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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?

GENERAL HALACHA

A Defective Shaitel and the Wedding is Tomorrow!

By Rabbi Baruch Meir Levin



Q: My wife recently purchased a brand new *Shaitel* for my sister's wedding. Everything seemed perfect as she wore the *Shaitel* the past few weeks. To our great dismay, my wife just noticed that the *Shaitel* is missing some hair and is a defective product. My wife is adamant about returning this *Shaitel* but we are in a very uncomfortable bind. On the one hand, tomorrow night is the *wedding* and this is the only appropriate *Shaitel* that she has for such an occasion. There is no time left to get a new *Shaitel* in time for the *wedding*. On the other hand, she clearly wants to return this *Shaitel* as it has a defect. Is she allowed to wear this *Shaitel* once she has decided to return it and if she wears it can she still return the *Shaitel* for a full refund?

A: This is a classic example of a *Mekah Ta'ut*—a mistaken transaction. The *Shulhan Aruch* states that one who purchases an item and later realizes that it has a *mum*—a defect, may return the item even after many years¹. However, there are a few important conditions that must be met in order to be able to return this item:

Knowledge and Usage: As long as the consumer did not have knowledge of the defect

1 ועי' בשו"ת הגרעק"א (בתרא סי' ק"ו) דהא שנתבטל המקח היבא דיש בו מום, היינו משום דכל מקח הוי מכירה על תנאי שהמוכר יתן לו מקח שלם. ובמקרה שקיבל המקח עם מום, יש זכות ללוקח לטעון מקח טעות, ואז יש זכות למוכר להשלים התנאי ואינו משלימו, המקח בטל. והיינו, דבעצם המקח קיים אלא שאם טוען הלוקח מקח טעות, אז נתבטל המקח. אולם, עי' בשו"ת בית הלוי (ח"ג סי' ג') דפירוש אחר יש בדבר, דביטול מקח אינו מדיני תנאי אלא היבא דאיכא מום המקח בטל מפני שיש חסרון בעיקר המקח, והוי כאילו הלוקח קיבל מקח אחרת לגמרי ממה ששילם עליה.

at the time of the sale or at the time of the usage, he may return the item. If however, the consumer realized that there was a deficiency and still purchased the item, or the consumer only realized sometime after the purchase but continued to use the item, the usage indicates that the consumer is *mochel*—forgives the imperfection. The sale is therefore deemed valid as is. The consumer has forgiven his rights to return the object².

Express Dissatisfaction: Once the consumer realizes that the item has a defect, he must express this dissatisfaction to the seller to let him know he would like to nullify the sale. If the consumer recognizes the defect but waits beyond a reasonable amount of time to let the seller know, this lack of action indicates that the buyer is *mochel*—forgives his rights to return the item³.

Ability to Rectify: Even in a circumstance that the buyer has the right to return an item, the buyer cannot necessarily cancel the transaction and demand a refund. If the product can be fixed to be like new, the seller must be given the opportunity to fix the item in a reasonable amount of time. Conversely, if the item cannot be fixed to perfection, the seller may not force the buyer to keep the item and refund only the difference between what the buyer paid and what the item is really worth; rather, he must issue a full refund.

REPAIRABLE

Given the above set of conditions, it is important to analyze the details of our case. If the *Shaitel* can be fixed by adding some hair to the point that the *Shaitel* would be a perfect product, the buyer is not allowed to demand a refund and cannot just cancel the sale. This being the case, she should wear the *Shaitel* for the wedding and have it fixed afterwards.

If the *Shaitel* cannot be fully repaired to per-

fection, the buyer has the right to cancel the sale. However, this places the woman between a rock and a hard place; if she doesn't wear the *Shaitel*, she will be embarrassed at the *wedding*. If she does wear the *Shaitel*, she forfeits her ability to return the item because she has now used the item and has effected a *מהילה* waiving her rights of returning the *Shaitel* (as above).

DIRE CIRCUMSTANCES

There is, however, an exception to this rule. If the buyer is in a situation of an *אונס*—a dire circumstance, even if he is aware of the defect, he may use the item in the dire situation and still have the right to return the object. For example, if one rented a car and midway on his journey he realizes that the air conditioning is broken and he wants to demand compensation for this defect. He may continue using the car and demand compensation at the end of his journey. The same *Halacha* would apply in our scenario. Since the woman is in a dire situation and would be left without a fitting *Shaitel* for the *wedding*, she may use the *Shaitel* and may still demand a refund or a full repair after the *wedding*.

NOT AVAILABLE

Another exception is a case where the consumer would like to return the item immediately but the seller is not available. In this scenario, even if the item was used after the defect was noticed, the usage is not considered a *מהילה*—and the right to return the object still stands⁴.

NOTIFIED IN ADVANCE

There is a dispute in the *Poskim* if one can retain the right of return and repair by first notifying the seller of the defect before he uses the item. Some maintain that if advance notice is given to the seller, even if the object was used thereafter, the usage does not indicate a *מהילה* on behalf of the buyer, because the buyer expressly communicated his dissatisfaction with the item. In our scenario, if the woman would notify the *Shaitel maker* that she intends to return the item but she needs to wear it for the *wedding*, she would still retain the right of return or repair according to some *Poskim*⁵.

4 כן פסק הנהיבות (משה"א סק"א) והובא להלכה בפתחי תשובה שם סק"א.

5 המחנה אפרים פסק דלא חשיב מהילה, והגליא מסכת הוכיח דחשיב מהילה (והובא בפתחי תשובה שם).

2 שו"ע חושן משפט סי' רל"ב סעי' ג'.

3 מדברי הרמב"ם (הובא במקור המשפט) משמע דעד שמשמש במקח לא חשיב מהילה. אבל הרדב"ז (סי' קל"ו - ח"ד סי' אלף ר"ו) מביא בשם רב האי גאון דהיבא דהוי הדין עם שמעון צריך לישבע שמעון שלא הרגיש במום זה עד עתה, ועכ"ל. ודייק המחנה אפרים (הל' אונאה סעי' ד') דמיד כשמרגיש הלוקח במום שצריך להחזירו, ואם אינו מחזירו מיד נחשב ההמתנה למחילה ושוב אינו יכול לטעון מקח טעות. וכן משמע ברי"ף בב"מ (דף ג) שכתב ח"ל והיבא דזבין איניש מידי ולאחר זמן איגלי ליה דאית ביה מומא דהוה ביה מעיקרא מקמי דלזבניה, אית ליה לאהדורי למריה ולא אמרינן בבי הא, הא שהה ליה בכדי שיראה לתגר או לקרובו, דלא אמור רבנן הכי אלא גבי אונאה. אבל גבי מומין מקח טעות הוא, וכל אימת דמיגלי ליה מהדר ליה למריה, והכי כתב רבינו האי גאון זצ"ל, ועכ"ל. ומלשון "וכל אימת דמיגלי ליה וכו'" משמע דצריך להחזירו מיד, דאם לא עשה כן נחשב למחילה.

MATTERS OF INTEREST

Avissar Family Ribbit Awareness Initiative

USUAL AND UNUSUAL FAVORS

May a person do favors for someone he owes money to? For example, Reuven, who owes Shimon money, was in a Sefarim store and saw a Sefer that Shimon always wanted. May he do him a favor and buy the Sefer? What if they always exchange favors? What if they became friends through the loan process?

A teacher lent money to a student for a taxi ride home. May the student chip in to buy the teacher a Hanukkah present while the loan is outstanding?

Many people will assume that these questions, or those that follow, do not apply to them since they don't owe any serious money to anybody. However, this is a mistake.



As explained in the overview, aside from borrowing money or commodities, the status of a "borrower" in *Halachah* can be achieved in many ways. Purchasing merchandise on credit falls into this category. Until the buyer pays his bill he is considered a "borrower," and the seller, a "lender." Similarly, after workers complete a project or a repair, the employer is considered a "borrower" and the employees "lenders," as the job has ended and the wage payment is outstanding. Owing money for tuition is also considered borrowing.

When such titles are conferred, the laws of *Ribbit* will apply in some form or another.

One important *Ribbit* restriction is that the borrower may not benefit the lender in connection to the loan. Offering favors is viewed as overpayment, and therefore a form of *Ribbit*. This is forbidden between friends just as between strangers, rich or poor.

However, there are certain laws related to extending favors which are sometimes relaxed between friends, depending on the level of friendship. People may know each other, but are not necessarily considered friends. The parties must determine the level of friendship before extending or requesting favors.

HALACHOT OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer Ou Kosher Halacha Yomis

Laws related to Berachot



What Beracha does one recite on granulated cane sugar?

The *Shulhan Aruch* (O.H. 202:15) follows the opinion of the *Rambam* that the *Beracha* for sugar is *Shehakol*. The *Mishna Berura* writes that since there are varying opinions in the *Rishonim* as to the *Beracha* for cane sugar, *B'Di'avad* (after the fact), if one recited *Ha'Etz* (opinion of the *Tur*) or *Ha'Adama* (opinion of the *Halachot Gedolot*), one does not repeat the *Beracha*.

The accepted ruling is that on all forms of sugar, whether extracted from a cane or a sugar beet, we recite *Shehakol*. The *Be'ur Halacha* writes that even if one were to suck on the sugarcane itself, one should recite *Shehakol*.

According to some opinions, the Beracha for sugar is Ha'Etz or Ha'Adama. What is the explanation for these views?

The *Tur* writes that the *Beracha* for sugar

from sugarcane is *Ha'Etz*. The sugarcane is a woody perennial stalk which has the status of a tree. Ordinarily, when juices are extracted from a fruit the *Beracha* changes to *Shehakol*. Nonetheless, in this case it remains *Ha'Etz*, since the main intent of growing the cane is for these juices. The *Tur* holds the *Beracha* is *Ha'Etz*, not only if one sucks on the sugarcane, but even if one eats granulated sugar.

The *Be'ur Halacha* explains the rationale of the *Halachot Gedolot* who maintains that the *Beracha* on sugar is *Ha'Adama*. Although sugarcane is a tree, it does not produce any actual fruit. Rather, the juices that are extracted are taken from the cane itself. Since there is no actual fruit, the *Beracha* is downgraded to *Ha'Adama*.

As noted the accepted *Halacha* is to follow the opinion of the *Rambam* and recite *Shehakol* on sugar.

OF INTEREST AT THE BET HAVAAD

The bold words: A Place to Turn introduced the recent comprehensive article featuring The Bet HaVaad Medical Halacha Center in the AMI magazine special medical issue. The in depth coverage was the result of interviews with the MHC Poskim, Rabbi Yosef Fund, Rabbi Eliezer Gewirtzman, Rabbi Moshe Zev Feldman and Rabbi Yosef Jacobowitz, shlit"u, conducted by AMI reporter, Yosi Krausz, as well as background and an overview discussion with Medical Center Director, Rabbi Yehoshua Greenspan.

In the few short months since the Center has gone public, multiple media outlets have expressed interest in interviewing this groundbreaking initiative, the first of its kind in North America.

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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]

The Daf in Halacha

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מסכת חולין

This Week's Topics

RABBI AHARON KAHN

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RAV YOSEF GREENWALD

DAYAN, BAIS HAVAAD YERUSHALAYIM

RAV YEHOShUA GRUNWALD

DAYAN, BAIS HAVAAD LAKEWOOD

- דף ע"ג LONG NAILS & CHATZITZA
- דף ע"ד THE MILK OF A BAS PEKUA
- דף ע"ה “HOW “SHECHTED” IS A BEN PEKUA?”
- דף ע"ו LEG INJURY: THE TREIFAH OF TZOMES HAGIDIM
- דף ע"ז “WAYWARD WAYS: DARCHEI HAE-MORI”
- דף ע"ח THE HALACHOS OF KISUI HADAM
- דף ע"ט “WITH CHILD: UNDERSTANDING THE MOTHER: FETUS RELATIONSHIP”

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