, מִזִּבְחֵי מַעַם--עֲרֹמֶהֶב לְהִרְגוֹ, רָעָהוּ-עַל אִישׁ יָזַד-נְכִי יד  
וְהִתְהַלַּךְ יָקוּם-אִם יט. לְמִשְׁכָּב וְנָפֵל, גִּמּוֹת וְל' א; בְּאֶגְר'ף אוֹ בְּאֶזְבֵּן, רָעָהוּ-אֵת אִישׁ-וְהִכָּה--אֲנָשִׁים יְרִיבֵן-נְכִי יח  
...וְרִפָּא וְרַפ' א, יִתֵּן וְשִׁבֵת רַק: הַמַּכָּה וְנִקָּה--מִשְׁעֲנִתוֹ-עַל, בַּחוּץ  
כְּוִיָּה כה. רָגַל תַּחַת רָגַל, יָד תַּחַת יָד, שֵׁן תַּחַת שֵׁן, עֵינַי תַּחַת עֵינַי כד. נֶפֶשׁ תַּחַת, נֶפֶשׁ וְנִתְתָה--יְהִיָּה, אֲסוֹן-וְאִם כג  
חִבּוּרָה תַּחַת, חִבּוּרָה, פְּצַע תַּחַת פְּצַע, כְּוִיָּה תַּחַת

These are the mishpatim that you shall set before them...He who fatally strikes a man shall be put to death. If he did not do it by design, but it came about by an act of God, I will assign you a place to which he can flee. When a man schemes against another and kills him treacherously, you shall take him from My very altar to be put to death...

When men quarrel and one strikes the other with stone or fist, and he does not die but has to take to his bed – if he then gets up and walks outdoors upon his staff, the assailant shall go unpunished, except that he must pay for his idleness and his cure...

If damage ensues, the penalty shall be life for life, eye for eye, tooth for tooth, hand for hand, burn for burn, wound for wound, bruise for bruise. (Exodus, Ch. 21)

**WHAT THE TEXT MEANS:**

- Leaving aside your personal opinions about capital punishment for the moment, what distinction do you think the Torah is making between premeditated and accidental killing?
- How does the text understand an individual’s responsibility for any damages caused?
- Based on your reading of this text, what is your understanding of mishpatim? What principle of law or social value is expressed through the Torah’s instructions?

**WHAT THE TEXT MEANS TO ME:**

- Do you agree with the approach to justice in the case of personal injury?
- What are its benefits and what are its deficits?
- If you were to write this portion of the Torah in today’s idiom, what might it look like?

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*The rabbis of the Mishnah agreed with the motivation and promotion of justice for all as found in Exodus, but thought the particular application of mishpat described there was too harsh for their society. They took the impulse for justice they found in the laws of the Bible, and adapted it to fit their contemporary situation:*

ח פרק קמא בבא מסכת

סימא: כיצד בנזק. ובבושת, בשבת, בריפוי, בצער, בנזק--דברים חמישה משום עליו חייב, בחברו החובל א, ח בצער. יפה הוא וכמה יפה היה כמה, גמכר עבד הוא כאילו אותו רואין--רגלו את שיבר, ידו את קטע, עינו את רוצה בזה כיוצא אדם כמה אומרים--חבורה עושה שאינו מקום, ציפורנו על אפילו, במסמר או בשפוד כווי מחמת ושלא; חייב, המכה מחמת אם--צמחין בו עלו. לרפאותו חייב, הכהו: ריפוי. כך מצטער להיות, ליטול שבת. לרפאותו חייב אינו, צורכה כל חייתה; לרפאותו חייב--ונסתרה חייתה, ונסתרה חייתה. פטור, המכה והמתבייש, המבייש לפי הכול: בושת. רגלו ודמי ידו דמי לו נתנו שכבר, קישואין שומר הוא כאילו תואו רואין והזיק, הגג מן נפל. פטור, שבבייש וישן; חייב--הישן את והמבייש, הסומא את המבייש, הערום את המבייש חייב אינו--(יא,כה דברים) "שיובמבו והחזיקה, ידה ושלחה" שנאמר: הבושת על ופטור הנזק על חייב--ובבייש מתכוון שיהא עד, הבושת על

Whoever wounds his fellow is liable for five things: for damage, for pain, for healing, for loss of time, and for shame.

For damage, how? If one blinded another's eye, cut off his hand, broke his foot, we consider him as if he were a slave sold in the market, and we appraise how much he was worth [before the injury], and how much he is now worth [after he was injured].

Pain? If someone burned him with a spit, or with a [white-hot] nail, even on his fingernail, a place where it produces no wound, we assess how much a person in his situation would be willing to accept to undergo such pain [Alternatively, how much would someone pay to avoid this type of pain as a punishment].

Healing? If one struck another, he is obligated to heal him; if swelling appeared on it from a result of the blow, he is liable; [if swelling appeared] not as a result of the blow, he is exempt. If [the wound] healed and opened again, he is obligated to cure him.

Loss of time? We consider him as if he [had an easy job like] the custodian of a cucumber field, since he has already paid him compensation for his hand and compensation for his foot.

Shame? Everything is in accordance with the person causing the indignity and the insulted party. If one insults a naked person, if one insults a blind person, or if one insults a sleeping person, he is liable, and if a sleeping person caused the indignity, he is exempt. If one fell from a roof and injured and shamed [someone], he is liable for the injury and is exempt for the shame, as it is written, "And she puts forth her hand, and takes him by the secret part" (Deuteronomy 25:11) he is not liable for shame unless he intended.

(Mishna, Bava Kama 8:1)

**WHAT THE TEXT MEANS:**

- What, if anything, surprised you about this text? Why?
- According to this *mishna*, how do you think the rabbis understood the concept of *mishpat*?
- Do you think their interpretation is true to the values expressed in the Book of Exodus?
- How is compensation for "shame" treated differently than physical and monetary damages?

**WHAT THE TEXT MEANS TO ME:**

- Did you ever make a mistake or do something wrong and try to make up for it? What did you do? What did you do to make things right? How was it received?
- Did someone ever wrong you and then try to make up for it? Did you feel satisfied at the end?
- What is the benefit of having the law determine how a wrong can be righted?

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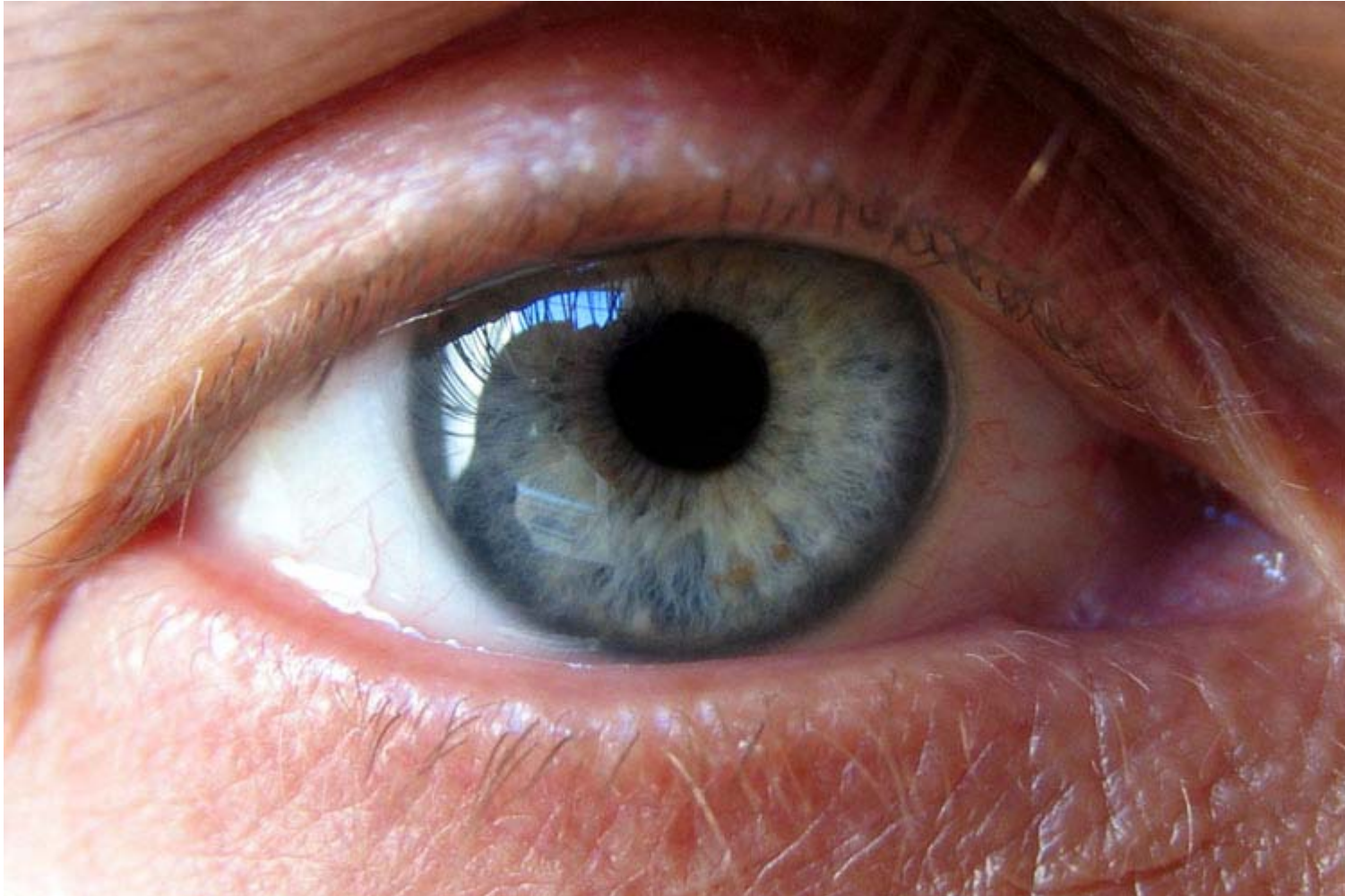
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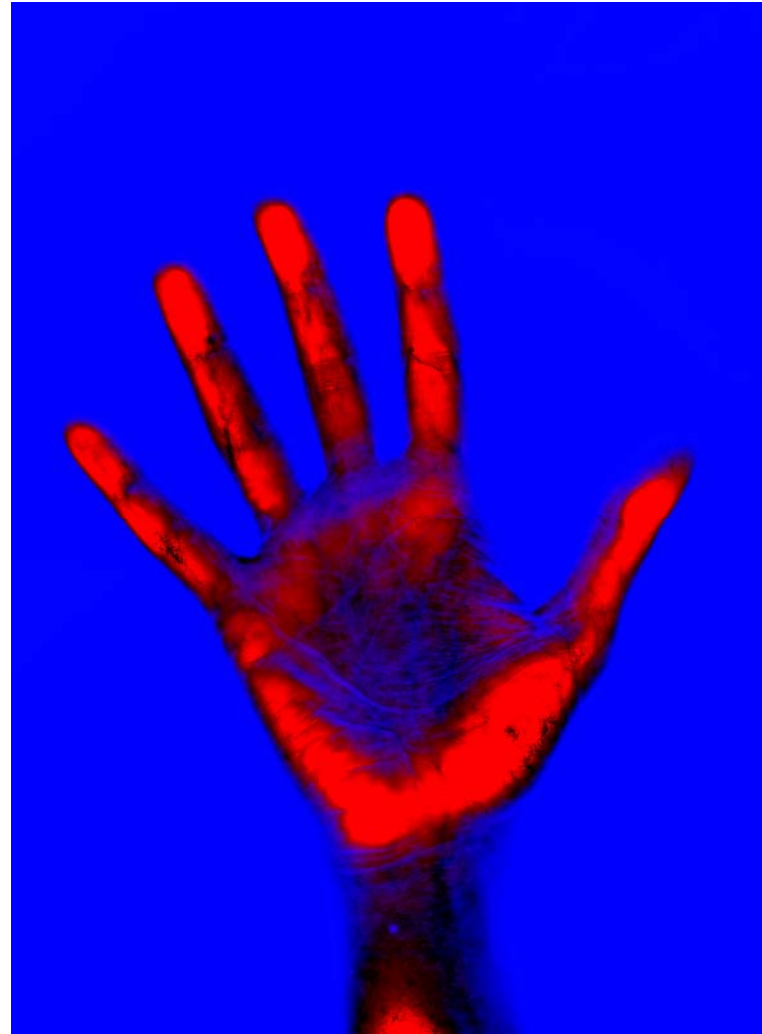
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