

Midrash Halacha: The Case of Two Men Fighting

1. When [two] parties quarrel and one strikes the other with a stone or fist, and [the victim] does not die but has to take to bed:

If the latter then **gets up and walks outdoors upon his staff, the assailant shall go unpunished**—except for paying for the idleness and the cure (Exodus 21:18-19).

2. Rashi: “Upon his staff.” On his [former] healthy state and vigor.
3. Mechilta: “If he rise up and walk outside upon a staff.” That means he is restored to health. This is one of three expressions in the Torah which Rav Yishmael interpreted figuratively...
4. Ramban: IF HE GETS UP, AND WALKS OUTSIDE ‘AL MISH’ANTO’ — “in his former healthy state and vigor.” This is Rashi’s language. And Rabbi ibn Ezra said that the reason why this word [which means literally: “support”] is used, is to tell us that he must not be dependant upon others for the ability to walk, like an invalid, but must walk by himself; only *then shall he that smote him be quit* from prison.

In my opinion, *mish’anto* is to be understood in its literal sense, [a staff], just as in the verses: *every man with ‘mish’anto’ (his staff) in his hand for old age; ‘mish’eneth’ (the staff) of this bruised reed*. Scripture is thus stating that if the injured person’s health improves sufficiently to enable him to go out walking as he wishes *in the streets and in the broad ways* with his staff, like those healed from some prolonged disabling injury, *then shall he that smote him be quit*; and it further teaches us that even if the injured man is careless later about his health and dies after that in his weakness, the assailant is free from the death penalty. Scripture says *and he walks outside* because it speaks of the customary way of life, for injured men who were laid up in bed do not go out walking again until their wounds have healed and they are out of danger, this being the sense of the phrase, *and he walks outside*, because if he just gets up and walks in his house on his staff, and then dies, the assailant is not free [from the death penalty].

In the words of the Mechilta: “*If he gets up and walks.*” I might think this means within the house; Scripture therefore says, *outside*. But from the word *outside* I might think that even if he was wasting away [the assailant is still free from punishment]; Scripture therefore says, “*if he gets up.*” This explanation too is very correct, that Scripture should be saying that if the injured man gets up completely from his bed and goes steadily outside — without having to go back to his bed when returning from outside, as is the way of those who continue to waste away — even though he is weak and has to lean upon a staff, the assailant shall be let off. In general all this is to be interpreted as being figurative, language expressing people’s practical conduct, and the basic rule is that he must have been assessed as being capable of recovery. This is why Onkelos translated *al mish’anto: al boryeih* (in his healthy state).