

THE BAIS HAVAAD

HALACHA JOURNAL

Family, Business, & Jewish Life Through the Prism of Halacha

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Reb Gershon ben Reb Yaakov Sostchin ז"ל



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MOB RULES:

Does the Torah Sanction Vigilante Justice?

PART III

Adapted from a shiur by Rav Yosef Greenwald

GOING ALONE

Bais Din has a side job in addition to *mishpat*: to serve as *shotrim*, officers (Devarim 16:18). This function requires Bais Din, in certain circumstances, to intervene to protect society from those that would menace it. If a troublemaker were to make a practice of causing damage via *grama*, Bais Din could apply social pressure or excommunicate him, but that is not a *mishpat* function.

Likewise on the *dinei nefashos* side of the aisle, if a murderer is known to Bais Din, it can act to protect the public by placing him in circumstances that will lead to his death (Mishna, Sanhedrin 9:5). This is a *Halacha leMoshe MiSinai*. But that is not part of the court's *mishpat* role.

There is a Halachic concept of "adjudicating for oneself" (Bava Kama 27) but it is quite limited in scope. One may stop someone from stealing his property, even to the point of physically removing him. The Nimukei Yosef understands that the victim is empowered by Bais Din to act as its emissary, but according to the Rosh, the Halachic mechanism here is that in a clear-cut case, one may actually rule on the matter himself. But even this authority is tightly circumscribed: Mordechai, citing Maharam MeiRutenberg, says that one may seize his own property but not collect a debt.

An example: If your bicycle has been stolen, you may enter the thief's garage and take it. But if the bicycle is gone, you may not grab its value in cash from the kitchen drawer. Were that to be permitted, he says, anyone could steal with impunity by claiming he's

owed the money, and the rule of law would collapse. The Rosh in Hamainiach says a creditor can't seize property for collateral without resort to Bais Din.

May I tow someone's car if he regularly parks in my driveway and he ignores repeated warnings? Probably. May I physically remove someone who is damaging my property? Yes.

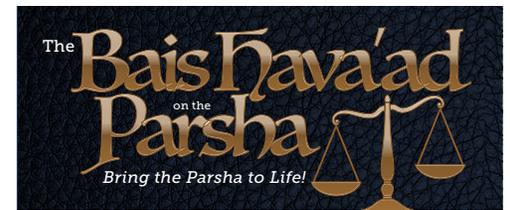
The mitzva to rebuke another Jew for his wrongdoing (Vayikra 19:17) includes the responsibility to prevent it where possible. Suppose someone is about to smoke on Shabbos. I may be permitted to slap his hand to cause the cigarette to fall out, but I certainly may not beat him up to deter future violation. This, too, is not about justice or punishment.

The Ketzos and the Nesivos (3) disagree whether an individual may force someone to perform a positive mitzva (as Bais Din must). R' Moshe Sternbuch writes that one who knows his friend violates *isurim* with his television may break it. Prevention, not punishment.

The defense of oneself or others is a legitimate use of force, in fact a required one (Rambam *Hil. Rotzayach* 1:6), but lethal force may be applied only if the threat cannot be averted by nonlethal means (Sanhedrin 84a). The Mishneh Lamelech (*Hil. Rotzayach* 1:15) writes that the pursued man himself is not so restrained. (Note that defense from attack is very different from the after-the-fact vigilante justice we discussed in Part I.)

In certain cases of public *chillul Hashem*, including *bo'el Aramis* (where a Jew is intimate with a gentile in public), a *kana'i*—a zealot who seeks to defend Hashem's honor without regard for his own safety—may kill the offender in the act. But because such killing is extrajudicial, the perpetrator may kill the *kana'i* in self-defense without consequence, something a condemned man could not do

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Adapted from a shiur by Rav Yehoshua Grunwald on Parshas Tetzaveh

Taking Center Stage: The Proper Place of the Bima

ועשית מזבח מקטר קטורת... ונתת אותו לפני הפרכת אשר על ארון העדות (שמות ל:א.)

The Rambam (*Tefilla* 11:13) rules that we place the *bima* in the middle of the shul so that everyone can hear the *baal korei* read the Torah.

Can you ever place the *bima* on the side?

Kesef Mishneh — If the shul is built in a way where all can hear, it's permitted.

Chasam Sofer (28) and *Meshiv Davar* (15) – The *bima* must always be in the center:

The *bima* is in place of the *mizbeach* (altar) since we read the *parshiyos of korbanos* there.

We circle the *bima* on Sukkos with our *Iulav* the same way as they circled the *mizbeach* in the *Beis Hamikdash*.

The *mizbeach hapenimi* (inner altar) was sit-

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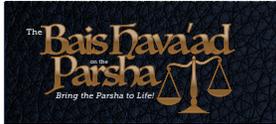
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to those who would execute him. As the Gemara says (Sanhedrin 82a), Zimri could have killed Pinchas as a *rodef* (pursuer).

This *Halacha leMoshe miSinai* is *Halacha v'ain morin kavin*: Were a witness to a *bo'el Aramis* to inquire about the Halacha, he would not be instructed to kill the offender.

What if someone threatens to kill a man if he doesn't comply with an arbitrary demand? "I don't like your tie. Remove it or I'll kill you."

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uated in the center of the *Kodesh*, directly opposite the *Aron Kodesh* in the *Kodesh Kodashim*, so our *bima* should also be in the center.

Igros Moshe (O.C. 1:42, O.C. 2:41-42) – Disagrees in principle with the *Chasam Sofer*.

Most *korbanos* were offered on the *mizbeach hachitzon* (the outer one) in the *azara* (courtyard), not the *penimi*.

Is this a case of self-defense, or, because the threat can be eliminated by simply complying, must the threatened party give in? The *Galya Masechta* (Y.D. 5; see also Teshuvos Chelkas Yoav, Kuntres He'aros 17) takes the former view. He proves it from the above Gemara about Zimri, because Zimri could have eliminated the threat from Pinchas just by stopping what he was doing. (This is relevant to the controversial "stand your ground" laws in many U.S. states and the debate about

They circled the *mizbeach hachitzon* with the *lulav*, not the *penimi*.

Main issue is that everyone should be able to hear the Torah read, and if they can, it is permitted to place it off-center.

But he says, if possible, comply with the *Chasam Sofer* even if we don't understand him, but close to the center is acceptable.

One may *daven* in a shul that has an off-center *mechitza*, but if there are two shuls, it is preferable to go to the other.

whether there ought to be a "duty to retreat," as required by common law.) Some question whether this would apply to someone like Zimri, who was engaged in forbidden behavior (see *Minchas Shlomo* Vol. 1, 7:2).

* * *

This concludes the series. May we soon merit to see the fulfillment of the promise that *Tzion* will be redeemed through *mishpat* (Yeshaya 1:27).

EVENTS & HAPPENINGS

AT THE BAIS HAVAAD

Playing POSSUM: How Does Halacha Assess the Risk of a Medical Intervention?



Assessing risk in medical intervention was the recent topic of a shiur presented by Rabbi Eliezer Gewirtzman, shlit"א, Posek at The Bais HaVaad Medical Halacha Center, as part of the bi-weekly lecture series for Rabbanim and members of the medical field.

The medical world uses the POSSUM score to determine risk. How much value does halacha attribute to the POSSUM score? Taking into account from a halachic standpoint the potential benefits and drawbacks, is it ever prohibited to begin dialysis? Rendering decisions on these weighty questions calls for advanced scholarship in a highly specialized field of halacha, and the Bais HaVaad Medical Halacha Center is privileged to provide this to Klal Yisroel.

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