

**JCI CURRICULUM: UNIT 1: CHAPTER 3 – MISHPAT VS. TZEDEK**  
**LESSON 3: “THE CASE OF THE REBELLIOUS SOCIAL WORKER**

**LESSON 3: “The Case of the Rebellious Social Worker.” (45 mins – 1 hour)**

**Goals**

**For students to:**

- consider the tension between *tzedek* and *mishpat* in a real-life situation.
- appreciate the competing values embedded in the *tzedek* and *mishpat* concepts.
- apply Jewish texts to a contemporary situation.
- formulate an argument for either *tzedek* or *mishpat*.
- convince their peers of the merits of their argument.

**Materials:**

- Poster board
- Markers
- Text handouts
  - The Case of the Rebellious Social Worker
  - Text Handout #1 – for the Prosecution
  - Text Handout #2– for the Defense
  - Text Handout #3– for the Judges

**Procedure**

**1) Introduce the case #1 (5 mins)**

- a) Distribute and read out loud the overview sheet, “The Case of the Rebellious Social Worker.” Be sure that every student understands the case.
- c) Divide the students into 3 groups:
  - the prosecution
  - the defense
  - the judges (should be 3 or 5). If you have a very small class, you could play the judge.

**2) Preparation (15-20 mins)**

- a) Distribute the argument and text sheets.
- b) Each group must prepare their arguments and have 1-3 lawyers arguing the case. If you have a large group you can have the students assigned to specific roles including:
  - opening argument
  - questioning the other side

**JCI CURRICULUM: UNIT 1: CHAPTER 3 – MISHPAT VS. TZEDEK  
LESSON 3: “THE CASE OF THE REBELLIOUS SOCIAL WORKER**

- closing argument
  - artists to make visual aides
  - scribe to take notes during all speeches to distill best arguments for closing
- c) Emphasize the importance of utilizing Jewish texts. Be sure groups spend at least 5-10 minutes examining these texts and formulating an argument for how they apply to this case.
- 3) Main Activity (15-20 mins)**
- a) Judges should call the hearing to order and read the charges.
  - b) prosecution: opening argument (3 mins)
  - c) defense: opening argument (3 mins)
  - d) cross examination of the prosecution (by defense & judges) (5 mins)
  - e) cross examination of the defense (by defense & judges) (5 mins)
  - f) prosecution: closing argument (1 min)
  - g) defense: closing argument (1 min)
- 4) Conclusion (10 mins)**
- a) Judges in chambers to deliberate. You can allow them to do this in privacy. It might be fun to have them deliberate in “fishbowl” format. The judges sit in a circle in the middle of the room while the rest of the class sits silently and listens to their deliberations. (5 minutes)
  - b) Judges issue their ruling.

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**The Case of the Rebellious Social Worker**

The local Jewish Social Service Agency works with needy people from all backgrounds to help them obtain welfare benefits provided by the state. They employ 10 social workers who each have a caseload clients who come to the JSSA when they are in need of help. The social worker’s job is to determine whether they qualify for state benefits and, if so, help them fill out all the proper paper work.

One of these social workers, Betsy Cohen, is accused of falsifying a welfare application so that a family would qualify for cash assistance. She was working with the Leventhal family who, though in serious need and in danger of losing their apartment, could not qualify for aid because their salaries were \$150 over the state mandated limit. Betsy Cohen is arguing that her main job is to help people in need and that no one can live off the minimum amount in today’s economy. She also notes that the state benefits do not rise quickly enough to keep pace with the sharp price increases that often occur for needed commodities such as gasoline and food.

Today, Betsy Cohen is being brought before a disciplinary board, which has the power to revoke her license. The disciplinary board operates like a “*Beit Din*” (a traditional Jewish court) and would like to hear arguments based in Jewish values.

**JCI CURRICULUM: UNIT 1: CHAPTER 3 – MISHPAT VS. TZEDEK  
 LESSON 3: “THE CASE OF THE REBELLIOUS SOCIAL WORKER**

Text Handout #1 – for the Prosecution

**Arguments for “Mishpat”**

- The state has limited resources and if people who make more than the minimum amount receive money, that means less money to those who are needier.
- There are other avenues within the rules that could have helped the Leventhals – like temporary emergency cash assistance.
- Bending or breaking the rules makes a mockery of the whole qualification process.
- When taking the job, the social worker, Betsy Cohen promised to “abide by all the rules of qualification as set out by the state.” She is clearly in violation of this promise.
- If you believe the rules should be changed, it is not your right to break them; instead, you should lobby the government to change them.
- Examine the Exodus 21 & Bava Kama texts. Although these texts don’t apply to the matter at hand, they illustrate that there are clear consequences to a person’s actions. How might these cases help your argument?

*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

לִידֹ אִנָּה וְהָאֵל קִים, צָדָה לֹא וְאֲשֶׁר יִג. יוֹמֵת מוֹת, נִמֵּת אִישׁ מִכֶּה יב...לְפָנֶיהֶם, תְּשִׁים אֲשֶׁר, הַמִּשְׁפָּטִים, וְאֵלֶּה א  
 שְׁמָה יָבוֹס אֲשֶׁר, מְקוֹם לְךָ וְשִׁמְתִי-

...לְמוֹת תִּקְחֶנּוּ, מִזְבָּחַי מֵעַם--בְּעֶרְמָה לְהַרְגוֹ, רָעָהוּ-עַל אִישׁ יָזַד-נְכִי יָד

וְהִתְהַלַּךְ יָקוּם-אִם יֵט. לְמִשְׁכָּב וְנִפֵּל, גְּמוֹת וְלֹא; בְּאֶגְרֹף אוֹ בְּאֶבֶן, רָעָהוּ-אֶת אִישׁ-וְהִכָּה--אֲנָשִׁים יְרִיבֵן-נְכִי יָח  
 ...יִרְפֵּא וְרַפֵּא, יִתֵּן שְׁבִתוֹ רַק: הַמִּכָּה וְנִקָּה--מִשְׁעֲנִתוֹ-עַל, בַּחֲוִץ

כֹּוֹיָה כֹה. רַגְלֵ תַחַת רַגְלֵ, יָד תַחַת יָד, שֵׁן תַחַת שֵׁן, עֵינַי תַחַת עֵינַי כֹד. נִפְשׁ תַחַת, נִפְשׁ וְנִתְתָה--יְהִיָה, אֶסוּן-וְאִם כֹג  
 תַחֲבוּרָה תַחַת, תַחֲבוּרָה, פְּצַע תַחַת פְּצַע, כְּוִיָה תַחַת

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?



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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,  
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; בחיי, 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 אותו רואין  
והזיק, הגג מן נפל. פטור, שבבייש וישן; חייב--הישן תא והמבייש, הסומא את המבייש, הערום את המבייש  
חייב אינו--(יא,כה דברים) "במבושיו והחזיקה, ידה ושלחה" שנאמר: הבושת על ופטור הנזק על חייב--ובייש  
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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LESSON 3: “THE CASE OF THE REBELLIOUS SOCIAL WORKER

Text Handout #2– for the Defense

Arguments for “Tzedek”

- The Leventhal family would have qualified for assistance in 30 other states. Our state has an unfairly low cut-off point.
- Social workers work to help needy families, not to police the government’s ridiculously stingy rules.
- They were in serious need. No one can live in this country simply on the assistance provided by the state. They are working to get back on their feet – why should they be punished for that?
- It would take years to change the current system. I am working to do that, but in the meantime, I need to help people when I can.
- Examine the Sanhedrin & Bava Metzia texts. Although these texts don’t apply to the matter at hand, they are some examples of when the letter of the law is ignored in the name of a higher sense of justice. How might these cases help your argument?

*When breaking the law is keeping the law*

אֵל גְּבוּרָה (אֵל גְּבוּרָה) וּפְקֻדָּוֹתֵינוּ מִן-בְּרִיתוֹ  
"לְהַרְסֵי עֲשֵׂתֵי אֱלֹהֵינוּ יִגְלַעַר אֶלְהוּרָנוּשָׁא עֲשֵׂינְכִין דִּין עֲשֵׂינְנוּ" אִמַר שְׁבָבָא ד'  
Rabbi Eliezer ben Ya'akov said: "I have heard that the court may pronounce sentences even where not [warranted] by the Torah; yet not with the intention of disregarding the Torah but [on the contrary] in order to safeguard it."  
Babylonian Talmud, Sanhedrin 46a

WHAT THE TEXT MEANS:

- What is the difference between the “letter of the law” and the “spirit of the law”?
- Can you describe a situation in which breaking the law, or ignoring the law, is in fact the best way to keep the law?
- Can you imagine a legal system which does not allow such leniencies? What would that be like?

WHAT THE TEXT MEANS TO ME:

- Did you ever have to do something that seemed “wrong” but was nonetheless right?
- How do you know when the “spirit of the law” should override the “letter of the law”?



**JCI CURRICULUM: UNIT 1: CHAPTER 3 – MISHPAT VS. TZEDEK  
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Text Handout #3– for the Judges

**Instructions:**

Listen carefully to the arguments of both sides. Decide which side makes a better case based on their arguments and the Jewish texts and values. When you issue your decision, you must cite at least one text in your decision and discuss, in particular, how you understood the differences between *tzedek* and *mishpat*. While the two sides are preparing, examine all of the following texts and determine how you might utilize each of these texts in your decision.

- Examine the Exodus 21 & *Bava Kama* texts. Although these texts don't apply to the matter at hand, there are clear consequences to a person's actions. How might these cases help the argument for *mishpat*?
- Examine the *Sanhedrin* & *Bava Metzia* texts. Although these texts don't apply to the matter at hand, they are some examples of when the letter of the law is ignored in the name of a higher sense of justice. How might these cases help the argument for *tzedek*?
- Examine the *Sanhedrin* 32b text. How might the ideas here apply to this case?

*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.*

**מִשְׁפָּטִים**

--לִידוֹ אֵנָה וְהָאֵל קִים, צָדָה ל' א וְאָשֶׁר ג. יוֹמֵת מוֹת, נִמֵּת אִישׁ מִכָּה ב...לְפָנֶיהֶם, תְּשִׁים אָשֶׁר, הַמִּשְׁפָּטִים, וְאֵלֶּהָ שְׁמָה יְנוּס אָשֶׁר, מְקוֹם לְךָ וְשִׁמְתִי...  
...לְמוֹת תִּקְחֶנּוּ, מִזְבְּחֵי מַעַם--בְּעֶרְמָה לְהִרְגוֹ, רָעוּהוּ-עַל אִישׁ יָזַד-נְכִי ד  
וְהִתְהַלַּךְ יְקוּם-אִם ט. לְמִשְׁכָּב וְנָפֵל, נִמּוֹת וְל' א; בְּאֵגֶר ף אוּ בְאֵבֶן, רָעוּהוּ-אֵת אִישׁ-וְהִכָּה--אֲנָשִׁים יְרִיבֵן-נְכִי ח  
...יְרִפָּא וְרַפ' א, יִתֵּן שְׁבֵתוֹ רַק: הַמִּכָּה וְנִקְה--תּוֹמֵשׁ-עַל, בְּחוּץ  
תַּחַת פְּוִיָּה. רָגַל תַּחַת רָגַל, יָד תַּחַת יָד, שֵׁן תַּחַת שֵׁן, עֵינַי תַּחַת עֵינַי. נִפְשׁ תַּחַת, נִפְשׁ וְנִתְתָּה--יְהִיָּה, אֶסוּן-וְאִם. ח  
חֲבוּרָה תַּחַת, חֲבוּרָה, צַעֲפֵ תַּחַת פְּצַע, כְּוִיָּה.

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...

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**WHAT THE TEXT MEANS:**

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# Just

Judaism Action Social Change

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### 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? [benefits: limits acts of revenge; controls runaway retaliation, indeed it was enlightened for its time; deficits: gruesome and harsh, brutalizes a more civil society]
- If you were to write this portion of the Torah in today’s idiom, what might it look like?

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**חפיקא אמתא**

בעדא פאלאטוראין-גלואטעב, דאקען עינאמא צובען. בשות ענת גרפוי גער בנק-ענדחשעמס ינחויב ענדוהנל אה, נכו רפוי קנצעקליח לטגרציה: כיצאם שואמם-עברעטיאיתמקם צפרענאלולו עסדאומפרכויוו. צער. פעהא עה פדרהשה, ראין ענת לשאתחויבאיו צונכזחיה לשאתחויב- ושורחיה, ושורחיה פור עכעמחטנאל קויב עכעמחטנא- צחיקבעלו לשאתחויב עכיש וטן קויב-רשןאז חכיש עסאזחכיש, עכיש עכיש צינדל בשות גלו וחי דחויילו נטענד קשאקעמדהאפאלואטור חכוין וטען עכשעלחויבאיו-- (אנהעם) וסטיו וחוקה, זעה עולה'שער בשותל פורהנקעלחויב-ביש הוק, נהגון פל פור

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].

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*(Mishna, Bava Kama 8:1)*

**WHAT THE TEXT MEANS:**

- What, if anything, surprised you about this text? Why?
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### JCI CURRICULUM: UNIT 1: CHAPTER 3 – MISHPAT VS. TZEDEK LESSON 3: “THE CASE OF THE REBELLIOUS SOCIAL WORKER

*Right of way*

בְּיָמֵינוּ מִשְׁפָּט וְתִצְדֵק (בְּיָמֵינוּ) דְּפָקִי - סְמִיךְ עֲבָדֵינוּ - עֲבָדֵינוּ  
בְּיָמֵינוּ מִשְׁפָּט וְתִצְדֵק בְּיָמֵינוּ מִשְׁפָּט וְתִצְדֵק בְּיָמֵינוּ מִשְׁפָּט וְתִצְדֵק  
שְׂאִיבֵנוּ מִשְׁפָּט וְתִצְדֵק שְׂאִיבֵנוּ מִשְׁפָּט וְתִצְדֵק שְׂאִיבֵנוּ מִשְׁפָּט וְתִצְדֵק  
לְזֶה עֲבָדֵינוּ מִשְׁפָּט וְתִצְדֵק מִשְׁפָּט וְתִצְדֵק מִשְׁפָּט וְתִצְדֵק מִשְׁפָּט וְתִצְדֵק

Rav Ashi expounded upon the verse, “*Tzedek, tzedek* you shall pursue” (Deuteronomy 16:20): The first [mention of *tzedek*] refers to a decision based on strict law; the second, to a compromise. How so? For example: Where two boats sailing on a river meet, if both attempt to pass simultaneously, both will sink; whereas, if one makes way for the other, both can pass [without mishap]. Likewise, if two camels meet each other while on the ascent to Beth-Horon; if they both ascend [at the same time] both may tumble down [into the valley]; but if [they ascend] after each other, both can go up [safely]. How then should they act? If one is laden and the other unladen, the latter should give way to the former. If one is nearer [to its destination] than the other, the former should give way to the latter. If both are [equally] near or far [from their destination], make a compromise between them, the one [which is to go forward] compensating the other [which has to give way].  
Babylonian Talmud, *Sanhedrin* 32b

#### WHAT THE TEXT MEANS:

- What is the “right” thing to do in these situations? Who has the right of way?
- Why should the one boat or camel cede to the other if they have the same right as the other?
- What do they gain?

#### WHAT THE TEXT MEANS TO ME:

- Who do you think is better? The one who yields his right of way (and goes second) or the one who claims his (and goes first)?
- What would you do if you were the camel driver?