

THE PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

Dayanus Shiur Four

Mareh Makomos for this Shiur

Shulchan Aruch, Choshen Mishpat Siman 1:5-6 - Siman 2:1

Nesivos HaMishpat, Siman I, S.K. 5

Gemara Bava Kamma 91a

Rosh, Bava Kamma, Perek HaChovel (Eighth Perek) Siman 15

Gemara Sanhedrin 46a

Rambam, Laws of Sanhedrin 24:4-10

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Table of Contents

- 1. Seifim in the Shulchan Aruch and Rama Pertinent to This Lesson (including notations of the Shach and Sma)**
- 2. When a Victim of Theft “Grabs” the Torah’s Fines**
- 3. Is Niduy Imposed on a Thief to Force Him to Pay Fines?**
- 4. Tefisa that Stems from a Ruling of a Non-Jewish Court**
- 5. “Grabbing Back” When There Was Already Tefisa**
- 6. Today’s Courts & Damage Payments for Words that Embarrass**
- 7. When Someone Verbally Embarrasses a Talmid Chacham**
- 8. Distinguishing Between Fine Payments and Monetary Payments**
- 9. Special Punitive Measures for Crisis Situations**
- 10. Who Is Permitted to Take Such Punitive Measures?**
- 11. When Solid Evidence is Lacking During a Crisis Situation**
- 12. The Words of the Rambam about Such Emergency Powers**
- 13. Review Questions**

The Authority of Judge's Today

Shiur

4

Siman 1 Seifim 5-6

5 Although judges who lack semicha attained in Eretz Yisroel are not authorized to collect fines (13), if someone according to the Torah deserves to be fined, the judges have the power to decree Niduy (excommunication) upon the guilty party until he appeases the person that he harmed (14). Once he pays the appeasement, according to the sum that the court deems proper [17], the court lifts the excommunication (whether the one who receives the payment is satisfied with the sum or not). Similarly, if, according to the Torah, someone deserves to collect a fine for damages, if he grabs [from the other party] belongings worth the amount due him according to the Torah [he does (Tefisa) -- "taking hold" i.e. "collecting" on his own) the judges do not intervene (15). He is allowed to keep what he seized (16).

Rama: But if the damaged party asks [the court], "Please assess for me my damages, so that I can know up to what amount I am allowed to grab," (17) the court does not listen to him. Rather, if he already has grabbed on his own, they tell him (18), "This much is permitted [19] but any more you must return (Tur in the name of the Rosh, Perek HaChovel and end of the first perek of Bava Kamma). All of this is relevant to fines written in the Torah [20]. On the other hand, where chachamim decide to charge a fine [21] for a purpose they deem constructive (See Siman 2) they can collect it (Mordechai, end of Perek HaSlolaiach).

6 If someone, by means of his words, intentionally embarrasses someone else [22], he is put into Niduy until he makes fitting financial appeasement, according to the honor of his victim [22] (19).

Rama: See further on Siman 420, Se'if 38 (20). Also, Siman 2 regarding when someone deserves lashes, whether he can pay money in order to exempt himself.

Siman 2:1

1 Any Beis Din (1) [1], even one whose judges lack semicha attained in the Land of Israel [2], if it sees the nation wantonly sinning (2) [3] (and emergency measures are necessary) (Tur), it can punish with death, monetary measures [4] or other means of punishment, even in the absence (3) [5] of solid evidence [6]. If the accused is strong and violent, the court can call in non-Jews to beat him [7]. (The courts also have the power to divest people of their property [8], or destroy belongings, as the judges see fit as essential temporary measures to control the generation) (Tur in the name of the Rambam, Laws of Sanhedrin Chap. 24). All of their actions must be for the sake of Heaven. Such powers, however, rest only with the greatest Torah authority of the generation, or with a city's finest citizens [9] when the community appoints them over them as a court.

Rama: Such is the custom everywhere [10] – that in their own city, a city's finest citizens are like the greatest Beis Din, giving lashes and other punishments, and divesting people of belongings (making their property hefker – ownerless), according to the custom. Although some argue and maintain that a city's top residents lack these powers [11] and only can force residents to comply with previous customs [12] or with what everyone accepted upon themselves, but they are not permitted to make changes that bring profit to one and loss [13] to another (5), nor can they divest anyone of any of his property unless the entire community approves (Mordechai, Bava Kamma Tenth Perek), nevertheless, every city follows its own custom (6). All the more so if the city's population appoints them over them regarding all matters [14]. So it appears to me (See Yoreh Deah, Siman 228, Laws of Community Takanot and Bans).

In responsa, Achronim have written that if someone deserves lashes, he can pay forty golden coins [15] to exempt himself (Mahariv Siman 147 and Maharam of Rizbork). They did not mean that according to the law he was deserving of this punishment. Rather, due to the times they gave this sentence, for in emergency situations, courts have the ability to give physical or monetary punishments [16], whatever is fitting in their eyes, according to the case at hand, to bring the situation under control (See further on, Beginning of Siman 425, Rama).

A Brief Review of Niduy and Tefisa

SIMAN 1:5

Towards the end of the previous lesson we cited opposing opinions in the **Rishonim** about the ability of today's courts to impose *Niduy* on someone who refuses to monetarily appease someone when according to the Torah he owes that person a fine for damages that he caused him. We also spoke of the opinion that in cases of fines, when the damaged party seizes belongings of the other party (i.e. he does *Tefisa*) in order to “collect” his fine, he can keep what he seizes. The court does not intervene, so long as the value of the items seized does not exceed the

sum of the fine that he was due according to the Torah. Now, let us set forth the rulings of the **Shulchan Aruch** and the **Rama** on these and related matters.

The **Shulchan Aruch** opens by citing the opinion in **Rishonim** (the **Rif**, **Ra'avad** and the **R' Shrir Gaon**; See Lesson 3):

Although judges who do not have *Semicha* attained in Israel cannot collect fines, they can decree *Niduy* on he who is responsible for property damage (or causes human injury). The *Niduy* remains in effect until he financially appeases the other party. When he pays the sum that the other party deserves, the court lifts the *Niduy*.

In the **Shulchan Aruch**, it is written in parenthesis that the *Niduy* is lifted whether the one who receives the payment is satisfied with the sum or not.

The **Shulchan Aruch** also rules according to the law mentioned in the Gemara and by **Rishonim** (See Lesson 3):

If the damaged party does *Tefisa*, taking no more than what he is due (in light of the damage he suffered) the courts let him keep what he took.

The Victim “Grabs” and Keeps

Regarding theft, the **Sma** (*Seif Katan. 18*) adds the opinion in the **Rishonim** (**Rosh** and **Tur**, end of *Siman 349*) the law of *Tefisa* also applies if fines of *Kefel* (“double the principle”) or “four or five times the principle” are seized by the stolen property’s owner. Once a court hears testimony from two witnesses that a theft occurred, then according to the Torah, the court makes the thief pay the other party a fine so that in the end, the owner of the stolen object gets back double the principle. This is called the fine of *Kefel* – “double” the principle. If certain animals that are kosher for offerings are stolen, and after the theft the thief sells the animal or slaughters it, the court makes him pay the owner fines of four or five times the principle. The **Sma** cites the opinion in the **Rishonim** that if the stolen object’s owner does *Tefisa* and grabs belongings of the thief in order to “collect” these fines, the courts let him keep what he seized.

Seizing Fines

There is an opinion in the **Rishonim** (the **Maharam HaLevi**, cited in the **Rosh**, **Bava Kamma**, First *Perek*, *Siman* 20) that regarding the fines for theft, seized property cannot be kept, since the one who does *Tefisa* wins a profit from it.

According to this view, *Tefisa* “helps” and the seized property can be kept only when the *Tefisa* saves money loss, but not when it results in financial profits. Thus, if the owner of the stolen property seizes goods of the thief in order to “collect” the fines that he would profit if the judges were *Semuchim*, today’s courts intervene and force him to return what he took.

According to the **Rosh** (cited by the **Tur**) and others, however, and such is the *Halacha*, the court does not intervene in such cases of *Tefisa*. The owner of the stolen property can keep what he seized, provided that he did not seize too much. In the words of the **Rosh**, the owner of the stolen object “is allowed to take the law into his own hands. The courts make him give back what he seized, so that the thief winds up paying the owner all that he could collect according to the Torah.”

Imposing on a Thief to Force Him to Pay Fines

One also can wonder whether the aforementioned use of *Niduy* applies to these fines. The *Achronim* differ about this issue.

1. The **Sma** cites the ruling of the **Ir Shushan**, who says that today’s courts have the power to place a thief into *Niduy* until he pays these fines, for these fines are authorized by the Torah. The courts impose *Niduy* on the thief until he appeases the stolen object’s owner by paying him a sum that approaches what these fines would be were the case brought to judges who have *Semicha*.
2. The **Sma**, however, disputes this ruling. He maintains that today’s courts cannot use *Niduy* as coercion to help the damaged party recover any more than his loss. Courts can impose *Niduy* on a thief only until he makes compensation for the principle. Once the owner of the stolen object recovers his loss, the *Niduy* must be lifted.
3. The **Sma** explains his ruling by citing the **Tur**, who writes that early halachic authorities began to use *Niduy* as coercion to extract payments because they saw that people could be harmed by the fact that in our times, courts lack jurisdiction over certain cases. For example, they cannot judge cases of fines or cases that do happen frequently. It is not often that

one Jew intentionally injures another, and for this reason, today's courts have no jurisdiction over such cases. The early halachic authorities saw that too often, someone who might be angry with his neighbor might assault and injure him, knowing that today's courts are powerless in such a case. Because the courts have no jurisdiction in such infrequent cases, writes the **Tur**, "corrective legislation was instituted whereby if someone intentionally injures his fellow Jew, the court can put the aggressor into *Niduy* until he financially appeases the one he injured."

4. The **Sma** writes, "It sounds from the words of the **Tur** that *Niduy* was meant to be a tool only in cases of assault and the like. In cases of assault, nothing more than the principle has to be paid by the guilty party and were it not for the *Niduy* people would go around assaulting one another. *Niduy* was not instituted regarding Kefel or the fines of 'four or five times the principle,' as if without the *Niduy*, people would go around stealing from one another, for clearly, when someone steals, he knows that he will have to pay back the principle." The **Shach** (*Seif Katan 14*) rules like the **Sma**.

Tefisa

After a Ruling from a Non-Jewish Court

The **Shach** (*Seif Katan 15*) writes in the name of the **Maharshah** (*Yam Shel Shlomo, Bava Kamma, Siman 43*) that the laws of *Tefisa* apply and the seized object can be kept only if the damaged party's original claim was justifiable under Torah law. If, however, his claim was justifiable only according to the non-Jewish laws of the locality, he is forbidden to keep the belongings that he seized from his fellow Jew.

Before the Fact

As cited in the **Pischei Teshuva** (*Seif Katan 5*), however, **R' Akiva Eiger** argues with this interpretation of the words of the **Maharshah**. According to **R' Akiva Eiger**, the **Maharshah** speaks only of "before the fact."

That is, the **Maharshah** means simply to qualify the law about the damaged party's right to go ahead and seize belongings from the other party. He can do so, writes the **Maharshah**, only if he could have won his claim in a Torah court of law (if the judges were *Semuchim*), but not if he would have won only in a non-Jewish court of law. In such a situation, writes **R' Akiva Eiger**, the **Maharshah** does not address what would be if the damaged party already seized belongings of the other party. According to **R' Akiva Eiger**, even if the claimant could have won his case only in a non-Jewish court, if on that basis he went ahead and did *Tefisa*, Jewish courts

would not be permitted to intervene, so he would wind up keeping what he seized. **R' Akiva** notes that such is implied by the words of the **Rama** in *Siman* 4.

“Grabbing Back” From the Victim

In the same *Siman* of the **Yam Shel Shlomo**, the **Maharshal** rules:

If someone who allegedly suffers damages does *Tefisa*, and then the other party grabs back what was seized from him, the courts may intervene and might well return the seized object to the one who seized it. If the court determines that the claimant’s claim was justified, and the other party, in fact, owed him money, the resulting law is that the *Tefisa*, too, was justified.

Therefore, the one who did the *Tefisa* gets the object back. From the moment that he seized it, it became his, says the **Maharshal**, so the court makes the original owner return it to him. As cited in the **Pischei Teshuva** (*Seif Katan* 6), **R' Akiva Eiger** agrees to this ruling.

The **Nesivos HaMishpat** (*Seif Katan* 5), however, takes issue with this ruling. He writes:

From the words of the **Rosh** (*Bava Kamma*, First *Perek*, *Siman* 16), it sounds as if the two litigants in such a case have equal rights. Just as if one does *Tefisa*, he can keep the object, such is the law if the other does *Tefisa*.

The **Nesivos** discusses this question at length, and deeply analyzes the words and approach of the **Rosh**.

In this *Siman*, the **Rama** begins with the ruling of the **Rosh** that if someone who allegedly was damaged asks the court,

“Please assess for me my damages, so that I can know up to what amount I am allowed to grab,”

In that case the court does not listen to him. Rather, if he already has done *Tefisa*, they tell him,

“This much is permitted but any more you must return.”

Afterwards, the **Rama** rules like the **Mordechai**, who says that courts today lack authority to collect fines only with respect to fines set forth by the Torah.

On the other hand, where *Chachamim* see the need to institute additional fines, for special situations, they have full authority to collect these fines. In addition, if they make a decree and institute a fine for anyone who violates it, they have full authority to collect the fine. (Accordingly, anyone who is owed such fines would see no need to do *Tefisa* to “collect” it on his own.)

The **Shach** (*Seif Katan* 17) cites the **Maharshal**, who decides in favor of an interesting distinction made by the **Rif**:

One might think that all cases that are not judged by today’s courts are in every respect considered like fines, even if the claim is not a fine. Even if the claim is purely monetary, unless it is a case that arises frequently and involves purported monetary loss to the claimant – today’s courts lack jurisdiction, just as they lack jurisdiction over cases of claims of fines instituted by the Torah. One might think, therefore, that if a claimant in such a case comes to the court and asks the judges, “Please assess for me my damages,” for he plans to do *Tefisa* and does not want to seize too much, the court does not listen to him. After all, such is the ruling if someone comes to court and makes such a request regarding a fine that he claims is due him according to the Torah.

Assessing Damages to do Tefisa

The **Rif** rules, however, that if someone’s claim is purely monetary, and he asks the court to assess his damages for the purposes of *Tefisa*, the court complies with his request, even if his claim is not a type that is made frequently. Although technically, courts lack jurisdiction in such cases, they come to this person’s aid, for the purposes of *Tefisa*, for the very reason that his claim is purely monetary and does not involve a fine of the Torah.

Damage for Words that Embarrass

SIMON 1:6

We find in the **Gemara** (*Bava Kamma* 91a) that if someone, by means of his words, intentionally embarrasses someone else, there is no fine or monetary payment of damages, according to the laws of man. In his commentary on **Bava Kamma**, (*Perek HaChovel, Siman* 15) the **Rosh** rules accordingly.

The **Tur** brings the ruling of **R’ Shrirah Gaon** (cited in **Piskei HaRosh**, *Perek HaChovel, Siman* 3) that although, according to the Torah, he who speaks such malicious words cannot be made to pay for the hurt that he caused, courts of today do intervene. If the one who was embarrassed complains in court, the

judges impose *Niduy* on the speaker of the hurtful words. As to the one who suffered the embarrassment, the more distinguished and honorable he is, the larger will be the required sum for appeasing him, for his suffering is greater. Until the speaker of the embarrassing words appeases his victim according to the sum that was fixed, he remains in *Niduy*.

Reason dictates, adds the **Rosh** that embarrassment caused by someone else's malicious words is worse than embarrassment arising from wounds sustained from physical assault. Seemingly, the **Rosh** seeks to explain why the speaker is put into *Niduy* for his hurtful words.

Verbally Embarrassing a Talmid Chacham

The **Tur** cites the **Talmud Yerushalmi** (*Bava Kamma* 8:5) which speaks of a case where someone uses his power of speech to embarrass a *Zakein*. Literally, *Zakein* means “elderly man,” but in terms of the *Halacha* at issue, *zakein* connotes “Torah scholar.”

THE YERUSHALMI RELATES:

*It happened once that someone spoke with great gall to **R' Yuda Bar Chanina**. The incident came before **Reish Lakish** who fined the person “a litre of gold.”*

According to some, this measure is the weight of 35 golden *Dinarim*, while others explain that it is the weight of 36 such coins (Sma Seif Katan 23). From here it is derived that when verbal abuse causes embarrassment, if the victim is a *talmid chacham*, courts of today can take an additional punitive measure, other than *Niduy*.

Defining a Talmid Chacham

The **Shach** (*Seif Katan* 19) writes that authorities differ whether in our times; anyone can be considered a “*talmid chacham*” with respect to this fine of “one litre of gold.” The **Rama** writes in **Yoreh Deah** (243:2) that this law does not apply in our times, but not all authorities agree.

The **Shulchan Aruch** rules like the **Rishonim** who say that courts can use *Niduy* as coercion, not lifting the *Niduy* until the speaker of the embarrassing words appeases his victim with a fitting sum, according to his victim's honor and position in society.

The **Rama** refers us to *Siman* 2, regarding when someone who deserves lashes, whether he can exempt himself by paying money. (G-d willing, we will study this matter in Lesson 5).

Fines vs. Monetary Payments

Above, we mentioned the ruling of the **Rif** (See **Shach** *Seif Katan* 14) who makes a distinction between two types of cases that today's courts are not authorized to judge:

- 1) Claims of fines instituted by the Torah.
- 2) Purely monetary claims in cases that do not arise frequently.

If someone claims that he was damaged but according to the Torah can collect only a fine, if he comes to a court of today and asks the judges,

“Please assess for me my damage.”

Since he plans to do *Tefisa*, the court does not listen to him. According to the **Rif**, the court does listen to such a request if the claim is purely monetary but courts today cannot hear such a claim because it is something that is not claimed frequently.

Summary

In closing our discussion of **Siman 1**, it is important to point out that the **Ketzos HaChoshen**, too, distinguishes between these two types of claims, but in a different fashion. He writes in (*Seif Katan* 7):

Regarding the second type of claim – the one that is purely monetary – if the claim is true, although the responsible party does not have to pay compensation according to the laws of man, he is held accountable according to the laws of Heaven. If he does not appease the other party, he is considered a thief.

This is not so regarding the first type of claim – the claim of a Torah fine. Not only do today's courts lack authority to collect such fines; even if the claim is true and the fine is not paid, there is no accountability even according to the laws of Heaven. Although in such a case, today's courts can place the person into *Niduy* in an effort to coerce him into paying, if he refuses he is not considered a thief.

This is so, explains the **Ketzos**, because regarding fines, the Torah says (*Shemos* 22:8), **Asher Yershiun elokim** – “**The one whom the Judges find guilty**” therefore only courts of *Semuchim* can obligate someone to pay a fine of the Torah.

The obligation to pay such a fine is created only by court action – action of *Semuchim*. Since today, no judges are *Semuchim*, courts have no power to obligate such fines in a direct way, and therefore, no obligation to pay these fines can exist today, even according to the laws of Heaven. In such a case, when someone is placed into *Niduy* to coerce him to pay appeasement, even if he continues to refuse to pay and remains in *Niduy*, he is not considered a thief.

Times of Crisis Demands Action

SIMAN 2:1

This law's source is a passage in the **Gemara Sanhedrin** (46a). The **Gemara** declares:

For the sake of “making a fence” around the Torah, courts are authorized to give people lashes and other punishments, even when the person who is punished did not do anything that warrants such measures according to the Torah.

Courts can take such steps when they see that the nation has reached an intolerable level lawlessness. These emergency measures are designed to stop further deterioration, bring the people back in line and assure that the Torah will not be violated.

The **Gemara** relates that it once happened (in the days of the Greek Empire):

*A Jewish man rode a horse on Shabbos.
He was brought to court for this offense and the Beis Din put him to death by means of stoning.*

According to the Torah, one does not deserve death for riding a horse on Shabbos. One who does so violates a Rabbinic prohibition, but according to the Torah he is completely exempt. Nevertheless, the *Beis Din* put this man to death, “for the times required it.” **Rashi** explains that in those days (due to the influence of the Greeks), “the nation had “broken through the Torah’s barriers” i.e. they were wantonly sinning.

The **Gemara** also cites an incident:

*A man had relations with his wife under a fig tree (and people saw).
He was brought to Beis Din and the Judges ruled to give him lashes.*

The **Gemara** explains that although, according to the Torah, he did not deserve this punishment, “the times required it.” Apparently, many people’s morals had deteriorated to the point where things of this nature were not uncommon, so the situation had to be brought in check. Seeing that this man had been given lashes, people would be afraid to do anything similar to what he did.

Emergency Powers

The **Tur** begins by citing the above passage from the **Gemara**. He adds that outside of the Land of Israel, although courts are not empowered to give lashes or administer the death penalty, and neither can they collect fines, if they see that the times require it, for the nation is wantonly sinning, the courts can give these punishments. They can use both physical and monetary punitive measures. Drawing from a precedent found in a **Mishna in Gittin** (88b), the **Tur** adds:

If someone has behaved improperly (in an area where lawlessness is common), but the offender is (strong, perhaps violent, and would not listen to the words of the judges), the court is allowed to call in non-Jews to beat him. The courts have the non-Jews tell him, *“Do what your fellow Jews tell you to do.”*

The **Rashba** (*Responsa* Vol. 3, *Siman* 33, cited in the **Beis Yosef**) cites another example from the **Gemara** (*Sanhedrin* 45b):

Shimon ben Shetach put eighty women to death in one day, for the sin of witchcraft. Also, he had their corpses hung on display.

According to the Torah, courts are forbidden to administer the death penalty to any more than one person per day, and when a woman is put to death; her body is not hung on display. Explains the **Gemara** that **Shimon ben Shetach** made these rulings only to “create a fence around the Torah.”

The **Tur** cites the view of the **Rif** (*Bava Kama* 96b), that even courts outside of *Eretz Yisroel* have such powers.

Permission to be Punitive

According to the **Rosh**, (*Sanhedrin, Perek Nigmar HaDin, Siman* 5) not every *Beis Din* can take such emergency steps. Such authority rests only with a city’s finest citizens when the community appoints them over them as a court, or with the greatest Torah authority of the generation, people such as **Rav Nachman**, who was appointed to the nation’s top judge by the *Nasi* of Israel.

The **Maharik** writes that according to some authorities, every *Beis Din* has such powers. See the **Beis Yosef**.

Lack of Evidence

Regarding Such Emergency Powers

The **Tur** adds that it appears from the words of the **Rif** and the **Rosh** that if the *Beis Din* sees that emergency measures are necessary, then in any given case it can take such punitive actions even in the absence of solid evidence. That is, if someone is alleged to have perpetrated an act that would warrant the death penalty, according to the Torah two witnesses are required to establish that he, in fact, did as he was accused. In times when courts were authorized to execute people they were powerless to do so without conclusive testimony from two *kosher* witnesses. The **Tur** writes, however, that even in our times, when courts lack the power to put people to death, if they see that such is necessary, they can administer the death penalty, even when two kosher witnesses against the accused are lacking. Even if the evidence is not completely conclusive, if the available evidence strongly points to guilt, the courts can put the person to death, if they see that such is necessary as an emergency measure.

Rambam

The **Tur** also brings the words of the **Rambam** (*Laws of Sanhedrin 24:4-10*), about emergency punitive measures taken by courts.

“*Beis Din* has the power to give lashes to someone who does not deserve lashes according to the Torah. *Beis Din* can also put to death someone who is not liable to the death penalty. When they do so, it is not against the Torah. Rather, it is to create a fence around the Torah. In instances where the *Beis Din* sees that the nation has gone beyond the legal bounds in a certain area, they have the power to take special measures to shore up the law in that area in ways that they see as fitting. These measures are temporary, to deal with a crisis situation; they are not meant to be fixed and permanent even for coming generations.”

The **Rambam** adds that [everywhere in every generation: Vilna edition] “courts have the power to administer lashes to a person who is known for his wickedness. They can denigrate his offspring in his presence. They also can divest him of his belongings or destroy them, as the court sees fit in order to bring the generation’s lawlessness under control. Similarly, if someone does not listen to the court’s rulings, the court can fine him. They can put him into *Niduy* or *Cherem*, declare a curse on him, strike him, imprison him, rip out hair from his head or make him swear in HaShem’s Name, against his will, that he will not do or did not do such things.

All of this is according to what the *Dayan* sees as necessary regarding that particular individual or the particular times.

The **Rambam** adds a qualifier, however, as a warning to the Judges:

“In all such instances, their actions must be only for the sake of Heaven. Human dignity cannot be a matter that they take lightly, for when the Torah permits something and only the Rabbis forbid it, human dignity takes precedence [and the Rabbinic prohibition is pushed aside]. All the more so this is the rule regarding the descendents of Avraham, Yitzchak and Yaakov, the people who possess the Torah of Truth. *Every Dayan must be careful not to besmirch their honor, and only increase the honor of Heaven.*”

**In the next lesson, we will learn these laws
as they are set forth in the Shulchan Aruch and the Rama.**

Review Questions

1. If a Jew or his property does damage to another Jew, but according to the Torah, the damaged party can collect only a fine, do today's judges have the power to place the guilty party into *Niduy*?

In such a case, although judges who lack *Semicha* attained in *Eretz Yisroel* are not authorized to collect fines, the judges have the power to decree *Niduy* (excommunication) upon the responsible party until he financially appeases the person that he harmed. Once he pays the appeasement, according to the sum that the court deems proper, the court lifts the *Niduy*, whether the one who receives the payment is satisfied with the sum or not.

2. What if the one who suffered the damage does *Tefisa*?

If he grabs from the other party belongings worth the amount due him according to the Torah, the judges do not intervene. He is allowed to keep what he seized.

3. Do today's courts use *Niduy* to coerce a thief to pay the fine of four or five times the principle?

The Achronim differ on this issue.

4. If an animal (sheep or ox) is stolen and, according to the Torah the thief must pay a fine of four or five times the principle, what if stolen animal's owner does *Tefisa* in order to "collect" the fine? Do today's courts intervene and make him give back what he took?

According to most *Rishonim*, *Tefisa* on these fines helps. The courts do not intervene and the owner of the stolen animal can keep what he took, provided that its value does not exceed the amount that he deserves according to the Laws of the Torah.

5. If the one who suffered the damage has done *Tefisa*, is the other party allowed to grab back what was seized?

The *Achronim* are divided about this question.

6. If a Jew or his property does damage to another Jew, but according to the Torah, the damaged party can collect only a fine, what happens if the damaged party comes to court and asks the judges to assess his damages? He is planning to do *Tefisa* and wants to know how much he can seize. Does the court comply with his request?

The court does not comply with his request. If he did *Tefisa* already, however, they tell him, "This much is permitted but any more you must return."

7. In cases where the Chachamim have instituted fines (for anyone who violates their decrees) are the Chachamim authorized to collect these fines?

Where *Chachamim* decide to charge a fine for a purpose they deem constructive, they can collect it.

8. What do courts punish someone who verbally embarrasses a talmid chacham?

The courts make him pay the *talmid chacham* a fixed fine.

9. Is the law about embarrassing a talmid chacham in effect today?

Authorities differ about this matter.

10. In our times, what happens to someone who verbally embarrasses his fellow Jew (the victim is not necessarily a talmid chacham)?

The court puts the guilty party into *Niduy* until he financially appeases his victim. The amount of required appeasement varies, according to his victim's honor and social standing.

11. Are today's courts allowed to give punishments that are not authorized by the Torah, for deeds that are not forbidden by the Torah?

Yes, courts have both powers. They can punish in any way they see fit, in order to create a fence around the Torah.

12. Can courts anywhere do such things?

Yes, even courts outside of *Eretz Yisroel* can take such emergency punitive measures.

13. Is every Beis Din authorized to take such steps?

Not every *Beis Din* has this power. Such authority rests only with a city's finest citizens when the community appoints them over them as a *Beis Din*, or with a generation's greatest Torah authority (such as Rav Nachman, who was appointed by the *Nasi* to be the nation's top judge).

14. Can courts convict in such cases even on the basis of circumstantial evidence?

Even if the evidence is not completely conclusive, if the available evidence strongly points to guilt, the courts can even put the accused person to death, if they see that such is necessary as an emergency measure.

15. When considering taking special punitive measures against someone, during times when emergency measures are necessary, what must the Dayan always keep in mind?

His intentions always must be exclusively for the sake of Heaven. He can give such special punishments only for the honor of the Torah, not in order to harm the accused or embarrass him, for after all, the accused is his fellow Jew.