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MOB RULES:

Does the Torah Sanction Vigilante Justice? PART III

Adapted from a shiur by Rav Yosef Greenwald

GOING ALONE

Bet Din has a side job in addition to *Mishpat* (justice): to serve as *Shotrim* – officers (Devarim 16:18). This function requires *Bet 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 *Gerama* (indirectly), *Bet Din* could apply social pressure or excommunicate him, but that is not a *Mishpat* function.

Likewise, on the *Dine Nefashot* (capital offenses) side of the aisle, if a murderer is known to *Bet 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 L'Moshe MiSinai* (a law not written in the Torah, but handed to Moshe and down the generations). 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 *Nimuke Yosef* understands that the victim is empowered by *Bet 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: the *Mordechai*, citing *Maharam M'Rottenberg*, 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 *Bava Kama* writes that a creditor can't seize property for collateral without resort to *Bet 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 *Shabbat*. 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 *Ketzot* and the *Netivot* (3) disagree whether an individual may force someone to perform a positive *Mitzva* (as *Bet Din* must). R' Moshe Sternbuch writes that one who knows his friend violates *Issurim* with one of his possessions he 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. Rotzeah* 1:6), but lethal force may be applied only if the threat cannot be averted by nonlethal means (*Sanhedrin* 84a). The *Mishneh LaMelech* (*Hil. Rotzeah* 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.)

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.” Is this a case of self-defense, or, because the threat can be eliminated by simply comply-

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A Parasha & Halacha Shiur Summary, Parashat Tetzave, by Rabbi Moshe Medrez

Holy Oil: Understanding the Miracle of Hanukkah

The Gemara in *Shabbat* 21b relates the story of the miracle of *Hanukkah*. *Maran* asks the famous question (which was asked by many *Rishonim*): why is *Hanukkah* 8 days and not 7 days if they found oil that would last for at least the first day?

The *Tosafot HaRosh* gives his own three answers: 1. They divided the oil into eighths, thus every night was a miracle. 2. They poured all of the oil in the Menorah on the first night, but the amount left in the Menorah didn't go down. 3. They poured the contents of the jug into the Menorah, but found that the amount of oil in the jug remained the same.

Rav Chaim Brisker asks on the third answer, how can such oil be used, if it is produced by a miracle and is not a physically sourced oil? Rav Chaim concludes that the answer has to be that the miracle enhanced the ability of the oil to last for eight days and not that the miracle “produced” oil.

The Gemara in *Horayot* and *Keritut* discusses the many miracles that involved the *Shemen HaMishcha* – the oil that was used to anoint the *Mishkan* and its vessels as well as the *Kohanim*.

The *Havatzelet HaSharon* quotes Rav David Soloveitchik, grandson of Rav Chaim Brisker, who claims his grandfather never said what is attributed to him. He adds, that the Gemara in *Menachot* says that wheat that is brought

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GENERAL HALACHA

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

By: Dayan David Grossman, Rosh Bais HaVaad



One may think that the *Halacha* of "Yored" (one who improves his friend's property without permission) does not often apply. According to the Gemara, a person who completes a job without the owner asking for it, is called a "Yored L'Toch Sede Havero Shelo BiRshut" - 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 *Bet 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 *Terumat 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 *Terumat 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 *She'elah* was brought before Rav 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 Rav 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 *Hevra Kadisha* to receive the \$1,000 as commission. However, the Israeli man was uncomfortable telling his American relative that he was taking a commission.

Rav 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 *Hoshen Mishpat* consultation to find out what his rights are, or go to a *Bet Din* or a knowledgeable third party.

MATTERS OF INTEREST

AVISSAR FAMILY RIBBIT AWARENESS INITIATIVE

Favors for the Lender

Regarding favors and *Ribbit*, the following levels of friendship and favors are discussed in *Halacha*:

Acquaintances: Favors one would not have done otherwise: A *private* favor the borrower would not have done previously for the lend-



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 of-*

ferred 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

the present if he would have done so regardless of the loan. Otherwise, it is considered *Ribbit*. This would be forbidden even after paying up the loan (*Ribbit Meuheret* – belated interest; 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 *Hakarat HaTov* – gratitude.

HALACHOT OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer Ou
Kosher Halacha Yomis

Laws related to Berachot



What Beracha is recited on papaya?

We recite *Bore P'ri Ha'Etz* on fruit and *Bore P'ri Ha'Adama* on vegetables. 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 *'Orla* and may not be consumed? *'Orla* 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.

Rav Belsky, zt"l suggested that the status of papaya with respect to *'Orla* and *Berachot* are not necessarily one and the same, and one may recite *Ha'Etz* on a papaya since it grows on a tree. Still, Rav Belsky thought it best to recite *Ha'Etz* and *Ha'Adama* on a separate fruit and vegetable, and then eat the papaya. By doing so, one covers all the bases and satisfies all opinions.

However, the *Hazon Ish* and Hacham Ovadia Yosef zt"l are of the opinion that if we consider papaya a vegetable with respect to *'Orla*, then a papaya is a vegetable as well in the realm of *Berachot*, and the proper *Beracha* is *Ha'Adama*.

What Beracha does one recite on candied

orange peel?

The *Mishnah Berura* (202:39) writes that there are three opinions as to what *Beracha* should be recited on candied orange peels. The *Taz* (OH 204:15) writes that one should recite *Ha'Adama*, since the *Gemara* writes that on the peel of the fruit of the caper bush one recites *Ha'Adama*. The *Taz* maintains that the same holds true for other peels as well. The *Magen Avraham* (202:17) writes that one should recite *Ha'Etz*. 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 *Beracha* is *Shehakol*. He explains that the *'Ikar* (main ingredient) in candied orange peels is the sugar or honey, which is *Shehakol*. The *Mishna Berura* concludes that because of the doubt, one should recite *Shehakol*, since it is the most inclusive *Beacha*, as is the opinion of the

However, *B'Di'avad* (after the fact), if one recited *Ha'Etz* or *Ha'Adama*, they may rely on the other opinions and eat the peel.

EVENTS AND HAPPENINGS AT THE BET HAVAAD

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 Bet HaVaad Medical Halacha Center is privileged to provide this to *Am Yisrael*.

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"n, *Posek* at The Bet HaVaad's Medical Halacha Center, as part of the bi-weekly lecture series for Rabbanim and members of the medical field.

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ing, must the threatened party give in? The *Galya Masechta* (Y.D. 5; see also *Teshuvot Helkat Yo'av, Kuntres He'arot* 17) takes the former view. He proves it from the Gemara that says that Zimri would've been allowed to turn and kill Pinhas out of self-defense, even though Zimri could have eliminated the threat from Pinhas just by stopping what he was doing. (This is relevant to the controversial "stand your ground" laws in many U.S. states and the de-

bate 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 *Minhat Shelomo* Vol. 1, 7:2).

* * *

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

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miraculously is acceptable to be used for a *Minha*. He says that the reason

must be that as long as the miraculous item is exactly like the one that is naturally found, it is acceptable.

The *Gemara* in *Sanhedrin* discusses two *Amoraim* who were studying the secrets of the Torah and created a calf. The *Shlah* in *Parashat VaYeshev* writes that it didn't require *Shehita*,

unlike our previous assertion. Another *Gemara* writes that if it would be possible that a non-kosher item would fall from Heaven it would be permissible. How then do we reconcile all of these sources?

The *Havatzelet HaSharon* writes that there is a special Halacha with regards to Menorah oil that it must be crushed. This seems to be the Rambam's opinion as well. Thus we can understand why miraculous oil would be unacceptable.

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