

Moshe teaches civil and criminal laws; one involves the treatment of slaves.

אַךְ אִם-יָוֹם אִו יוֹמִים יַעֲמֵד לֹא יִקָּם כִּי כֶסֶף הוּא:

“Except, if he stands for a day or some time, then he is not avenged, because it is a monetary matter.” (Shmos 21:21).

This pasuk refers to when an owner beats a slave that ultimately dies. It is together in a stand-alone section (between 5 partitions) with: “When a slaveowner fatally strikes his slave or slave woman with a weapon, and the slave dies under the slaveowner’s hand, then the slave shall surely be avenged.” (Ibid 21:20). If so, why does our pasuk seem to suggest that not dying immediately exempts the owner? Further, most interpret this pasuk as *כי כסף הוא* as “because he is only property.” However, I take exception to this translation and translate it differently. Why?

In order to understand any of the laws in this section—from *ibid* 21:1 through 23:33—a couple introductory remarks are important. First, Hashem taught these to Moshe and he conveyed them to Bnei Yisroel earlier than the Revelation. These were taught after the crossing of the Yam Suf and before reaching Rephidim. These are the laws that Hashem said, “If you surely heed the voice of Hashem, your Lord, and do what is proper in His eyes...I, Hashem, will be your healer.” (Ibid 15:26). What is proper in Hashem’s eyes are these civil and criminal laws. In this way, they form a basis of *derech erez kadma l’Torah* – proper behavior and etiquette precedes learning the Torah.

Second, they are built on one another and all must be read in context. Even though they are in stand-alone sections, between partial and full breaks in the Torah’s layout, they build on the previous laws. In this way, the Torah is not overly protracted in detailing every statute specifically. For example, it says “If one fatally strikes another and there is death, surely put the killer to death.” (Ibid 21:12). It then says if two are quarreling with weapons and one injures the other, he must pay damage. (Ibid 21:18-19). It does not then use another pasuk to state a case where the other did die, as this point was already taught. The same is true with the underlying pasuk. Context teaches how to interpret it. Another example is: “If damage is done to another then a life under a life, an eye under an eye, a tooth under a tooth...a bruise under a bruise.” (Ibid 21:23-25). It is important to note that the pasuk does not say, and is often mistranslated as, *an eye for an eye, a tooth for a tooth*. It uses the word *תחת* instead of a *ב* or *ל* prefix. When codifying about the false witnesses, the Torah is much clearer: *וְלֹא תַחֲסוּ עֵינֵיכֶם בְּנַפְשׁ עֵין בְּעֵין שֵׁן בְּשֵׁן יָד בְּיָד רֶגֶל בְּרֶגֶל*: “Do not have pity on them in your eyes, a life for a life, an eye for an eye, tooth for a tooth, hand for a hand, and a foot for a foot.” (Devarim 19:21). That is literally, *eye for an eye*. In the pasuk in Mishpatim it is *under*. “Under” means a civil exchange and is used to connote civil penalties.

“Except, if he or she can stand for a day or some time.” The previous pasuk introduced the case: the slaveowner hit his slave or slave-woman. If the slave died then he is avenged. However, if the slave survives then there is no death to avenge. יום או יומים does not mean a day or two days. It would not need to say “two days” when it already said “a day.” It means the slave survived and stood that day or even after some time. The slave did not die directly from these wounds. Even if the slave dies in a while from the wounds, the time makes it impossible to know if the wounds were the direct result in the death. In that situation, the owner would pay damages but not be capitally liable. This law is not only for slaves. The Torah already codified that a slave is not to be treated worse than any freeman. A slave shall be acquired only for six years (with the option to stay longer). (Ibid 21:1). Therefore, the slave has a life-estate on his own life. And it must be talking about a Hebrew slave because the laws about captured slaves are not taught until Vayikra 25:44. Accordingly, an owner cannot just kill his slave at will. However, this pasuk is using slave to each another point, too.

“He is not avenged.” There is no death penalty for the owner or wergild payment to the slave’s family. A death that results after some time will be compensated monetarily only.

“Because it is a matter of money.” Many commentators translate this as “because the slave is just property.” However, כסף does not mean property. It means money. רכוש is property. This is a monetary matter. The owner has to pay the slave for the damage just as he has to pay his fellow freeman for damages. Since the slave did not die then the damages are civil. *An eye under an eye, food under a foot...* The slave-master arrangement is a civil arrangement, the slave is paying off a debt. Certainly, the Torah is not advocating just capturing a person and using him as a slave. That is already the capital penalty of kidnapping. (Shmos 21:16). כִּי תִקְנֶה עֶבֶד עִבְרִי “When one acquires a slave.” (Ibid 21:1). This is a financial transaction and the money is being used to pay off a debt. The slave works it off. The slave cannot be wantonly beaten. Instead, the slave now just earned time off from work. The Beis Din can calculate how much the damage is worth and then reduce the slave-term by that amount. The context that clarifies this is, “If a slave owner strikes the eye of a slave...the slave goes out on account of the eye.” (Ibid 21:26). An eye and a tooth are worth any remainder of the six years. Of course, there is still civil damage to reckon with. If the term was only one month left and the owner knocked out an eye, then the slave goes free *and collects damages*.