



Indemnification of police officers (continued)

1. Mishnah Makkot 2:2

Just as chopping wood is a voluntary activity, so [one only goes to a city of refuge] for [accidental murder that occurs in the course of] a voluntary activity. This excludes... an agent of the court.

2. Maimonides (12th century Egypt), Mishneh Torah, Laws of a Murderer and Protecting Life 5:6

An agent of the court who struck the party who refused to come to court...

Why is a police officer indemnified?

3. Tosefta, Gittin 3:8

An agent of the court who strikes with the court's permission and causes harm by accident is exempt. If it is on purpose, he is liable. This is for repair of the world.

4. Rabbi Shimon ben Tzemach Duran (14th-15th century Spain/Algiers), Tashbetz 3:82

A person is always considered forewarned, whether his act is accidental or intentional... but they exempted an expert doctor and an agent of the court who erred. If we would not exempt him for error, he would refrain from healing...

5. Rabbi Dr. Avraham Sofer Abraham, Nishmat Avraham Choshen Mishpat 306

It appears that he is liable to pay, according to the letter of the law, and the same is true in all similar cases of treatment where experience has taught us that sometimes one [accidentally] treats healthy sites, causing great harm. Of course, this is where he could have known clearly, immediately, which was the appropriate site, and he was negligent...

6. Rabbi Eliyahu ben Chaim (16th century Turkey), Responsum 111

These insults, which are not issued as a strategy to induce him to pay his debts, but are only a function of anger and rage – it is obvious that this is not at all similar to the case of Rabbeinu Yerucham...

7. Rabbi Yaakov Reischer (17th century Prague), Shevut Yaakov 3:140

So that he would not accustom himself to this, for it is improper for a sage to be angry, and a demanding person cannot teach, for rage rests in the heart of fools. To avoid this... I have ruled that he must pay the doctor to heal him well...

Who Watches the Watchmen?

8. Talmud, Bava Kama 112b

An agent of the court is believed like two [witnesses]. But this is only for *shamta*; for *peticha*, which would cost him money for the scribe, we would not trust the agent.

9. Numbers 16:12-15

And Moshe sent a summons for Datan and Aviram, and they said, "We will not ascend. Is it insignificant that he brought us up from a land flowing with milk and honey, to kill us in the wilderness? Will he also rule over us?? He has not brought us to a land flowing with milk and honey, giving us portions of fields and vineyards! Even if they were to put out our eyes, we will not ascend!" And Moshe was very angry...

10. Rabbi Yisrael Isser Wolf (18th-19th century Ukraine), Shaar Mishpat 8:2

It would be shocking to say that an officer of the court is exempt even if he could have accomplished the goal through other means. If someone is pursuing another person to kill him, such that any Jew is biblically obligated to save him even at the cost of the attacker's life, and there is no greater "officer of the court" than this, we still say that if he could save the victim by wounding the attacker, and instead he kills him, he is liable!...

And one cannot say, "Then what good is a court," for even if a court errs in appraising property, or an officer of the court errs in any [financial] matter, we say their sale is invalid. Certainly here; there is no greater error than this!...

11. Rulings of the Jerusalem Rabbinical Court for Financial Matters and Clarification of Jewish Status III pg. 245 [Rabbi Yosef Rosen] in Tzofnat Paneiach 42 was asked about a situation involving a Rabbi, when part of the community complained that he was not conducting his rabbinate properly. He responded that a Rabbi is credible against those who complain, for two reasons. First, they accepted him, so that his word is testimony... Also, he has the status of the community's agent; since there can be no community without a Rabbi, for they cannot all be scholars, just as an agent is credible, so the Rabbi is credible...

12. Rashi (11th century France) to Bava Kama 112b
 "Is believed like two" – for he would not lie in court.

Review questions

- When may police officers use force?
- Must a police officer be certain when using lethal force to prevent what appears to be a fatal attack?
- Why is an officer indemnified for error?
- What are three exceptions for this indemnification?
- Why do police officers have automatic credibility?

The Effect of Imprisonment

13. Justin Ling, *Canada's prisons are failing*, CBA Magazine Aug. 12 '19

<https://www.nationalmagazine.ca/en-ca/articles/law/in-depth/2019/canada-s-prisons-are-failing>

It has been more than 80 years since a government-ordered report into the conditions inside Canada's prisons recommended nothing less than "radical change." That study, spearheaded by Justice Joseph Archambault, laid the framework for our modern prisons. It would reject a system built on retribution and punishment and ensure the "reformation and rehabilitation of all those who find their way into our prisons." The better part of a century later, there are worries that the wisdom of that report has been lost. Lawyers and human rights advocates say conditions in Canada's prisons and jails have deteriorated to the point of crisis. Administrative segregation, overcrowding, arbitrary lockdowns, a lack of access to counsel are all problems that have become shockingly common.

In June 2016, Correctional Investigator Howard Sapers released his final report, after more than a decade in the job. In it, he describes a system at a breaking point...In that report, and in the litany of studies he published, Sapers describes a system that has steadily turned away from rehabilitation, favouring longer and longer sentences, and that has become tougher on Indigenous offenders and those with mental health issues. It's a system that has employed solitary confinement as a matter of convenience for the prisons, or as a way to cover resource shortages...

14. Al Donato, *From Puppies to Farming: Canada's Most Innovative Prison Rehab Programs*, cbc.ca

<https://www.cbc.ca/keepingcanadasafe/blog/from-puppies-to-farming-an-in-depth-look-at-innovative-prisoner-rehab-progr>

A 2015 John Howard study on the Ontario prisoner population revealed that more than 40 per cent reported experiencing mental health issues and 70 per cent said they had problems with substance use. The isolation of prison can exacerbate these struggles, a Centre for Addiction and Mental Health (CAMH) report says. As CSC is the sole healthcare provider for all offenders, their choices are limited. A U.S. Justice Department document states that rehabilitation and treatment programs have an effect on recidivism, ranging from 10 to 20 per cent.

Imprisonment in Torah

15. The biblical system of penalties

Accident	Intentional, Without Witness/Warning	Intentional, with Witness/Warning
Korbanot Financial Liability	Almost no korbanot Divine Ex-Communication Divine Execution Financial Liability	Almost no korbanot Lashes Divine Ex-Communication Divine Execution Death Penalty Financial Liability

16. Biblical imprisonment (see source sheet from Week 1)

- Exodus 21:19 Waiting to see the state of a victim of a potentially fatal attack
- Leviticus 24:11-12 Waiting for the verdict for blasphemy
- Numbers 15:33-34 Waiting for the verdict for gathering wood on Shabbat

17. Anonymous (13th-14th century Spain), Sefer haChinuch 410

Because the sin of murder is very severe, involving destruction of the world, to the point where the Sages said: One who kills intentionally will never be saved from justice, even if he performs every mitzvah... Therefore, it is appropriate that one who kills, even accidentally, because such a great tragedy happened at his hand, should be pained by exile, which is almost as painful as death, as one is separated from his friends and the land of his birth, and he lives out his life among strangers.

This law also improves the world, as the text clarifies, for [the murderer] will thus be saved from the redeemer of the blood [of the victim], lest he kill him without guilt on his hands, for he did this accidentally.

There is another benefit, in that the relatives of the victim will not need to see the murderer before their eyes perpetually, in the place where the evil was done. All of the ways of the Torah are pleasant.

18. Anonymous (13th-14th century Spain), Sefer haChinuch 408

Because of the great level and fine conduct and fine value [of the Levites], their land was chosen, over the land of the other tribes, to absorb any who kill accidentally. Perhaps the land invested with their sanctity will atone for him.

There is also another reason for this: Because the Levites are thoughtful people, known to be versed in the levels of character and honoured wisdom, it is known that they will not reject this murderer who will take refuge there, and they will not harm him, even should he kill one of their friends or kinsmen, for he will have killed suddenly, without enmity.

19. Rabbi Moses Maimonides (12th century Egypt), Mishneh Torah, Laws of Lender and Borrower 2:4

If someone is known to be a law-evader, and his commercial interactions are corrupt, and he is wealthy, possessing assets, but he claims he has nothing, and he is quick to swear [that he cannot pay his debt] – they should not have him swear. Rather, if the judge can coerce him to pay his creditor, or ex-communicate him until he will pay, the judge should do this...

20. Rabbi Moses Maimonides (12th century Egypt), Mishneh Torah, Laws of a Murderer and Protecting Life 2:2, 5

2: But one who hires an assassin to kill another, or who sends his servants to kill him, or who binds another person and puts him before a lion... All of these are shedders of blood and carry liability for murder, and are subject to Divine execution, but the court cannot kill them.

5: If the king does not kill them and the situation does not warrant strengthening in this matter, the court is still obligated to strike them greatly, close to killing them, and to imprison them in painful straits for many years, and to pain them in various ways, in order to intimidate other wicked people...

21. Deuteronomy 19:20, 24:7

And those who remain shall hear and fear, and will not perpetuate this evil conduct in your midst.

...and you shall eradicate evil from your midst.

22. Rabbi Shlomo ibn Aderet (13th-14th century Spain), Responsa of Rashba 2:134

The king's order to make an entrance and doors in the middle of the neighbourhood to protect the nation is within his authority. The law of Jewish kings is equal to that of the nations in this regard. Also, even Jewish kings are permitted to do such things, as part of protecting their nation.

23. Rabbi Shlomo ibn Aderet (13th-14th century Spain), Responsa of Rashba 3:393

If you were to establish everything on the basis of biblical law, and you would not punish other than as the Torah does for injuries and the like, the world would be ruined, for we would require witnesses and warnings...

Why is imprisonment not a standard penalty? Might it actually be against the Torah's laws?

24. Talmud, Bava Metzia 83a

Porters broke Rabbah bar bar Chanan's wine barrels, and he took their cloaks. They told Rav, who told him to give them their cloaks. He asked, "Is this the law?" Rav replied, "Yes, 'So that you will walk the path of the good.' (Mishlei 2:20)" The porters said, "We are poor, we worked all day, we are hungry and we have nothing!" Rav told him, "Pay them." He asked, "Is this the law?" Rav replied, "Yes, 'And you will guard the path of the righteous.' (ibid.)"

25. Rabbi Chaim David haLevi (20th century Israel), **עונש המאסר בהלכה**, Torah Sheb'al Peh 16

G-d, who "shows the way for penitents" after they descend into the world of sin, did not choose to punish them with imprisonment. He is good and just. Although imprisonment seems righteous and just, it certainly is not good – not [good] in itself, because it involves removing human liberty, and not [good] in its results...

Review questions

What punishments does the Torah prescribe for intentional violation of the law?

For what three purposes does the Torah prescribe a form of arrest?

What are four goals of imprisonment in the city of refuge?

For what two purposes have post-talmudic courts authorized imprisonment?

What justifies imprisonment for extra-biblical punishment?

What is Rabbi Chaim David HaLevi's reason for saying imprisonment is inconsistent with the Torah's values?

A topic we did not reach in this series

26. Talmud, Bava Metzia 83b-84a

Rabbi Elazar ben Rabbi Shimon advised a government police officer: Go into the pub in the fourth hour of the day. When you see someone drinking wine, holding a cup and dozing, ask about him. If he is a scholar and he is dozing, it's because he rose early to study. If he is a worker, he rose early for labor. If he works at night, perhaps he works with fine metal (and that's why no one hears the sounds of his work). Otherwise, he is a thief, and you can catch him.

Word of this was brought to the government, and they said, "Let the reader of the scroll be the one to carry it out!" They brought Rabbi Elazar ben Rabbi Shimon, and he caught thieves.

Rabbi Yehoshua ben Karchah sent to him: Vinegar, son of wine! How long will you pass the nation of our Gd to be murdered?!

Rabbi Elazar ben Rabbi Shimon responded: I am eliminating thorns from the vineyard. He replied: Let the Owner of the vineyard come and eliminate his own thorns...

Rabbi Yishmael ben Rabbi Yosi had a similar story. Eliyahu met him, and said, "How long will you pass the nation of our Gd to be murdered?" He replied, "What can I do? It is the authority of the king!" He replied, "Your father fled to Asia; you flee to Ludkiya."