

From the Rabbi's Desk  
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## Mishnah with a Twist [7]

### Will I Give Four Hundred Dinars to This?

Insights into Mishnah Bava Kamma 8:6

Also: Stories With a Twist # 66



#### Background to Our Story (What you need to know to better understand the story)

##### Laws of Damages in Jewish Law



[http://en.wikipedia.org/wiki/Damages\\_\(Jewish\\_law\)](http://en.wikipedia.org/wiki/Damages_(Jewish_law))

In cases of injury to a person, Talmudic law identifies five categories of damages:

1. damage proper (*nezek*)
2. pain; (*tza'ar*)
3. stoppage of work
4. cost of cure; (*ripui*) and
5. shame (*boshet*)

In dealing with these categories, the Gemara (BK 83b et seq.) first discusses why the literal rule of eye for eye must yield to the more humane law of compensatory damages in money. Since the interpretation of "eye for eye" is established as monetary compensation, there is no reason for them to doubt that "bruise for bruise" means money for the pain suffered and does not mean the infliction of like pain. The separate elements of liability are:

##### Damage Proper (Nezek) and its Appraisal

How much should a person be compensated for injuries? The Mishnah says the damage is appraised by calculating the different of two values: how much the person injured would have been worth as a slave in the market before the infliction of the injury and how much the injured party is worth after it. This difference represents the liability for damage proper (*nezek*). But if the result of the injury has been to render its victim deaf, he is considered worth nothing whatever, and the damage is accordingly equal to the whole of his former value.

##### Pain

Pain, "as when he has singed him with a spit or spike, even on his finger-nail, where no mark is left." Here the question arises, should the judges ask themselves (a) how much money would "such a man"—that is, one as strong or as delicate as the injured man—be willing to take to submit to the pain, or rather (b) how much would he be willing to pay to forego the pain? The former measure, though named in the Mishnah, is in the Gemara deemed inadmissible; for many people would not take all the money in the world and willingly submit to the pain: the latter measure is held to be more reasonable. Where the pain is incident to a mutilation, the judges should say: "Suppose the wounded man to have been sentenced to have his hand cut off, how much would he be willing to pay to have it taken off under the influence of a drug [an anesthetic], rather than have it rudely hacked off; and this amount would serve to represent the damage" (Bava Kamma 85a).

### **Stoppage of Work**

The Mishnah allows to the injured man his wages only as a "watcher of cucumbers"—that is, such wages as he can earn in his disabled condition—"because he has already been paid the value of his eye or the value of his hand"; for the action might be brought at once when the injury was done, and the judges would estimate the loss of time beforehand. This estimate should be paid in full, though the injured man should recover sooner than was expected (Bava Kamma 85b).

An example is put, where violence may bring about stoppage of work alone, without mutilation or pain or need for cure: it is in the case of unlawful imprisonment (ib.).

### **Cost of Cure**

Talmudic law provided for a kind of health cost coverage; a liability imposed on whomever causes injury.

As the Scripture says, he "shall cause him to be thoroughly healed" (Exodus 21:19), the inference is that the guilty party shall pay for the services of a physician. He may not offer his own services, no matter what his skill may be; nor can he avoid the outlay of money by finding a physician that will do the healing work free of charge. Should ulcers arise in consequence of a wound, the cost of healing such ulcers also falls on the assailant; but if ulcers arise from other causes—for instance, because the wounded man disregards the orders of his physician—the cost of healing these is not to be assessed. The wound may disappear and break out again and again: the cost of cure will still rest on the assailant; but if it is fully healed (literally, "to its full need"), the liability comes to an end (Mishna Bava Kamma 8:1). The cost of cure may exist without any of the other elements of damage; for instance, where one has forcibly thrown chemicals upon another, giving to his skin the whiteness of leprosy, it is his duty to pay the cost of having the skin restored to a healthy color (Bava Kamma 85b).

### **Shame or Humiliation**

For the sages, it was deemed of utmost importance to avoid shaming another person. Hence, they sought to impose liability for humiliating personal injury, regardless of the physical effects of the injury.

Here it is impossible to lay down hard and fast rules; for, as the Mishnah says, "it all depends on who is put to shame and who it is that puts him to shame." But for certain acts of violence that involve very little pain and no permanent disablement, but mainly disgrace, the sages fixed a scale of compensation, namely: for a stroke with the fist, one sela or shekel (nominally 60 cents); for a slap with the open hand, two hundred zuzin (1 zuz = 15 cents); for a back-handed slap, or for pulling a man's ear or hair, or tearing off his cloak or a woman's headgear, or spitting at a person if the spittle reaches his flesh, four hundred zuzin (\$60 nominal) (Mishna Bava Kamma 8:6). A kick with the knee costs

three selas; with the foot five selas; a stroke with an ass' saddle thirteen (Bava Kamma 27b, see Rashi.). According to Maimonides (Yad ha-Ḥazakah, Ḥobel u-Mazziq, 3: 8-10), each slap, kick, or stroke counts separately. But he also says (following Bava Kamma 36b) that these sums are not meant for the full-weight or Tyrian coins, but for the "country currency," worth only one-eighth of the Tyrian.

These liquidated damages cover only pain and shame: if sickness ensue, stoppage and cure have to be paid for separately.

## Rabbi Akiva



Koren Talmud Bavli, The Noe Edition. Kiddushin. Koren publishers Jerusalem. 459.

Rabbi Akiva ben Yosef was one of the greatest of the *tanna'im*. He lived from just after the destruction of the Second Temple until the bar Kokheva revolt. According to legend, Rabbi Akiva began his studies at the age of forty, when Raḥel, the daughter of the wealthy Kalba Savua, consented to marry him on condition that he would study Torah.

Rabbi Akiva became the student of Rabbi Eliezer ben Hyrcanus and Rabbi Yehoshua ben Ḥananya. Ultimately, he became a prominent Torah scholar with twenty-four thousand students. Among Rabbi Akiva's first students were Shimon ben Azzai and Shimon ben Zoma, with whom he entered the orchard (see *Ḥagiga* 14b), i.e., engaged in the study of esoteric elements of the Torah.

Subsequently, Rabbi Meir and Rabbi Shimon bar Yoḥai, among others, became his students. He was a staunch supporter of bar Kokheva's revolt against Rome and even declared him the Messiah. During the period of the Roman emperor Hadrian's decrees, Torah study was prohibited, but Rabbi Akiva continued convening assemblies and teaching Torah. Ultimately, he was apprehended and executed, and he is one of the ten martyrs whose execution is described in liturgy.

Rabbi Akiva collected early rabbinic statements and began organizing the material of the Oral Torah. The Mishna, redacted by Rabbi Yehuda HaNasi and his disciples, is based on his work.

## Hair Covering in Jewish Law

The law (Talmud) Ketubot 72a, Shulchan Aruch, Orach Chaim, 75:2) is based on Numbers 5:18, where it is stated that the kohen "reveals the hair of the [Sotah] woman." This is a clear indication that women have always covered their hair.

So why don't women cover their hair before marriage?

1. The verse in Numbers is referring to a (sotah) married woman. Therefore only married women are bound by this rule.
2. Practically, women's hair is considered to be sensuous. Once a woman is married, she reserves her sensuous side for her husband. Additionally, once a woman is married, she must make a special effort not to "advertise" herself, for the results of a married woman's illegitimate relationship are much more disastrous than if a single girl were to make the same mistake.

Halacha (Jewish law) requires married women to cover their hair; Maimonides calls this requirement *Dat Moshe* (the law of Moses). The most common hair coverings in the Haredi community are the snood, the tichel (scarf), and the sheitel (wig); some Haredi women cover their hair with hats or berets. Observance of this law is not universal among Modern

Orthodox women, but even in this sector virtually all cover their hair in synagogue. The most common hair covering for Modern Orthodox women is a hat or beret; younger women often wear baseball caps and bandannas when dressed casually, and some wear bright and colorful scarves tied in a number of ways. A style of half wig known as a "fall" has become increasingly common in many segments of Modern and Haredi Orthodox communities. It is usually worn either with a hat or headband.

### Coin System in the Talmud (Not so simple)

- 1 Perutah = 1/2 barley kernel
- 1 Issar = 8 Perutahs = 4 barley kernels
- 1 Me'ah/Gayrah = 2 Pundyonin. = 16 barley kernels
- 1 Dinar (also called Zuz) 6 Me'ain = 192 Perutahs = 96 barley Kernels
- 1 Sela (Talmudic Shekel) = 4 Dinarin = 384 barley kernels (weight).
- 1 Dinar Zahav (Gold Dinar) = 25 dinarim
- 1 Maneh = 4 Dinar Zahavim
- 1 Maneh Shel Kodesh = 2 Manehim
- 1 Kikar (talent) = 60 Maneh Shel Kodesh
- 1 Kikar shel Kodesh = 2 Kikarin

### Fragrant Oil



### Issar

A copper coin 1/24 of a dinar (zuz). Dinar (pl. dinarim), a silver coin.

## The Text: Mishnah Bava Kamma 8:6

התוקע לחבירו – גותן לו סלע; רבי יהודה אומר משום רבי יוסי הגלילי: מנה. סטרו – גותן לו מאתיים זוז, לאתר ידו – גותן לו ארבע מאות זוז.

צ'רם באזנו, תלש בשערו, רקק והגיע בו רוקו, העביר טליתו ממנו, פרע ראש האשה בשוק – גותן לו ארבע מאות זוז;

זה הכלל: הפל לפי כבודו. אמר רבי עקיבא: אפילו עניים שבין ישראל רואין אותם כאילו הם בני חורין שי'רדו מנכסיהם, שהם בני אברהם יצחק ויעקב.

ומעשה באחד שפרע ראש האשה בשוק, באת לפני רבי עקיבא, וחיבו ליתן לה ארבע מאות זוז. אמר לו: רבי, תן לי זמן, ונתן לו זמן.

שמרה עומדת על פתח חצרה, ושבר את הכד בפניה ובו פאיסר שמן, גילתה את ראשה והיתה מטפחת ומנחת ידה על ראשה, העמיד עליה עדים ובא לפני רבי עקיבא, אמר לו: לזו אני גותן ארבע מאות זוז? אמר לו: לא אמרת פלום, החובל בעצמו אף על פי שאינו רשאי – פטור, אחרים שתבלו בו – חייבים, והקוצץ נטיעותיו אף על פי שאינו רשאי – פטור, אחרים – חייבין.

One who strikes another must give him a *se'la*. Rabbi Yehuda says in the name of Rabbi Yosei HaGelili that he must give him one hundred dinars.

If he slapped another on the cheek, he must give him two hundred dinars. If he slapped him on the cheek with the back of his hand, which is more degrading than a slap with the palm, he must give him four hundred dinars.

If he pulled his ear, or pulled out his hair, or spat at him and his spittle reached him, or if he removed the other's cloak from him, or if he uncovered the head of a woman in the marketplace, in all of these cases, he must give the injured party four hundred dinars.

This is the principle of assessing payment for humiliation caused to another: It is all evaluated in accordance with the honor of the one who was humiliated, as the Gemara will explain. Rabbi Akiva said: Even with regard to the poor among the Jewish people, they are viewed as though they were freemen who lost their property and were impoverished. And their humiliation is calculated according to this status, as they are the children of Abraham, Isaac, and Jacob, and are all of prominent lineage.

And an incident occurred involving one who uncovered the head of a woman in the marketplace, and the woman came before Rabbi Akiva to request that he render the assailant liable to pay for the humiliation that she suffered, and Rabbi Akiva rendered the assailant liable to give her four hundred dinars.

The man said to Rabbi Akiva: My teacher, give me time to pay the penalty, and Rabbi Akiva gave him time.

The man then waited for her until she was standing by the opening of her courtyard, and he broke a jug in front of her, and there was the value of about an *issar* of oil inside the jug. The woman then exposed her own head and she was wetting [*metapahat*] her hand in the oil and placing her hand on her head to make use of the oil.

The man set up witnesses to observe her actions, and he came before Rabbi Akiva, and he said to him: Will I give four hundred dinars to this woman for having uncovered her head? By uncovering her head for a minimal benefit, she has demonstrated that this does not cause her humiliation.

Rabbi Akiva said to him: You did not say anything, i.e., this claim will not exempt you. One who injures himself, although it is not permitted for him to do so, is nevertheless exempt from any sort of penalty, but others who injured him are liable to

pay him. In this case as well, the man was liable to compensate the woman for shaming her, despite the fact that she did the same to herself. Similarly, one who cuts down his own saplings, although it is not permitted for him to do so, as this violates the prohibition of: "You shall not destroy" (see Deuteronomy 20:19), is exempt from any penalty, but others who cut down his saplings are liable to pay him.

### **Commentary by Rabbi Joshua Kulp**

Most of mishnah six deals with injuries inflicted on another person that do not cause lasting damage but cause great embarrassment. The end of the mishnah deals with people who injure themselves or their own property.

The first part of our Mishna contains a list of fines a person must pay for striking another person. These types of blows will probably not cause any damage and therefore the fines are for embarrassment only. Note that these are extremely large fines. They demonstrate that Jewish law takes publicly embarrassing another person very seriously and penalizes such a person with a stiff financial penalty. Indeed, according to Jewish tradition one who publicly embarrasses another is akin to a murderer.

The continuation of our Mishna tempers the fines imposed in the previous part. According to the first anonymous Tanna of our Mishna, these fines are imposed only on those people who are of the highest honor and are therefore greatly embarrassed by being slapped etc. Rabbi Akiva disagrees with this statement.

According to Rabbi Akiva, one of the greatest, if not the greatest Rabbi in the Mishnah, all of Israel is of equal honor, since all of Israel comes from the same roots. A person's honor is not based on his current financial status, as the opinion in section five intimates. Rather it is based on his noble roots as a descendant of Abraham, Isaac and Jacob.

A story in our Mishna illustrates this point. In this story a man disgraces a woman who, as we learn later in the story, is willing to disgrace herself over a tiny portion of oil. (An issar is probably less than an ounce of oil). Nevertheless, Rabbi Akiva makes the man pay 400 zuz, as he would have to pay to a woman of the most honorable status. According to Rabbi Akiva, all Israelites are of equal honor, even those who are poor.

In the explanation of our story, we learn that a person is not allowed to injure himself, but there is nevertheless no penalty for doing so. However, if another person should inflict such an injury on him, he is liable, even if the injured person regularly should injure himself. In the example in the story, although the woman undid her own hair, and thus disgraced herself, no other person has the right to do this to her.

The last part of the Mishna relates a similar law with regards to cutting down saplings. A person should not cut down his own saplings but if he should do so, he is not liable. However, if another person should cut down his saplings, he is liable, even though this is something that the person himself has done before.

A final note on unloosing a woman's hair. This phrase can alternatively be translated "to uncover a woman's hair." In Mishnaic times it was customary for men and women to cover their hair in public. It was considered a disgrace for anyone to go out with their hair uncovered.



**Explaining the Mishna** - What is going on here? (Explain the sequence of events)

**Comprehension and Analysis Questions**

**Extra Bonus** **?** What do you think about the difference of opinions between the anonymous tanna and Rabbi Akiva on the settlement to be granted to one humiliated in public? Do you think the amount of the settlement should be relative to the status of the person embarrassed and the one embarrassing him/her, or equal to everyone?

**Extra Bonus** **?** Why did the man uncover the head of the woman in the marketplace?

Answer 1 \_\_\_\_\_

Answer 2 \_\_\_\_\_

Answer 3 \_\_\_\_\_

**?** Why did the woman come to Rabbi Akiva?

**?** Why did Rabbi Akiva rule that the man must give the woman 400 dinars?

**?** Why did the man ask for time from Rabbi Akiva?

Answer 1 \_\_\_\_\_

Answer 2 \_\_\_\_\_

**?** Why did Rabbi Akiva grant the man his request?

**?** What did the man want to prove by breaking a jug containing an issar worth of oil before the woman?

**Extra Bonus** **?** What prompted the woman to expose her head?

Answer 1 \_\_\_\_\_

Answer 2 \_\_\_\_\_

Answer 3 \_\_\_\_\_

**?** Why did the man bring witnesses with him?

**?** What did the man mean by "Will I give four hundred dinars to this?!"

**Bonus** **?** Why did Rabbi Akiva dismiss the man's claim?

Answer 1 \_\_\_\_\_

Answer 2 \_\_\_\_\_

**"The Twist" – Or the Lessons We Can Learn from the Text**

! The poor behavior (or low standards) of others doesn't justify yours!



The context of our story is the discussion of the Mishna on the laws of damages, including payment for humiliation. In our story, we encounter a man who uncovers a woman's head in public. The woman went to Rabbi Akiva and was awarded a settlement of 400 dinars. The man, not wanting to pay the woman, set a trap for her and brought witnesses who testified how she, willingly, uncovered her head in public.

Rabbi Akiva dismissed the claim of the man, forcing him to pay the 400 dinars, reminding him and all of us, that the poor behavior and low standards of others doesn't excuse ours.