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MOB RULES:

Does the Torah Sanction Vigilante Justice?

Adapted from a Shiur by Rav Yosef Greenwald

MURDER IN THE PARK

Victor Melo, 16, began his afternoon listening to music in the sprawling national park in the Brazilian capital, Brasilia.

At some point a classmate of Victor's, standing nearby, had her phone stolen. She thought Victor did it and called out for help. Her friends, assisted by onlookers from whom a pair of sunglasses had been taken earlier, ran to punish the offender.

Over the next thirty minutes, while a hundred spectators stood by, Victor was beaten savagely. When paramedics arrived, they found a stab wound from a broken bottle in his belly, multiple screwdriver punctures between his ribs, and a knife wound in his heart. They worked vainly to resuscitate him.

At no point did anyone bother to search Victor for the missing phone or glasses. Police later found them in another man's possession. *Oops.*

Sadly, this is not an isolated incident. In addition to the world's highest murder rate, Latin America has the world's highest rate of impunity. In Brazil and Mexico, police solve fewer than one in ten murders. (Brazil's Supreme Court has a 44,000-case backlog that stretches back 49 years.) Anticipating no justice from the authorities, mobs mete it out daily, with participants often summoned on WhatsApp. And the mob's process for determining guilt can be less than rigorous.

What is the Torah view of vigilante justice? This article, first in a series, will begin to address the issue.

We are told in *Pirke Avot* (3:2): "Pray for the welfare of the government, for but for the fear of the government, each man would

swallow his fellow alive." R' Yerucham Levovitz, the *Mirrer Mashgiach*, used to say, "Within a person lies an entire zoo."

When fear of government disappears (the lynchers are rarely punished), there is no limit to the cruelty of which man is capable. Add a dollop of righteous indignation and you have a recipe for staggering evil.

Additionally, acting cruelly damages the actor's personality, making him cruel (see *Or HaHayim HaKadosh, Devarim* 13:18). This initiates a vicious circle. Each episode makes the people less human and more likely to act cruelly in the future, so the society gets progressively worse.

There are multiple reasons vigilantes might act: in vengeance, to punish violators or to deter future violations. In the Torah's jurisprudential system, none of these is the job of the public—or of the courts. The role of *Bet Din* is not to maintain order in society, to forestall chaos, or to make sure offenders don't go unpunished. That is Hashem's department. Rather, the job of *Bet Din* is to promote a value system in society that keeps people upright and good. Torah keeps at bay the baser instincts of man. Recognizing and respecting the *Tzelem Elokim* – the image of G-d – in oneself and in others is, according to R' Shimshon Refael Hirsch, the foundation of a just society.

It has become popular of late in some quarters in the United States to treat law enforcement with derision. Those who promote this are in violation of that *Pirke Avot* dictum, and they help to foster the creation of the kind of society *Hachamim* are warning us about.

There is a Torah precept (see *Bava Kama* 23) that *Kim Leh Bid'Rabba Minneh*, meaning that one who commits a capital crime cannot for the same act be liable to monetary payment. This is true



Summary of Parasha & Halacha Shiur for Parashat Yitro by Dayan Shlomo Cohen

Partners in Crime: Stealing in Pairs

We are commanded not to steal. According to *Maran*, who follows the *Rambam*, that includes stealing from a non-Jew. However, the *Rama* permits keeping a *Hafka'at Halva'a* (forgotten debt) or mistake of a *Goy*, unless there is a chance of *Hillul Hashem*.

The *Sm"a* writes, that not paying from merchandise is not considered a "forgotten debt" but rather stealing, and is forbidden. *Rama* says that the mistake we permit must be made by the *Goy*, but one may not trick a *Goy*. The *Be'er HaGolah* writes that money made from such mistakes is never blessed, whereas, people who have returned the money in place of *Hillul Hashem* merited great *Beracha*.

The *Havot Ya'ir* was asked about two thieves who conspired to steal silverware, one climbed up the ladder, packed up a sack and threw it down to his friend who drove off and sold \$100,000 worth of merchandise for \$20,000 in the black market. One of them was caught, and was obligated to pay \$100,000 for the real value of the merchandise.

Many years
later

(continued
on back)

spotlight

Medical Halacha
Center Seminar on RPL

The *Bet HaVaad Medical Halacha Center* recently hosted an informative seminar for Rabbanim on the topic of recurring pregnancy loss featuring Senior Medical Halacha Posek, Rav Moshe Zev Feldman, shlit"á; Dr. Isaac Glatstein, Associate Medical Director of Boston IVF; and the emotional perspective, by Dr. Elyahu Weinschneider.

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GENERAL HALACHA

THE CATERING SALESMAN: When Does He Get Paid?

By: Dayan David Grossman, Shlita, Rosh Bet HaVaad



There is one *Halachic* classification of work which can lend itself to confusion. A *Po'el* – laborer – who works by the hour is called a *S'chir Yom* (lit. day laborer). An independent contractor, who is paid by the job, is a *Kablan*. Each of these categories comes with its own set of rules and *Halachot*.

There is a third category of employment, which is an arrangement neither by the hour nor by the job, but rather a sales job. This *Halachic* designation of *Mekah* – sales – applies when a worker constructs something in his own time and with his own materials, and then sells it.

The worker who uses his own material to con-

struct a cabinet, sew a garment, or even write a *Sefer Torah* does not have an employment arrangement with the buyer. Rather the buyer purchases the product once it is complete. There may be a requisite down payment, or some payments made along the way. But the worker is using his own materials and his own infrastructure. Therefore, he is considered as working for himself, as a *Mekah*.

ON-TIME SALES PAYMENTS

The *Halachic* designation of the *Mekah* makes a difference with regards to terms of payment. According to the *Halacha* of *Bal Talin*, an employer must pay his worker on time. In the case of a *Po'el* or a *Kablan*, the employee is obviously working for the boss, and the boss must make sure to pay him. This may apply even if one is creating a cabinet or sewing a garment. If he is using the boss's material, or working on the boss's time, he still falls under the category of a *Kablan* or *Po'el*.

In the case of the *Mekah*, there is no *Mitzvah D'Oraita* (Torah obligation) of *Bal Talin*, to pay the salesman on time. However, there is a *Mitzvah D'Rabbannan* (rabbinic obligation) to pay the *Mekah* as soon as possible. This is based on the *Passuk* in *Mishle*: “*Al Tomar L'Havercha Lech VaShov, Umahar Eten..*” “Do not say to your friend, ‘Go and return and tomorrow I will give’, though you have it with you.” If you have the ability to pay the *Mekah*, do not send him away for another day. It is a *Mitzvah D'Rabbannan* to pay the *Mekah* on

the same day the goods are delivered or services rendered.

PAYING FOR THE PARTY

The common application of this principle is in the case of wedding vendors. The *Ba'al Simha* books a caterer, rents a hall, and hires a band. Is he obligated in the *Mitzvah* of *Bal Talin*, to pay these vendors that same day?

It depends on the nature of the product or service.

It is questionable if the hall rental falls under *Bal Talin*. There is a question among the *Poskim* if renting moveable objects (*Mitaltelin*), is in the same category of renting a home or building (*Karka*). A home or building does not fall under the *Halacha* of *Bal Talin*, while there is a debate whether renting moveable objects, such as the tables and chairs, falls under this category.

Waiter services and the like are a classic case of *Sechirut Po'alim*, a regular employment which is subject to *Bal Talin* and must be paid that same day.

The caterer's fee, however, is for the food and that is considered a *Mekah*. The *Ba'al Simha* pays for the portions of food prepared for the wedding guests. As a *Mekah*, the caterer is not included in the Torah obligation of *Bal Talin*.

Whether a product or service is designated as a *Po'el*, *Kablan* or *Mekah* can have *Halachic* ramifications regarding payment. In every case, it is important to understand which category you are hiring.

MATTERS OF INTEREST

Avissar Family Ribbit Awareness Initiative

COSIGNING AND SIMILAR CONCEPTS



It is definitely permitted for a Jew to co-sign as a standard *Arev* (guarantor) on a loan initiated by a public company. Being that the terms are that the lender will turn to the borrower for payment first, he is considered the borrower and the cosigner is merely guaranteeing the loan in the event of default. On the

other hand, an *Arev* of the “*Shelof Dotz*” type (where the guarantor is fully responsible for the loan, regardless of the borrower's state) is definitely rendered in *Halacha* as the borrower. *Halacha* views his relationship with the bank to be as if he himself has borrowed the funds being that he is the only address to which the lender may turn. He in turn “re-lends” the money to the actual borrower. This is considered as if the Jewish borrower is borrowing directly from his Jewish guarantor and is therefore prohibited. Therefore, even if the borrower sends the interest payment directly to the bank it is still prohibited being that he is merely satisfying the cosigner's direct obligation to the bank, and in essence he is paying interest to his Jewish cosigner.

In regard to the middle type of guarantor there is a dispute amongst the *Poskim* as to whether or not it would be considered *Ribbit*. Most *Poskim* maintain that since the lender has the right to approach the cosigner first,

if he should so desire, he is considered to be a borrower. Any interest payment paid to the bank would be considered to be satisfying the *Arev's* obligation. Other *Poskim* write, that since the borrower is equally responsible, there would not be any *Ribbit* violation. *Maran* in *Bet Yosef* and others rule that one should not enter into such a relationship.

This *Halacha* plays itself out in many instances in today's lending environment. Many times there is a borrower that does not have a healthy credit rating. When the borrower asks his friend or relative to co-sign on a mortgage or on a car loan, extreme caution must be taken to avoid the prohibition of *Ribbit*. One must analyze the terms of the loan documents and learn the exact responsibility of the cosigner, and use the above guidelines to ensure that he is not in violation of these prohibitions.

Yet another very common scenario is where an individual would like to purchase some-

thing using his friend's credit card. Being that he does not want his friend to incur any expenses, the borrower agrees to cover any interest obligation the cardholder will have to pay the credit card company. This is pro-

hibited according to all opinions. Since the legal obligation is solely the cardholder's, he is considered the borrower and his friend is in turn borrowing those same funds from him. Therefore, it is prohibited to pay the interest,

even if the payment is sent directly to the lender. The lender must understand that he runs a risk (of not being able to recapture the fees) when lending the credit card.

HALACHOT OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer Ou Kasher Halacha Yomis

Laws related to Berachot



I walk past a coffee shop every day. From outside the store, I can smell the coffee. Should I recite a Beracha on this aroma?

The *Mishnah Berurah* (216:16) writes that if one smells hot ground coffee, since it emits a strong aroma, one should recite the *Beracha* of "*Ha'Noten Re'ah Tov Ba'Perot*." However, it is questionable whether one can recite a *Beracha* on a cup of coffee, since there are no coffee grinds in a cup of coffee. The drink is only the residual flavor and aroma that were captured in the hot water (see *Shulhan Aruch* 216:6). The aroma wafting from a coffee shop is more likely from the brewed coffee and not from coffee grinds. Furthermore, Hacham Ovadia Hedaya in *Teshuvot Yaskil Avdi* (vol. 8, *Hashmatot* 14) writes that one who passes a coffee shop is exempt from reciting a *Beracha* since they were just walking by and it was not their intent to enjoy the smell. Because coffee in principle is a drink and not an aroma, unless one has specific intent to smell the coffee beans, it is exempt from a *Beracha*. He writes that this is true even though the proprietor uses the coffee's aroma as a method to

attract customers.

What Beracha does one recite on flax seeds?

At first glance, one would say that the *Beracha* should be *Ha'Adama*, since flax grows from the ground, like a grain. However, the *Nishmat Adam* (51:7) points out that we find an apparent contradiction in *Tanach* about the status of flax. In *Yehoshua* (2:6) flax is described as a tree. Referring to *Rahav* hiding the spies, the *Pasuk* says, "*VaTitmeneim B'Pishte Ha'Etz*" (and she hid them among trees of flax). On the other hand, we read in *Bereshit* (4:3): "*And Kayin brought [an offering] from the fruits of the ground [P'ri Ha'Adama]*." *Hachamim* have a tradition that the offering that *Kayin* brought was flax (*Pishtan*). This would indicate that flax is a plant that grows from the ground and not a tree. The *Nishmat Adam* explains that in *Bereshit* the flax was still growing. At that stage, flax is pliable and is not considered a tree. In contrast, in *Yehoshua*, the flax was harvested. After it is cut, flax dries out and hardens. Only then is it considered a tree. Since the flax is not considered a tree at the time the flax seeds grow, the *Beracha* on flax seeds is *Ha'Adama*, whether eaten raw, roasted or cooked.

If flax seeds are sprinkled on another food, they would be considered *Tafel* (subordinate). One does not make a separate *Beracha* on a food that is *Tafel*, as it is covered by the *Beracha* that is said on the primary food.

What Beracha is recited on tahini?

Tahini is a spread made of ground sesame seeds and oil. If one were to eat whole sesame seeds, the *Beracha* would undoubtedly be *Ha'Adama*. However, once the sesame is finely ground into a liquid paste without any semblance of the seed, the *Magen Avraham* (205:9) writes that the *Beracha* changes to *Shehakol*. The *Even 'Ozer* (OH 210:7) disagrees. He argues that since tahini is one of

the primary manners in which sesame seeds are eaten, the *Beracha* remains *Ha'Adama*. *Igrot Moshe* (OH 1:65) writes that there is no clear ruling and it is best to avoid eating tahini as a stand-alone food. If one does eat tahini, *Igrot Moshe* writes that because of the doubt, one should recite *Shehakol*. While some Sephardic *Poskim*, such as Rav Moshe Levy ztz"l write that tahini is *Ha'Adama*, the consensus of the *Poskim* is that today that it is usually very liquid, its *Beracha* is *Shehakol*.

This all assumes that the tahini is eaten alone or is the main food that one is eating. However, if one spreads tahini on bread, crackers or vegetables, then all would agree that no additional *Beracha* is recited on the tahini because of the principal of *'Ikar* and *Tafel* (the *Beracha* on the main food covers the subordinate).

What Beracha do you recite on hearts of palm?

Rav Belsky, zt"l ruled that the *Beracha* for hearts of palm is *Bore P'ri Ha'Adama*. The *Gemara* (*Berachot* 36a) cites a disagreement between Rav Yehuda and Shemuel as to which *Beracha* should be recited on *Kora* (hearts of palm). According to Rav Yehuda the *Beracha* is *Ha'Adama* and according to Shemuel, it is *Shehakol*. The *Gemara* concludes that since one does not plant a palm tree having in mind to harvest the hearts of palm, the *Halacha* follows the opinion of Shmuel that the *Beracha* is *Shehakol*. Rav Belsky explained that today, since palm trees are planted with the intent of eating the hearts, the appropriate *Beracha* is *Ha'Adama*. Although hearts of palm grow on a tree, the *Beracha* is not *Ha'Etz*, but rather *Ha'Adama*. This is because hearts of palm are not an actual fruit, but the core of the stem of the tree. Since they are part of the actual tree and not fruit, the *Beracha* is downgraded from *Ha'Etz* to *Ha'Adama*. This is also the *P'sak* of Rav David Yosef in *Halacha Berura*.

BET HAVAAD KEHILLA EVENTS

The Halacha Institute of Toronto held a community wide event on Business Halacha at the end of December featuring Dayan Dovid Englander, shlit"á, of the Bet HaVaad Halacha Center, where he spoke about contemporary issues related to Bet Din. Following the main presentation, Rav Englander, a native Torontonian, engaged the audience in a lively question and answer session.

(continued from front pg.)

even where the act is unintentional and the death penalty doesn't obtain (*Ketubot* 35). Rav Hirsch (*Shemot* 21:22) sees in this a great principle of justice: As evident in *BeMidbar* 35:31, no amount of money can compensate for murder. For the court to exact payment for the illicit killing of someone created in the Divine image would be an affront to human dignity.

Even where the crime comprises the murder of one person and financial damage to another (e.g., an arsonist who burns down a house and kills someone inside who isn't the homeowner), *Bet Din* doesn't order compensation for the monetary damage. Murder and theft are so distant from each other that they cannot appear in the same case file. Murder is adjudicated by a minor *Sanhedrin* (rabbinic court) of 23 judges, each with *Semicha* (ordination) in an unbroken chain from Moshe *Rabbenu*. Financial claims are judged by three, no *Semicha* required. And ne'er the twain shall meet.

Equating phone theft to murder is an outrage to *Tzelem Elokim*.

Although *Bet Din* cannot collect payment even if the act was unintentional and the perpetrator is not actually subject to death, he owes the money and must pay it *LaTzet Yede Shamayim* – to fulfill his obligation to Heaven. For this reason, as the *Ketzot HaHoshen* (28) demonstrates from *Rashi (Bava Metzia*

91a), the victim is permitted to seize payment nonviolently. However, if the perpetrator was actually subject to death, like one who murdered intentionally and also damaged property, there is no monetary obligation of any kind (*Ketzot* *ibid.* citing *Yam Shel Shelomo* B.K. 6:6). A death sentence is the ultimate seizure; it wouldn't make sense to "additionally" take his money.

Likewise, in the case of a *Rodef* (pursuer), whom a bystander must kill if that is necessary in order to save the pursued. Because he was subject to death, there is no financial obligation at all. The *Ketzot* proves this from Rav's refusal to accept his property back from the man who burgled his home (*Sanhedrin* 72). A burglar is considered a *Rodef* and may be killed (*Shemot* 22:1), because we assume he comes prepared to kill the homeowner if he's confronted.

* * *

Last week, Jair Bolsonaro assumed the presidency of Brazil. During the entire election campaign, only once was he stabbed nearly to death. (He survived despite organ damage and 40% blood loss.)

Elected on a platform of a return to Biblical values, Bolsonaro roundly rejects secularism and leftism. Maybe there's hope for Brazil after all...

(continued from front pg.)



they both became *Ba'ale Teshuva* and they met on *Erev Yom Kippur!*

The thief who was caught told his friend he owes him \$50,000 for his share of the theft.

The *Havot Ya'ir* says that we may compare this to two "business" partners who borrowed jointly, where, if one was made to pay the full

loan the other must reimburse him for half. Or we can compare it to two damaging partners, where, if only one was caught, it would depend whether each one could've caused the damage on their own right. Thus, in our scenario, if each could've stolen on their own right, it would seem that each one is really responsible for the full value, whereas if they could've only stolen together, then each one is only responsible for a half.

The Daf in Halacha

Bring the Daf to Life!

מסכת חולין

This Week's Topics

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DAYAN, BAIS HAVAAD LAKEWOOD

RAV YOSEF GREENWALD

DAYAN, BAIS HAVAAD YERUSHALAYIM

RAV SHMUEL BINYOMIN HONIGWACHS

DAYAN, BAIS HAVAAD LAKEWOOD

- דף נ"ט WATER BUGS
- דף ס' NIGHT SEDER: LEARNING PESUKIM AT NIGHT
- דף ס"א KOSHER BIRDS : PART 1
- דף ס"ב KOSHER BIRDS : PART 2
- דף ס"ג KOSHER EGGS : PART 1
- דף ס"ד KOSHER EGGS : PART 2
- דף ס"ה INSECT INFESTATION: TORAH OR RABBINIC?



Business Halacha Services



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