

## **Holding Court**

*Excerpted and adapted from a shiur by Dayan Yosef Greenwald*

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[https://baishavaad.org/wp-content/uploads/2021/08/DEV81\\_005\\_Shoftim\\_Order\\_in\\_the\\_Court-Criminal\\_vs.\\_Civil\\_Law\\_in\\_Todays\\_Beis\\_Din.mp3](https://baishavaad.org/wp-content/uploads/2021/08/DEV81_005_Shoftim_Order_in_the_Court-Criminal_vs._Civil_Law_in_Todays_Beis_Din.mp3)

*You shall place judges and law enforcement officials for yourself in all your cities that Hashem, your G-d, is giving you, for your tribes...*

Devarim 16:18

The Torah here commands us to build a justice system by establishing a network of batei din. Although the system cannot be implemented fully today because our *dayanim* lack *smicha* (ordination in an unbroken chain from Moshe), the Gemara (Gittin 88a) says that *dayanim* today represent the *dayanim* of old in Eretz Yisrael and serve as their emissaries. But the Gemara distinguishes in this context among different areas of law. Any judgments that are about punishment—e.g., *dinei nefashos* (capital cases)—are not adjudicated today, nor are payments that are punitive and assessed as fines (*knasos*). For example, a burglar may not be compelled to pay *keifel* (double) today, because this payment exceeds the actual loss. On the other hand, many cases that are about compensation are adjudicated today. The Shulchan Aruch (C.M. 1:1) writes that this includes common cases of theft and unintentional property damage (though not uncommon cases).[1] This stands in contrast to secular law, where there is a distinction between the criminal (e.g., arson) and non-criminal (e.g., a car accident). The Shulchan Aruch also lists *sheves* and *ripui* (compensating an injured party for time lost from work and medical bills),[2] financial obligations between people, and questions of inheritance.

[1] According to the Rama (1:3), not all cases of theft are considered common, and perhaps car theft or pickpocketing would not be included.

[2] Here, too, the Rama (1:2) cites opinions that *sheves* and *ripui* are not adjudicated either, because those obligations stem from bodily injury, which he holds to be uncommon.