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MOB RULES:

Does the Torah Sanction Vigilante Justice? PART II

Adapted from a Shiur by Rav Yosef Greenwald

JUSTICE AS DIVINE REPRESENTATION

Bet Din is called in the Torah by the Divine name: “Elokim” (*Shemot* 22:7).

A monetary *Bet Din* of three judges is G-dlike in that it brings justice to this world. A minor *Sanhedrin* of twenty-three carries the additional Divine mantle of the power over life and death.

For this reason, *Bet Din* doesn't employ an executioner to carry out its verdict. Because the *Dayanim* represent Hashem in administering justice in the world, they must themselves carry out that justice. It is not a task that can be assigned, like the sweeping of the *Bet Din* floor. Even the witnesses can't supply their testimony and walk away, they must participate in the execution along with the judges. And they go first (*Devarim* 17:7).

But capital punishment is almost never carried out in the Jewish justice system. There is a dispute in the *Mishna* (*Makkot* 1:10) whether a *Bet Din* that performs an execution as frequently as once in seventy years is “destructive,” or only one that does so once in seven. Ribbi Akiva and Ribbi Tarfon said that had they been in the *Sanhedrin*, no one would ever have been executed.

This is not only because of the dearth of crime in a Torah society, but because the *Halachic* conditions for execution are so onerous as to be almost impossible to meet: Two valid witnesses must view the criminal act, both from the same vantage point (*Makkot* 5); the perpetrator must be warned; and he must acknowledge the warning and proceed anyway. This would almost never happen, especially considering that crimi-

nals don't generally enjoy the company of witnesses.

Clearly, deterrence is not the goal of the Torah's death penalty. A would-be murderer who desists because he's worried about being executed by the courts is suffering from irrational fears.

Nor is it to punish, because that is Hashem's exclusive domain: *Mine is vengeance and repayment* (*Devarim* 32:35).

Rather, explains R' Shamshon Rephael Hirsch, the purpose of the Torah's death penalty is to create a presence of G-dliness in the world by demonstrating publicly that a person who rebels against Hashem doesn't deserve to live. That the court exercises this power so infrequently is of no import. Were an innocent man to be put to death in Hashem's Name, that would constitute a dreadful *Hillul Hashem*. Much of what passes for evidence in secular judicial systems—sufficiently so, to take a man's life—would be of no value in a Jewish court.

In the first installment of this series we spoke of the bright line dividing *Dine Nefashot* – capital punishment, from *Dine Mamonot* – monetary law. Unlike in the secular judiciary, a monetary *Bet Din* of three judges doesn't exist to punish financial crimes, because punishment, again, is outside the purview of *Bet Din*. Rather, payment is exacted from the thief or the arsonist precisely as it is from the borrower or the purchaser. Though theft is prohibited and borrowing is not, both create indebtedness. It is the brief of *Bet Din* to rectify this indebtedness by restoring monies to their rightful owners. [Nevertheless, one who damages property bears one additional burden: In the event that he lacks sufficient cash or personal property to satisfy his debt, and he is paying with real estate, he must surrender his best land.]

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Shiur on Parashat Teruma from Rabbi Mordechai Lebar

Talkin' Tech: Using the Nest Home System on Shabbat

The Nest thermostat's main function is to be energy efficient by learning the behavior of the dwellers of the house. Can one have it on on Shabbat?

There are a few potential issues. Firstly, when you pass by the thermostat it shows you the temperature. This can be easily solved by turning off that function.

Another issue is that it is sensing when someone enters the room and turns off the air conditioning when he leaves. This is worse than other thermostats which are also affected by people being in the room, because here it is more direct.

This is more of a problem because here it is *Niha Leh* – pleasing for the person – that the *Melacha* is done, unlike some other electronics applications around the house which may fall under the concept of *P'sik Reshe D'La Niha Leh* – an act that will inevitably happen, but is not pleasing to the doer. While the latter category is permitted by

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spotlight

Did you know that members of the Even Haezer Chabura rotate every week giving shiurim on different areas of practical issues related to Even Haezer?

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Although a thief who lacks the funds to make restitution is sold into servitude in satisfaction of his debt, this is a program to rehabilitate him for his own benefit rather than a punishment. Ultimate justice is not in human hands. As we find in *Bava Kama* 56 and elsewhere, one who causes damage indirectly, *Gerama BiNzikin*, is liable under the laws of Heaven but exempt under the laws of man. A driver who deliberately causes another to swerve and crash must pay for the damage, but the earthly court has no power to enforce that obligation. This is because indirect causation is not a *Ma'aseh Hezek*, an act of damage. The perpetrator is certainly at fault, but fault is not the purview of the *Bet Din*, only actions are. Hashem will hold the guilty liable.

Man is accountable for his actions in the earth-

ly court from age 13, but in the Heavenly one only at 20. Theoretically at least, a thirteen-year-old murderer could be executed by *Bet Din*, because at 13, his actions are his and would remove the Divine Presence, so *Bet Din* must perform *Mishpat* – justice – to restore it. In terms of responsibility and fault, one's deeds are not fully his fault until age 20. But *Bet Din* doesn't punish fault, it addresses actions in the physical world. In this world, a 13-year-old's *Ma'ase Kinyan* (transactional act) is his, and so are his *Ma'ase Hezek* – act of damage, and his *Ma'ase Retziha* – act of murder. So *Bet Din* must act.

In the next segment, we will address particular cases where an individual is permitted to intervene extra judicially.

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the *Shulhan Aruch*, the former is forbidden. Since one wants the Nest

system to pick up on his habits and save him money, this will not fall under the *Heter of P'sik Reshe D'La Niha Leh* (it may even be an issue of *Mitkaven* and may not be a *Gerama* either...).

This discussion is relevant to the "Kosher-Switch", which was originally billed as a *Gerama* – indirect causation – in a permitted way, but was ultimately forbidden by most *Poskim*. Additionally, Rav S.Z. Auerbach ultimately held that anything that is meant to happen systematically is considered to be a direct causation and not indirect. This would make the Nest system a problem (perhaps even an issue of *Make B'Patish* – completing

an action, as the *Shaar HaTziyun* writes regarding clocks).

Perhaps a possible solution is to set the Nest system on a schedule for *Shabbat* which may override the Nest's automatic programming. However, it's not clear whether it completely turns off the system. It may be that leaving one's phone at home on a specific setting would also prevent the system from running. All of these actions may make it into a *Safek P'sik Reshe* – it may inevitably cause an act forbidden on *Shabbat*, which is a subject of debate among the *Poskim* (*Be'ur Halacha* is lenient on a *D'Rabbanan*). It may also be considered *Lo Niha Leh*, if the person is trying to shut the system off.

[ואולי אפשר גם לצרף את סברת הגר"ש וואזנר שאם רק הולך כדרכו לא חשוב כעושה מעשה, וכן היקל הגר"ע יוסף לעניין הליכה ליד מצלמות ע"פ הר"ן והרשב"א בדין צידנה]

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