

MISHPATIM (EXODUS 21:1-24:18)

Oh Say, Can you Sue?!

2004 · Rabbi Yerachmiel Sepowitz

Three times a day, we pray, “Restore our Judges, as in earliest times... Rule over us, You, G-d, alone, with kindness and compassion, and justify us through judgment...”

What are we complaining about? Don’t we in America have a fair and just judicial system?

Jack and Jill lived up the hill.

Each of these two neighbors owned an ox. Jill's ox was out in the field one day, calmly grazing on grass. Suddenly, out of nowhere, Jack's ox charged, ramming his horns into his unsuspecting neighbor. To Jill's utter shock, her ox lay there in the field, and bled to death.

Jill was outraged! She had spent \$1000 to buy that ox. She had hoped to breed it and/or butcher it. Now her thousand-dollar investment had become a hundred dollars worth of dog food (see “The Dog Days of Egypt”) and shoe leather.

Jill hired Johnnie Cochran, who told the jury how Jill's life had been shattered by the loss of her livelihood. By the time the trial was over, Jack was required to sell his house in order to stay out of bankruptcy. The court awarded Jill damages for the loss of the animal, plus two million dollars for the mental anguish of seeing her ox shishkabobbed. Jack was ruined, and Jill bought a condo in Boca.

Now, let's change the scenario a bit.

Jack and Jill are now Yaakov and Yocheved. Instead of going to court, Yocheved, a religious woman, went to her local Beit Din, a rabbinic tribunal, for justice.

The facts were presented to the panel of rabbis. Yaakov's ox, in a completely unprovoked attack, had gored Yocheved's ox. Yocheved demanded justice. She was dismayed by the response.

The court acknowledged that her thousand-dollar ox was now worth a hundred. They also noted that this was Yaakov's ox's first offense. Yaakov's \$1000 ox was sold and the money was divided. As well, the \$100 value of the carcass of Jill's ox was divided.

Yesterday, Yocheved owned \$1000 worth of ox. Today she has \$500 cash and \$50 worth of dead ox. So much for the condo in Boca.

The rabbis on the Beit Din quoted from this week's Torah Portion:

If one person's ox injures another person's ox, and it dies, they will sell the live ox and divide the money received for it. They will also divide the dead animal. (Exodus, 21:35)

This concept is known as *Chatzi Nezek* -- "Half-Damages." By selling Yaakov's \$1000 animal and Yocheved's \$100 carcass, they each end up with \$550.

But it doesn't stop there. What if Yaakov's ox is worth less than Yocheved's? What if the scrawny, sickly old thing was worth only \$200? The law of selling both animals only applies when both animals were of equal value. In case of a \$200 attacker, the court would award Yocheved \$200, and let her keep her ox's \$100 carcass. Total award: \$300.

WHAT'S GOING ON HERE?! Where's the fairness? Where's the justice? Yaakov's ox destroyed Yocheved's ox! Isn't Yocheved entitled to fair compensation? Why should she lose? Yaakov should have to pay the full value of her loss!

Actually, sometimes he does. The scenario we have been discussing involves a first-time (or second- or third-time) offender. Let us read the next verse:

If, however, the ox was known to be in the habit of goring on previous occasions (i.e., three or more times - Talmud), and its owner did not take precautions, then he must pay the full value . . . (Ibid. verse 36)

Rabbi Huna tells us in the Talmud (Bava Kama 15a) why we go easy on Yaakov. Really, he shouldn't have to pay at all! The owner should be entirely exempted from paying the first three times that his ox gores, since oxen are docile animals and rarely cause damage. This was a fluke! (Still, the Torah required him to pay half, in order to insure that he'll be more careful in the future.)

The reason the payment is limited to the value of the attacking ox is that technically, Yaakov is not guilty; The OX is. In the case of an ox with an ongoing reputation for goring, YAAKOV is at fault for not watching his ox, and must pay full value for the damage done.

[It should be pointed out that this rule doesn't apply in all cases. For example, not every animal is in the category of an ox. If my boa constrictor swallows your gerbil, or your pit bull mauls my poodle, the owner is liable for full damages on the first offence. Also, there are many situations when even an ox would be fully liable the first time.]

The Torah is teaching us a lesson that our litigious society needs to learn. Not every act of damage is an act of heinous negligence.

Yaakov owned an ox. Your average ox is more interested in lazily munching on grass than it is in assaulting another ox. There was no reason to anticipate this attack. It was, to a certain extent, a "coincidence." It was what the insurance companies would call "an act of G-d." There is nobody to sue when a tornado sucks up every ox on your farm.

But Yaakov is not totally off the hook. He still should have been more careful.

Today's judicial system allows murderers to get off scott-free on a technicality and would allow Yocheved to turn this unfortunate event into a cash cow. (Pun intended!)

Bad things happen sometimes. That doesn't mean you have to find someone to blame. Therefore, the Torah tells Yaakov and Yocheved to split the loss.

I heard about a survey that was taken about getting rich. People were asked what circumstances they envisioned as a means of becoming wealthy. Some anticipated winning the lottery. Others were hoping to discover a long-lost rich relative who had included them in his will. (Some even considered the possibility of actually EARNING the money!!)

A very large percentage of respondents were hoping to take in a fortune as the result of a lawsuit.

Society today is not concerned about liability; we're more concerned about how to make a quick buck.

Aren't you disgusted by the radio commercials from ambulance-chasing lawyers who seek to capitalize on other people's misfortunes? ("Call ___, ___, & ___ -- Fight back! Win!") I am not a smoker. I quit smoking over twenty years ago. I have no great love for the tobacco companies. But smoking is still legal. It is ridiculous to sue the companies for producing a legal product that some people are still reckless enough to consume. The same holds true for obese people who eat Big Macs and murderers who watch TV.

The Torah's message? Take some personal responsibility, and GROW UP!

Have a great Shabbos. Rabbi Yerachmiel Seplovitz