

THE BAIS HAVAAD

HALACHA JOURNAL

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

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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.

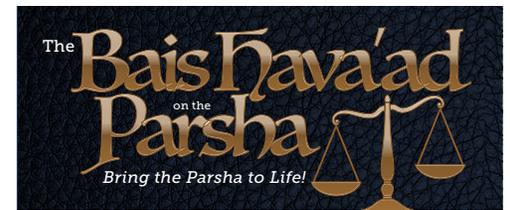
The mitzva to rebuke another Jew for his wrongdoing (Vayikra 19:17) includes the responsibility to prevent it where possible. Suppose someone is about to smoke on Shabbos. I may be permitted to slap his hand to cause the cigarette to fall out, but I certainly may not beat him up to deter future violation.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

(continued on back)



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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GENERAL HALACHA

A YORED: The Fee When It's Free Paying for Unsolicited Services

By: Rabbi Dovid Grossman, Rosh Bais HaVaad



One may think that the Halacha of *yored* does not often apply. According to the Gemara, a person who completes a job without the owner asking for it, is called “*yored l'toch sodeh chaveiro shelo b'rshus*” - a person who goes into his friend's field without permission. In this case, if the worker provided a direct benefit to the owner, he can charge for the job.

Does a situation involving *yored* really happen nowadays? After all, how often does a person complete a job when he is not asked at all to do it? However, there are many circumstances where *poskim* do rely on the Halacha of *yored* in order to determine the responsibility for payment for a job or service.

The Halacha of *yored* plays itself out in many cases:

CASE #1: THE WRONG SIDING

A case came to *beis din* involving a homeowner who had ordered new siding to be installed

on his home. The siding was delivered in the wrong color and was installed. Was the owner responsible for payment if he did not receive the exact siding which he had ordered?

The siding did upgrade the overall quality of the house, even though it was not to the homeowner's taste. Since this did provide a benefit to the homeowner, the Halacha of *yored* does apply and the owner is obligated to pay for the siding.

CASE #2: HAVING IT OUT WITH THE IN-LAWS

The Shulchan Aruch brings a case in the name of the *Terumas Hadeshen*. It was customary in those days for a son-in-law to move into his father-in-law's house for the first few years of marriage, while the father-in-law supported the young couple. In this situation, the father-in-law had committed to support his son-in-law for two years. Once the two years passed, the couple continued to live in the father-in-law's house.

After the fourth year, the father-in-law decided that it was time for the couple to move out. The couple agreed to look for a new place to live. The father-in-law then told his son-in-law, “We had an agreement that I would support you for two years, which I did. You stayed for an extra two years, and now I would like you to pay me for those extra two years of food which I gave you.” The son-in-law replied that he had assumed that if his father-in-law gave him food, it was free of charge.

The *Terumas Hadeshen* says that one must never assume that something is given for free. If a person does a service for you or gives you food, you must pay him if he asks for payment later on. This is true even if he doesn't mention payment at the time that he

is doing the service. According to the concept of *yored*, if a person derives benefit, he has to pay for it, regardless of whether the terms were agreed upon beforehand. If the worker gave you pleasure, fed you, sustained you, or upgraded and improved your asset, he can charge for it afterwards. Even if the worker is a close relative, one should never assume that he is doing it for free.

CASE #3 COMMISSIONING RELATIVES

A *shaylah* was brought before R' Elyashiv involving a man in America who had lost a loved one and was traveling to Israel to bury his relative. The American called his Israeli relative and asked him to find them a *kever*. The Israeli man asked R' Elyashiv if he could incorporate a commission into the *kever* fee. If the *kever* was selling for \$8,000, he would charge \$9,000 and arrange with the *chevra kadisha* to receive the \$1,000 as commission. However, the Israeli man was uncomfortable telling his American relative that he was taking a commission.

R' Elyashiv *paskened* that assuming there is a market for this service, and that it is normal practice for a broker to receive a commission, then one is allowed to incorporate a commission into the basic price. One is entitled to the industry standard for commission and the customer is obligated to pay it. As long as the customer agreed to the price beforehand, he does not have to know that a percentage of the price is a commission.

If there is a misunderstanding between the two parties, and a clear price was not established, the Halacha of *yored* does apply. In circumstances where the obligation to pay is in question, the worker should seek *chosh-en mishpat* consultation to find out what his rights are, or go to a *beis din* or a knowledgeable third party.

MATTERS OF INTEREST

AVISSAR FAMILY RIBBIS AWARENESS INITIATIVE: *Favors for the Lender*

Regarding favors in ribbis, the following levels of friendship and favors are discussed in halachah:

Acquaintances: Favors one would not have done otherwise: A private favor the borrower would not have done previously for the lender,



er, may not be extended to the lender during the loan period (i.e., using the lender's alarm clock without permission) even with the lender's knowledge.

Friends: Favors they would have done: The borrower may extend or benefit the lender with private favors he would have done regardless of the loan, even though he may have never

done so yet. Such favors require the borrower's knowledge, and cannot be offered in public.

Close friends: In this case, certain poskim allow even public favors if the favors had been extended previously (it does not suffice to assume he would have done them) and are not perceived as loan related. One must ascertain that the favor is identical to the one extended previously. If he had always extended the favor even without knowledge (allowing to use the alarm clock when not asked permission) then it would be permitted after as well. If the borrower only extended favors with knowledge, he may not do so now without knowledge.

Therefore one would only be allowed to buy a present if he would have done so regardless of the loan. Otherwise, it is considered ribbis. This would be forbidden even after paying up the loan (ribbis meucheret; see overview for ways to avoid this).

Rav Moshe Feinstein z"l writes that becoming

friends through a loan qualifies as friendship, and favors may be extended within the aforementioned parameters.

If a teacher lent a student money for a taxi, the student may chip in for a chanukah present for the teacher. It is logical to assume that the student would have chipped in for the present regardless of the loan, and it would be permitted. It is probable that it would not have the issue of being a public favor either, if done among a group of friends.

When the student is asked to give an exceedingly large amount of money for the present, or if they usually do not chip in for such presents, it would be prohibited.

It is important to note that the above discussion applies only to favors; however, common courtesies, such as holding a door open for someone, are permitted, regardless of their level of friendship. Treating a lender with disrespect is a lack of hakaras hatov.

OU DAILY LIVING

Weekly Questions

Laws Related to Brachos



What bracha is recited on papaya?

We recite *borei pri ha'eitz* on fruit and *borei pri ho'adama* on vegetables. *Halachically*, is papaya treated as a fruit or a vegetable? A related issue is whether or not the first three years of a papaya plant's fruit is treated as *orlah* and may not be consumed? *Orlah* applies only to fruit and not to vegetables. Most *poskim* assume that the *halacha* views papaya as a vegetable because the papaya tree displays vegetable-like characteristics in the following two ways: the papaya tree bears fruit in the first year of growth, and the quality of the fruit tends to diminish after the first 4 years, as the plant ages. The Chazon Ish and Rav Ovadya Yosef, zt"l are of the opinion that if we consider papaya a vegetable with respect to *orlah*, then a papaya

is a vegetable as well in the realm of *brachos*, and the proper *bracha* is *ho'adama*. However, Rav Belsky, zt"l suggested that the status of papaya with respect to *orlah* and *brachos* are not necessarily one and the same, and one may recite *ha'eitz* on a papaya since it grows on a tree. However, Rav Belsky thought it best to recite *ha'eitz* and *ho'adama* on a separate fruit and vegetable, and then eat the papaya. By doing so, one covers all the bases and satisfies all opinions.

What bracha does one recite on candied orange peel?

The Mishnah Berurah (OC 202:39) writes that there are three opinions as to what *bracha* should be recited on candied orange peels. The Taz (OC 204:15) writes that one should recite *ho'adama*, since the Gemara writes that on the peel of the fruit of the caper bush one recites *ho'adama*. The Taz maintains that the same holds true for other peels as well. The Magen Avrohom (202:17) writes that one should recite *ha'eitz*. Unlike the peel of the caper which separates from the fruit while it grows, the orange peel is part of the fruit. The Pri Megadim (202:17) writes that the *bracha* is *shehakol*. He explains that the *ikar* (main ingredient) in candied orange peels is the sugar or honey, which is *shehakol*. The Mishnah Berurah concludes that because of the doubt, one should recite *shehakol*, since it is the most inclusive *bracha*. However, *bedieved* (after the fact), if one recited *ha'eitz* or *ho'adama*, they may rely on

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דף פ"ד Living Within Your Means
דף פ"ה Unsuitable Slaughter: Studies in Shechita She'eina Re'uya
דף פ"ו Davening While Dining?

the other opinions and eat the peel.

What bracha should one recite on dried cranberries?

Most dried cranberries are sugar infused. This means the cranberries are soaked in sugar water and then dried to look like raisins. Rav Belsky, zt"l ruled that the *bracha* on dried cranberries is *ho'adama*. Although the cranberry plant survives from year to year, and in fact can live for over a hundred years, since the berries grow on or near the ground, the *bracha* is *ho'adama*. The Mishnah Berurah (203:3) writes that there is a dispute as to which *bracha* to recite on berries that grow on low bushes that are within three *tefachim* (9 to 12 inches) of the ground, and the *minhag ha'olam* (the accepted practice) is to recite *ho'adama*. Individuals who grow their own cranberry bushes may have cranberries that grow higher than 3 *tefachim*. On berries that grow on those bushes, one should recite *ha'eitz*. However, commercially grown cranberries are grown in bogs, on or near the ground, so their *bracha* is *ho'adama*.

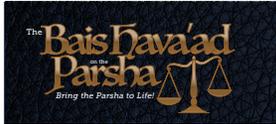
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to those who would execute him. As the Gemara says (Sanhedrin 82a), Zimri could have killed Pinchas as a *rodef* (pursuer).

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."

(continued from front pg.)



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

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).

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.

When your heteriska needs to satisfy the law and The Law.

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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"a, 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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