

PIRCHEI SHOSHANIM SHULCHAN ARUCH LEARNING PROJECT

Dayanus

Lesson One

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Learning to Be a Judge of Torah Law

Shiur

1

Introduction

Appointment of *Dayanim* in Eretz Yisroel and Abroad

In our times, *Dayanim* are authorized to hear cases involving loans, inheritances and gifts, admission of debt, women's claims to their *Kesuba* and claims of damage to personal property. These types of disputes arise very often and involve monetary loss to the claimant. These are the two necessary criteria. Lacking one of them, the case is not heard. Thus, today's *Dayanim* are not authorized to hear cases about types of disputes that do not arise so often, even cases which involve certain monetary loss to the claimant, such as when someone's animal maliciously wounds someone else's animal. Similarly, even if something happens almost every day, if it's not a matter of compensating monetary loss, the case cannot be heard. For example, if someone charges that his neighbor secretly stole from him, the *Dayanim* can rule on the theft itself, but they are not authorized to rule that the thief pay the Torah's fine for theft – *kefel* (paying double the principle).

No cases regarding fines instituted by our Sages can be heard either, such as where somebody shouts into his neighbor's ear and frightens him, for here, too, the claimant did not suffer *monetary* loss. So, too, if someone takes his hand and uses it to slap someone on the cheek, thereby causing his victim embarrassment, although Sages instituted that the aggressor must pay a fine, the case is not heard today.

The same applies to any case where, according to the law, the guilty party must pay more than the loss, or he need not compensate the loss completely (e.g. cases of half-damage payments). In all of the above, the only *Dayanim* who can hear and decide such cases are *Mumchim* (experts) and *Semuchim* (ordained judges), when

their *Semicha* (ordination) was in the Land of Israel (today, however, there is no *Semicha* -- see further on). The one exception is half damage payments in cases of *Tzrororos* “pebbles” cases. The classic example is where an animal walking normally in the public domain steps on a pebble which shoots out from beneath the animal’s foot and causes damage to property. The reason is that regarding *Tzrororos*, the payment of half the damages is not regarded as a fine, but as partial compensation for monetary loss.

Let's Begin

Learning to be a *Dayan* is a very long process, for the subject matter (according to the widely used editions of the *Shulchan Aruch*), covers nothing less than all three volumes of *Choshen Mishpat* and the one volume of *Even HaEzer*. On the other hand, by dividing the subject matter into many small sections, we will attempt to simplify the process and make things much easier on the learner. The project is divided into many subject areas, and regarding each area there will be a number of *shiurim*.

Dayanus is Unique

We will learn every *Siman* and *Se'if* of the *Shulchan Aruch*, in the order found in the *Shulchan Aruch* itself. For each *Halacha* of each *Se'if*, we will trace the *Halacha*'s source, usually through the *Gemara* and *Rishonim*, and where the *Rishonim* differ as to how the *Gemara* is explained, we will analyze each opinion. We will analyze the words of the **Tur** and **Beis Yosef** about the *Halacha*. We will cite the ruling of the *Shulchan Aruch* and explain it in light of the commentaries of various *Achronim* (listed below), mainly the commentators (*Nosei Keilim*) on the *Shulchan Aruch* itself.

- For every *shiur*, just as regarding the *shiur* before you, page one will display the *shiur*'s subject as well as a table of contents listing major topics of discussion in the order that the topics are presented. This will give learners a general idea of what is coming up. Thereby, they will be better able to concentrate on the material and understand it more fully as they go through the *shiur*.
- Also as regarding the *shiur* before you, page one of each *shiur* will also note the *se'ifim* of the *Shulchan Aruch* that the *shiur* will discuss. The *se'if*'s title will be written not only in Hebrew, as it appears in the *Shulchan Aruch*; it will be translated into English as accurately as possible. Afterwards will come sections that explain the *se'if*, each section with its own title.

Shulchan Aruch Commentaries to be Studied (*Nosei Keilim*)

The following are the Shulchan Aruch (Choshen Mishpat) commentaries that will be studied during this project:

1. The first *sefer* is entitled **Me'iros Einayim** (The Sma), by **HaGaon R' Yehoshua Falk**¹, one of the two primary commentators on Choshen Mishpat.
2. The second *sefer* is the **Sifsei Kohen** (The Shach)², the other primary commentary on Choshen Mishpat. This work is authored by **HaGaon R' Shabbetai, ben Meir HaKohen of Vilna**,
3. The third *sefer* is the **Beer Heitev**. This work is not by the same author who wrote the commentary of *Even HaEzer* entitled, "The **Beer Heitev**." Rather, this commentary, explanations on Choshen Mishpat, was written by **HaGaon R' Zachariah Mendel**,³ Av Beis Din of Belz.
4. The fourth *sefer* is the **Pischei Teshuva**⁴, by **HaGaon R' Avraham Zvi Hirsch Eisenstadt**, Av Beis Din of Utian, is found both in Choshen Mishpat and in **Even HaEzer**. It discusses each *se'if* by citing *responsa* of great number of Achronim.

¹ Sma- R' Yehoshua Ben Alexander HaKohen Falk - **Born:** Lublin, Poland, c. 1550. **Died:** Lemberg, Germany, 1614. **Notes:** Talmudic scholar and Rosh Yeshiva in Lemberg. Author of **D'risha u Prisha**, twin commentaries on the Tur, **Sefer Me'iras Einayim/SMA/The Book that Enlightens the Eyes**, a commentary on Shulchan Aruch Choshen Mishpat, included in the standard editions of the Shulchan Aruch.

² Shach – R' Shabbetai Ben Meir HaKohen - Born: Amstibov, Lithuania, 1621. **Died:** Hollischau, Bohemia, c. 1663. **Notes:** Halachist. Lived in Vilna until he had to flee due to persecution. He then settled in Dresnitz and Hooischau, Bohemia. Author of Sifsei HaKohen/Shach/Lips of the Kohen, a major commentary on the Shulchan Aruch Yoreh Deah and Choshen Mishpat, which includes attempts to rule on issues where the Mechaber and the Ramah differed. Author of **Nekudos HaKessef**, a response to the Taz, with whom he conducted a sharp controversy.

³ Beer Heitev – R' Zechariah Mendel Ben Aryeh Leib - **Born:** Cracow, Poland, middle 1600s. **Died:** Poland, after 1707. **Notes:** Rabbi and author Rav of Cracow, Tvrobin and from 1691-1770 of Belz. Author of **Beer Heitev** (Thorough Commentary) which provides summaries of varied halachic rulings and responsa related to the decisions of the Shulchan Aruch. Focuses on Choshen Mishpat and Yoreh Deah and follows a format similar to the Beer Heitev on Orach Chaim and Even HaEzer.

⁴ **Pischei Teshuva** - R' **Avraham Tzvi Hirsh Ben Yaakov Eisenstadt** - Born: Grodno, Russia, 1813. Died: Kovno, Russia, 1868. **Notes:** Rav of Utian, Author of Pischei Teshuva, a running commentary on the Shulchan Aruch. The Pischei Teshuva (Opportunities for Repentance/Responsa) follows the same approach and format of Shaarei Teshuva as it provides a digest of responsa as a supplement to the Shulchan Aruch, including the responsa composed after the publication of the *Shulchan Aruch*. It covers the three volumes not covered by **Shaarei Teshuva**, i.e., *Even HaEzer* (including also *Kunteirim HaShamos Al Mekomo*), *Choshen Mishpat* (including also **Nachalas Tzvi**), and *Yoreh Deah* (including also **Nachalas Tzvi**).

5. The fifth *sefer* is the **Ketzos HaChoshen**⁵ by **HaRav HaGaon Aryeh Leib ben Yosef HaKohen Heller**.
6. The sixth *sefer* is the **Nesivos HaMishpat**⁶, by **HaRav HaGaon Yaakov of Lisa**.

The practical side

We also will discuss practical questions of modern day life that relate to each *se'if* and the material that we study in connection with the *se'if*. The goal will be to determine what exactly is the *Halacha* in each case according to the different principles and precedents that we have learned and taking into account the differing opinions of the Rishonim and Achronim regarding the issues at hand.

Before this project begins, it is important to note that in preparing these *shiurim*, I often consulted the Bar Ilan University computer program of collected *responsa*, which proved to be a great help to me. I hereby express my thanks to the originators of the program and send them my blessings.

How Truly Essential it is that *Dayanim* Clearly Know the Laws?

As we are only starting out at this point, here is not the place to discuss at length how truly essential it is for *Dayanim* to have broad and thorough understanding of all of the laws in their purview:

First of all, it is common sense that *Dayanim* must possess such understanding, for justice is at stake, and justice is a very serious matter.

Secondly, the importance of thorough knowledge of the law will be more fully discussed later, during our study of the first *Se'ifim* of *Choshen Mishpat's* first *Siman* – the Laws of *Dayanim*.

⁵ **Ketzos HaChoshen – R' Aryeh Leib Ben Yosef HaKohen Heller** - Born: Kalish, Poland, 1745. Died: Ostrow, Poland, 1813. Notes: Talmudist. Author of **Ketzos HaChoshen**, a commentary on Shulchan Aruch *Choshen Mishpat* which is one of the basic Seforim learned in yeshivas and **Arnei Meluim** on *Shulchan Aruch Even HaEzer*, and **Shev Shematsa**, Chidushim on the Talmud.

⁶ **Chavas Daas – R' Yaakov Ben Yaakov Moshe of Lissa** Born: Loberbaum, Poland, c. 1759. Died: Loberbaum, Poland, 1832. Notes: Author of **Derech HaChayim**, a prayer book with a compilation of laws about daily life, a commentary on the Codes as well as at least 15 other books. **Nesivos HaMishpat** (The Paths of Justice, see *Mishlei* 8:20) is a commentary to *Choshen Mishpat* that is organized in a manner similar to *Urim v' Tumim*, with one section called *Beurim* devoted to a straightforward explanation of the *Shulchan Aruch*, and another section called *Chidushim*, including extensive discussions of various topics. It includes discussion and disagreements with **Ketzos HaChoshen**. In turn, Chavas Daas focuses on *Yoreh Deah*.

Even at this stage, however, we cannot completely ignore the matter. Let us cite, therefore, just a few laws that provide an inkling of what, in fact, is involved.

In *Choshen Mishpat*, *Siman 10*, *Se'if 1*, we find,

“If due to an arrogant heart, one decides a case hastily, without thinking carefully about the matter until the proper ruling is as clear as day, the one who makes the ruling is a fool. He is wicked and arrogant.”

Later, in *Se'if 3* there, the *Shulchan Aruch* cites our Sages' exposition of the verse (*Mishlei 7:26*), "כי רבים חללים הפילה"

For she brought about the fall of many casualties.” Our Sages expound (*Avoda Zara 19b*), “The reference is to a *talmid chacham* who is not yet qualified to issue legal rulings, but does so anyway.”

In addition, the *Shulchan Aruch* writes (*Choshen Mishpat 8:1*),

“If a *Dayan* is not just, does not possess the wisdom of the *Torah* and is unqualified to be a *Dayan*, even if his personality is totally pleasing and there are other good things about him, the one who appointed him a *Dayan* violates a *Torah* prohibition” (See **Mishnah Torah**, Laws of the **Sanhedrin 3:8**).

Adds the *Rama* there,

“One is forbidden to appoint an **עם הארץ** (ahm ha'aretz – an ignoramus regarding *Torah*) to be a *Dayan*, trusting that, for every case, the appointee will consult a *chacham*.”

Tragedy: Without Vast Knowledge of These Laws

In order to emphasize the importance of the *Dayan* having expert knowledge of the laws in his purview, let us cite a passage from the *Gemara Kiddushin* (6a). G-d-willing, we will speak more about this passage when we learn *Even HaEzer*, particularly the laws of marriage.

Rav Yehuda said in the name of **Rav**, **"כל שאינו יודע בטיב גיטין וקידושין לא יהיה לו עסק עמהם"** --Anyone who is not expert in the laws of divorce and marriage shall have no dealings with them." As to what *Rav* means by the words, "with *them*," the Rishonim differ.

1. According to **Rashi**, *Rav* means that a *Dayan* who lacks expertise in these laws *should not get involved with these laws*, for perhaps the *Dayan* unwittingly will rule that a woman who is off-limits to marry is permitted.
2. According to **R' Ezriel**, however (cited in Tosafos there, *Lo*), *Rav* means that someone who is not expert in these laws *should not speak with women about the process whereby a man takes a wife*. If a man does discuss this subject with a woman, it could happen that by virtue of his words and actions, he winds up married to her without he or she being aware of it!

The *Shulchan Aruch* favors **Rashi's** interpretation, as is evident from his ruling in *Even HaEzer* (49:3). The Mechaber (author of the *Shulchan Aruch*) writes, "Anyone who is not expert in the laws of divorce and marriage should have no involvement with these laws as far as making rulings about them, for quite easily he could err and rule that a woman who is forbidden is permitted. Through such a mistake, he might cause there to be more *mamzerim* in the nation of Israel."

According to the **Taz**,⁷ cited by the **Beis Shmuel** there, it sounds from the wording of the *Shulchan Aruch* that someone who is not well versed in these laws is forbidden only to make rulings about the laws, but he is not forbidden to conduct wedding ceremonies. On the other hand, writes the **Taz**, such a person is forbidden to preside over divorce proceedings, for compared to the laws of marriage, the laws of divorce are much more complicated and detailed, so the level of knowledge must be much higher.

This ruling of the **Taz**, however, is a matter of dispute. According to the **Shvus Yitzchak**, cited in the **Pischei Teshuva** (*Seif Katan 2*) anyone not expert in the laws of marriage is even forbidden to conduct wedding ceremonies, though if he conducts such a ceremony the marriage is consummated. The **Pischei Teshuva** supports this ruling and adds,

⁷ **Taz** – **R' David Ben Shmuel HaLevi** - **Born:** Ludmir, Volhynia, 1586 - **Died:** Lemberg, Poland, 1667 **Notes:** Halachist. Son-in-law of the Bach, he was the Rav of Posen, Ostrow, where he founded a major Yeshiva. After a few years on the run from persecutions he became the Rav of Lemberg. Author of **Turei Zahav/Taz/Golden Rows**, a major commentary on all sections of the *Shulchan Aruch*, of which the ones on *Orach Chaim* and *Yoreh Deah* gained greatest acclaim. He attempts to re-establish the original decisions of the Beit Yosef, refuting subsequent criticisms and bringing order to the commentaries on the *Shulchan Aruch*. He often disagreed with the **Shach**.

“Without question, not for naught was it the custom of earlier generations to not conduct wedding ceremonies without the permission of the acknowledged (local) Rabbi, for many types of mistakes can happen... And in the responsa of the Gaon ... such was an enactment of the rabbis of France in the days of Rabbeinu Tam. They decreed that no one shall conduct marriage ceremonies except the community’s appointed Rabbi or a Moreh Tzedek.”

Summary

All of this essentially explains the goal in the upcoming *shiurim* about becoming a *Dayan*. Through the *shiurim* to follow, every learner will gain all of the knowledge that he needs to become a qualified *Dayan*. Having participated in the project from beginning to end, and having understood all of the material, he will never be regarded as “*someone who is not thoroughly versed in the laws of divorce and marriage.*” Similarly, our goal is that every learner becomes an expert in all areas of civil law, too -- the laws of *Choshen Mishpat*.

Let us begin discussion of our first topic -- the Laws of *Dayanim*. First, let us provide some important background, by citing the words of the **Tur** in his edifying introduction to these laws (See first volume of **Tur Choshen Mishpat**).

The Tur’s Introduction to the Laws of *Dayanim*

The **Tur**⁸ begins:

“על ג' דברים העולם קיים, על הדין ועל האמת ועל השלום – The world remains standing because of three things – justice, truth and peace.”

⁸ **Tur – R' Yaakov Ben Asher** - Born: Cologne, Germany, c. 1275. Died: Toledo, Spain c. 1349. **Notes:** Torah commentator, Talmudist and Halachic codifier. The third son of the Rosh and a student of his father, his older brother Yecheiel, and the Rashba. A pietist who refused to take a position as Rabbi and only became a member of the Toledo Bet Din after his father’s death. Author of **Arba Turim/The Four Rows**, Code of Jewish Law that bridged the gap between the French and Spanish schools and formed the basis for the Shulchan Aruch. Unlike the Rambam in Mishneh Torah he includes all sources. Also, he only deals with the laws that are still applicable in the post-Temple period. Introduces the division in four parts - **Orach Chayim**, on the laws of daily practice throughout the year, including Shabbat and Holidays, **Yoreh Deah**, on the laws of kashrut and purity, morning and niddah, **Choshen Mishpat**, on civil and monetary issues, and **Even HaEzer**, on marriage and divorce. Author of two commentaries on the Torah, the **Baal HaTurim**, a short commentary based on gematria as well as a longer commentary, of a commentary on Rambam’s Mishneh Torah, and of **Kitzur Piskei HaRosh**, compiling halachic conclusions of the Rosh. His students include R’ Abudraham.

JUSTICE TRUTH AND PEACE

1. On What Pillars Was the World Created
2. On What Pillars Does it Continue to Stand?

“According to Rabbeinu Yona⁹,” the Tur explains, “Rabban Shimon ben Gamliel does not mean that the world was created for these three things, for previously in this chapter (1:2), we find, “על שלשה דברים העולם עומד” – on three things the world **stands**,’ and what is mentioned here is not mentioned there. Rather, previously we were taught that the world was created for three things -- *Torah*, *Avoda* and *Bestowal of kindness* ... while now we are taught that after having been created, the world continues because of three different things – law [or justice] (דין) truth (אמת) and peace (שלום).

“By settling disputes between people, *Dayanim* enable the world to continue to stand, for were it not for courts and due process of law, [anarchy would rule and] might would make right. So, too, truth is necessary for the world to continue, as our Sages teach (*Shabbos* 104b), שקר (falsehood) has no legs, while אמת (truth) is on great, solid foundations and gives things their standing power (compare the shapes of individual letters of these two words). “Peace, too, is essential, for we find (*Avos* 3:2), ‘Pray for the welfare () of the government, for were it not for fear of authority, men would eat each other alive.’” So wrote Rabbeinu Yonah.

Summary

In summary, HaShem brought the world into existence for the sake of three things, but the world continues to exist only on the strength of three different things, and of these three, first and foremost is דין (*din*) – justice under the law. By virtue of law and justice, there is fairness and order in the world. The world can go on and not be destroyed by peoples’ arguments and disputes.

⁹ Rabbeinu Yonah – R’ Yonah Ben Avraham Gerondi - Born: Gerona, Spain, c. 1180. Died: Toledo, Spain, 1263. **Notes:** Talmudic and halachic scholar as well as a great pietist. Cousin of the Ramban and student of R’ Shlomo ben Avraham of Montpellier. He engaged in great polemics against Rambam, banning the Moreh Nevuchim. After the burning of 24 wagonloads of Seforim in 1242 he regretted his earlier zeal and wrote **Shaarei Teshuva/Gates of Repentance**, a work on ethics and repentance. Author of a commentary on the Rif. His students put together a collection of commentaries on the Talmud under the name Talmidei Rabbeinu Yonah among his students is the Rashba.

Competent *Dayanim* Uphold the World

The **Tur** continues, “This is what our Sages mean, ” **כל הדין אמת לאמיתו כאילו** “נעשה שותף להקב"ה במעשה בראשית” – Anyone who judges a case and reaches the correct conclusion according to the true intent of the law, it is as if he becomes a partner to the Holy One in the creation of the world.’ This is so because the Holy One created the world intending that it *continues* to exist. Wicked people, when they steal, cheat and commit other evil, serve only to destroy the world, as we see regarding the generation of the flood in the days of Noah. Specifically because of theft it was decreed that they die, as is written (Bereishis 6:13), ‘for the land is full of robbery because of them.’ Immediately afterwards we read, ‘Behold I am going to destroy them.’

“Accordingly,” writes the **Tur**, “when a *Dayan* breaks the arrogant arms of the wicked, forcing them to return to the owners all that they robbed from them, the *Dayan* helps to preserve the world. *The Creator’s will is that the world that He made continue and not be destroyed, so when a Dayan administers justice, he causes fulfillment of the Creator’s will. Thereby, he becomes a partner of the Holy One in creating the world.*”

The Fathers of our Nation Pursued *Mishpat*

The **Tur** continues by describing how the Fathers of the Jewish Nation devotedly clung to the ways of justice. For this reason, he explains, the Holy One loved them. The **Tur** writes, “HaShem showed Avraham affection and called him “**אוהבי**” – My beloved – because Avraham followed the ways of justice and taught the ways of justice to his progeny. So it is written (Bereishis 18:19), ‘For I have known him (treated him with special care) because he will command his children and household after him to keep the way of HaShem, doing righteousness and **משפט** (*Mishpat*) -- justice.’

“Moshe Rabbeinu, the greatest of all prophets, took Yisro’s advice regarding the issue of justice. When Yisro advised him to appoint (lesser) judges to admonish the nation and command them about matters of justice, Moshe Rabbeinu took the advice and HaShem agreed to the move.

“When Yehoshua brought the nation into a covenant to serve HaShem, his concluding words to them involved matters of **משפט** (*Mishpat*), as is written (Yehoshua 24:25), ‘And on that day Yehoshua cut a covenant for the nation, setting before them laws and justice in Shechem.’”

In the **Tur's** Introduction we find a striking and significant sentence that indicates the vital importance of learning the laws of *Choshen Mishpat*. He writes, "**המשפט השם הוא יסוד ועיקר גדול בעבודת השם**" -- Justice is a key foundation and principle for serving HaShem."

He continues and explains, "and after him each Judge in his particular period of history made legal rulings for that generation, turning the people away from evil, steering them to service of the Holy One, that they follow in the ways of Avraham Avinu, doing righteousness and justice. As a result, the Jewish Nation was saved from its enemies. So it continued into the times of the faithful Prophet Shmuel, who judged the Jewish people all of his days. Each year, Shmuel would travel the land, circling through Beit El, HaMitzpeh and the Galil, where he would hear people's disputes and hand down judgments. Our Sages say that never would he make the same circuit and travel the same route two consecutive years, for he sought to return the heart of the entire nation to service of HaShem, that they follow the way of Avraham Avinu.

King David

"Shmuel anointed Dovid as king over Israel, and Dovid, too, walked in the ways of HaShem, even more so than his predecessors, as is written (Shmuel II:8:15 'And Dovid did justice and charity for all the people.' [Yoav, says that verse, 'was over the army,' and we find (Divrei HaYamim I: 11:8)], 'and Yoav revived (rebuilt) the remainder of the city.' In the merit of the justice and charity done by Dovid, Yoav rebuilt the remainder of the city' (See *Sanhedrin* 49a).

King Shlomo

"Dovid was succeeded by Shlomo, his son, who was beloved to HaShem. Clinging steadfastly to his father's ways, Shlomo asked HaShem for an understanding heart, for the ability to listen and judge His nation, to discern between good and bad. In the eyes of HaShem it was pleasing that this was Shlomo's request. As a result, the Al-Mighty gave him a wise and understanding heart, the likes of which was never seen either before Shlomo or after. The entire nation feared and respected him, for they saw that HaShem's wisdom was in his heart, to do justice.

King Yehoshefat

"The same was true of Yehoshefat, who walked in his father's ways, stirring and uplifting himself by careful adherence to the ways of HaShem. He made strong efforts in the area of justice, appointing judges throughout the land, city by city,

telling the judges (Divrei HaYamim II:19:6), “Watch what you are doing, for not in order to please men will you issue judgments, but to please the L-rd. With you is the matter of justice.’

King Yesheyahu

“Regarding King Yesheyahu, too, the verse testifies (Melachim II:23:25) that never before or after him was there ever a king over Israel ‘that turned to HaShem with all of his heart, all of his soul and all of his might, according to all the Torah of Moshe.’ Our Sages say (*Shabbos* 56b) that every case [of monetary matters] that Yesheyahu had judged before year eighteen (of his life) [see Maharsha] ‘he returned to its master.’ (Out of fear that he had judged cases incorrectly, and in order to make good on any unjust losses that his errors might have caused, he took his own money and used it to pay restitution to every litigant that he had ruled against during all those years).

Mashiach

“It will be the same regarding the Mashiach, may he come soon. The Scriptures praise him regarding matters of **משפט** (*Mishpat*) – justice. We find (Isaiah 11:3-4), ‘(And he shall not judge after the sight of his eyes, neither decide after the hearing of his ears),””**ושפט בצדק דלים והוכיח במישור לענוי ארץ**”-- but with righteousness he shall judge the poor, and decide with equity for the meek of the earth.”

Punishment to Those who fail to Pursue Justice

After having spoken in praise of those who pursue justice and assure that justice is done, the Tur turns to those on the opposite end of the spectrum – people who ignore justice, pervert it or judge unfairly. He writes,

“Just as its reward is great, so, too is the punishment of those who ignore it or pervert it. So taught our Sages (Avos 5:11), “The sword (destruction) comes to the world because of the suppression (or delay) of justice, and because of the perversion of justice.”

Dovid spoke similarly when he said (*Tehillim* 119:121)

*‘I practiced justice and righteousness (**משפט וצדק**) Abandon me not to those who would exploit me.’ These words imply that if one does not practice justice and righteousness, one falls into hands of those who seek his harm.*

“Jerusalem was destroyed and Israel was sent into exile only because they forsook justice, as is written (Isaiah 1:21), ‘(How could the faithful city become like a harlot?)”**מלאתי משפט צדק ילין בה ועתה מרצחים**” – It was replete with justice;

righteousness lodged there, but now murderers.’ The prophet continues, “They did not do justice to the fatherless, and the disputes of the widow [where widows were victimized] did not come before them [to be settled].’ Afterwards we read, ‘I will rid Myself of My adversaries and avenge Myself of My enemies.’”

Correct Judgment of Torah Law

About the reward for staunch allegiance to justice, the Tur writes, “In the merit of justice the Jewish Nation will be redeemed, as is written (Isaiah 1:27), **ציון במשפט**” **תפדה ושביה בצדקה** – Zion shall be redeemed through justice, her returnees through the practice of right.’ It also is written (Isaiah 1:17), **דרשו משפט אשרו**” **חמוץ שפטו יתום ריבו אלמנה** – Seek justice, relieve the oppressed, give justice to the fatherless and plead for the widow.’ If the nation does so, says the Prophet, “Though your sins be like scarlet, they shall become as white as snow.’

“Such brings our Redemption closer, as is written (Isaiah 56:1), **שמרו משפט ועשו**” **צדקה כי קרובה ישועתי לבא וצדקתי להגלות**” – Keep judgment and do what is right, for [thereby] My salvation is near to come, and My uprightness to be revealed.’

“The Holy One desires this more than all of the offerings [ever brought on the altar], as is written (Mishlei 21:3), **עשה צדקה ומשפט נבחר לה' מזבח**” – To practice righteousness and justice is more preferred by the Holy One than sacrificing.’ We do not read, ‘more than a sin offering or a burnt offering;’ rather, HaShem declares, ‘more than *all* sacrificial offerings.’”

Torah Commandments: Judges & Justice

In his concluding remarks, the Tur points out several places where, in the Torah, we find commandments about judges and justice. “Moshe Rabbeinu,” he writes, “warns [about justice] several times. For example, he admonishes [Dayanim]: **לא**” **לא תגורו**” **לא תכירו פנים במשפט** – Do not recognize faces in judgment (*Devarim* 1:17) **לא תפני איש כי המשפט לאלקים** – Do not be afraid of any man’s face, for judgment belongs to the L-rd’ (Ibid.).

“One also finds positive commandments (*VaYikra* 19:15), **בצדק תשפט עמיתך**” – In righteousness you shall judge your neighbor,’ and (*Devarim* 1:16), **ושפטתם צדק**” – And judge righteously [between every man and his brother].’ Moshe Rabbeinu also relayed the Divine command that the people appoint judges in every city, as well as officials who will carry out the law and enforce judicial decisions, as is written (*Devarim* 16:18), **שופטים ושוטרים תתן לך בכל שעריך**” – Judges and law officers you shall place in all of your gates.’

Arriving here, let us now begin to explain, with HaShem's help, the Se'ifim of the first Siman of Choshen Mishpat.

This Seif – Provide the Background

In this *shiur*, we will do no more than provide the source of the first *Halacha* of the first *siman*, briefly discuss some of the *halachos* of the *siman* and cite background information that the Tur supplies about the entire *siman*. In the next *shiur*, with *HaShem's* help, we will explain the first *se'if* in depth and start our discussion of the other *Seifim* of the *siman*.

As to the first *seif*, the source of its *Halacha* is *daf* 7a of the *Gemara Makos*, where we find that courts must be established in the Land of Israel and also abroad. The *Gemara* concludes, however, that a difference exists, for in the Land of Israel, judges must be appointed and courts must be established not only for every region, but also for every city and town. (The *Gemara* says, “in each *plach* (פּלַח) and each *ir* (עִיר). Seemingly, a *plach* is a region while an *ir* is a city or town. Usually, in each region there are several cities and towns). By contrast, outside of Israel, judges and courts are required only for each region, but not for each city and town.

Torah Authority Today!

Also, we see from a different passage of the *Gemara* (*Gittin* 88b) that a *Sanhedrin* (and so, too, a lower, smaller court) is authorized by the Torah to hear cases and hand down verdicts only if the judges have *Semicha* – ordination. That is, according to the Torah, before someone can become a judge, he has to have *Semicha* from someone who himself received *Semicha*. “Ordained” judges “pass down” to others their authority to judge. This way, in the earlier stages of our nation's history, *Semicha* was transmitted from one generation to another. Today, therefore, since *Semicha* is no longer given, no *Dayan* is authorized to be a judge according to the Torah. Rather, "שליחותיהם דקמאי עבדינן" – We do the bidding of those who preceded us.” Today's *Dayanim* are simply “emissaries” of the judges of old who did have *Semicha* and were authorized *Dayanim* according to the Torah.

What Cases can Today's *Dayanim* Judge?

The *Gemara* in Tractate *Bava Kamma* (84b) concludes, however, that in our times, since *Dayanim* do not have *Semicha*, not regarding all cases can they serve as “emissaries” of the judges of the past. As noted above, *Dayanim* of today are able

to “borrow” of powers entrusted to the *Dayanim* of the past only in the following instances:

- ∞ Cases that arise very often, and
- ∞ Cases that involve monetary loss to the claimant, such as claims regarding money lending or admissions of debt

For example, explains the Tur, Person X claims that Y owes him money, and witnesses are ready to testify that in their presence, Y admitted that he borrowed the money and did not yet repay. Alternatively, the witnesses are ready to testify that they were present when Y took the loan.

It is necessary that both criteria be fulfilled – frequency and monetary loss. Today’s *Dayanim* are not authorized to hear cases about types of disputes that do not arise so often, even cases which involve monetary loss to the claimant (such as if someone strikes somebody and physically injures him). Neither are today’s *Dayanim* allowed to hear cases that do not involve monetary loss to the claimant, even if the claim involves something that happens frequently.

For example, if someone slaps someone in the face, hoping only to embarrass him, and there is no physical damage to the victim, the Torah law is that the victim can collect only a fine. Fines, however, are only profit for the victim; they do not serve to compensate him for monetary loss. For this reason, today’s *Dayanim* are not authorized to hear cases of fines, even if the event that warrants the fine is something that happens very often.

Introducing the Project

The *shiur* above is not a regular *shiur*, for it simply introduces the project upon which we are embarking – learning the laws of *Dayanim*, primarily the laws of Choshen Mishpat.

1. We have outlined what will be the learning format and style, and the primary commentaries to be studied.
2. We have discussed how truly essential it is that *Dayanim* be thoroughly versed in the laws with which they deal, especially *Dayanim* whose purview includes marriage and divorce cases. We noted that our Sages taught that if a *Dayan’s* knowledge of marriage and divorce laws is not expert, he should not involve himself in such cases (See above, two ways of understanding this teaching).

3. Afterwards we quoted from the **Tur**'s introduction to the laws of *Dayanim*, for there, he inspiringly explains the great importance of justice. The Tur writes of numerous illustrious figures in Jewish history, how they all followed the ways of justice, and constantly struggled to further its cause.
4. Finally, we briefly discussed the first *seif* of the first *siman* in Choshen Mishpat. We learned:

There must be established courts of Torah law not only in the Land of Israel, but elsewhere, too.

In Israel, not only must there be regional courts. Every city and town must have a court of Torah law. Outside of Israel, however, only regional courts are required.

In our times, since *Dayanim* do not have *Semicha*, they are not authorized judges according to the Torah. Rather, they are mere “emissaries” of the *Dayanim* of the past who did have *Semicha*.

In our times, *Dayanim* can hear cases only if two conditions are fulfilled: the dispute is a type

- ∞ That arises very often
- ∞ Involves monetary loss to the claimant.

Our goal is to encourage all too now have the ability to seek Din, Emess and Shalom and now have the vehicle to be able to achieve what so many talk about but don't have the tools to accomplish. That was, until now! In Bereishis Perek 2:7 the Pasuk tells us that Hashem by breathing into his nostrils gave Adom life. “Vayipach be Apov Nishmas Chayim”. The Chafetz Chaim Zt'l writes that the single and most distinguishing feature between the spirit of Man and that of animal life is the ability to speak. With speech comes action. The Greeks desired complete intellectual and physical freedom without restraint. Hashem blew into Adom life, but a life that requires one to act as an Adom with proper restraint. Klal Yisrael's role in the world is to show mankind how an Adom should act. Having a thorough understanding of what Din, Emess and Shalom is through the learning of the laws of Choshen Mishpat epitomizes what Hashem meant when he blew life into Adom. We wish all those who choose to undertake this noble path of learning much Bracha and Hatzlacha over the coming years in seeking the ultimate accomplishment of working to understand Din, Emess and Shalom!