

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

The Noahide Laws - Lesson 60



**Written by Rabbi Avraham Chaim
Bloomenstiel**

© Yeshiva Pirchei Shoshanim 2014

This shiur may not be reproduced in any
form without permission of the copyright holder.

164 Village Path, Lakewood NJ 08701 732.370.3344
164 Rabbi Akiva, Bnei Brak, 03.616.6340

Table of Contents:

1. Introduction
2. Dinim = Procedural Laws & Substantive Decrees
3. Substantive Decrees
4. The Torah Requirements of Dinim
5. Courts That Only Observe or Enforce Part of the Noahide Code
6. Capital Punishment
7. Modern Courts: Conclusions
8. Modern Courts According to the Rema
9. Can Noahides Elect to Be Judged in *Bais Din*?
10. Summary

Dinim III: Practical Summary

Lesson

60

Introduction

In the last lesson we delved deeply into the [Rishonim](#) in search of support for the [Rema's](#) opinion that Noahide *dinim* is the same as *chosben mishpat* – the Jewish civil and monetary laws. At the end, we saw that most [poskim](#) do not agree with the Rema's conclusion. Of particular significance was the opinion of [Nachmanides](#). We saw that some *poskim* have read Nachmanides as a precedent for the Rema. However, many *poskim* hold that Nachmanides's views on *dinim* are either unrelated to or even contradict the Rema

In this lesson we will see will explore the practical issues of *dinim* in our times.

***Dinim* = Procedural Laws & Substantive Decrees**

In the last lesson we cited many, many *poskim* who hold that Noahide *dinim* is neither based upon nor identical to *chosben mishpat* – Jewish monetary and civil law.

The majority of the *poskim* hold that *dinim* has two aspects:

- 1) **Procedural** – *Dinim* requires the establishment of courts and administration of justice to judge the other Noahide laws.
- 2) **Substantive** – The courts are empowered and expected to make additional laws and decrees as needed to preserve order and maintain

society.¹ These additional regulations fall out under *dinim* and not under any other category of Noahide law.

Procedural Requirements of *Dinim*

The procedural requirements of *dinim* include:

- Noahide courts must enforce the other Noahide laws.²
- Noahide courts must judge the Noahide laws according to their Torah details as commanded to Noahides. They apparently have no right to judge otherwise when it comes to the other six laws.³ (However, Noahides may judge other decrees established by their courts as needed).
- Noahide courts must also judge according to the minimum procedural requirements of *dinim*.⁴
- Noahide courts must also administer the death penalty for infractions of Noahide law.⁵

Substantive Decrees

Dinim grants Noahides the right to make laws and judge according to the needs of their own societies and cultures. These laws, in so much that they preserve society, have biblical authority.⁶ Therefore, if the courts declare certain financial transactions illegal, even though the Torah permits them, those transactions become biblically prohibited under *dinim*. Their transgression is not only a civil

¹ See the list of *teshuvos* mentioned in the previous lesson as well as *Shu"t Ezras Kobein* 22.

² As we saw from Maimonides in the first lesson on *dinim*.

³ See [*Shu"t Mishneh Halachos* VII:254](#).

⁴ This is also clear from Maimonides. We have decided not to get into the procedural details of *dinim* since these are mostly theoretical today (as we shall see).

⁵ *Mishneh Halachos* *ibid*.

⁶ According to Nachmanides and Rabbi Yaakov of Anatol. There are differing views on how Maimonides would characterize such laws.

crime, but a religious sin as well. A court may also impose any punishments reasonably required to penalize the guilty and deter other would-be criminals.

The courts are only empowered to make such laws that benefit society and preserve order.⁷ The courts may not pass wicked or decadent laws (i.e. like Sodom and other corrupt peoples).⁸

The courts may not only make additional laws, but may judge these laws as they deem necessary.

Modern Courts & *Dinim*

**Modern courts –
do they fulfill
dinim?**

Obviously, modern courts do not fulfill the procedural requirements of the Noahide laws. They do not enforce all of the Noahide laws, nor do they punish properly those that are enforced. Does this lack of proper enforcement or penalization mean that these courts are not fulfilling the *mitzvah* of *dinim*? If they are not fulfilling *dinim*, then are they valid courts of law in the eyes of the Torah? Does this fact invalidate the substantive decrees these courts make? This is a grave question with serious consequences:

- **If valid** – It is a *mitzvah* to use those courts, to participate in the justice system, and to respect its rulings.
- **If invalid** – Then it is forbidden to use these courts, participate in them, or even participate in the government that maintains them. The monetary rulings of such courts constitute theft, and should they impose the death penalty they would be guilty of murder!

Courts That Only Observe or Enforce Part of the Noahide Code

Today's courts do not enforce all of the Noahide laws. Furthermore, the judges, lawyers, witnesses, and other officials of the court do not themselves conscientiously observe all of the Noahide laws. Even if they do, it is usually only on account of reason and not religious motivation.

⁷ This is the fundamental purpose of *dinim*, as mentioned in the first lesson.

⁸ See Rashi to Sanhedrin 56b.

However, observance of the Noahide laws for such a reason is nevertheless valid; they are Noahides, but only *chakbmei umos haolam* (of the wise) and not *chasidei umos haolam* (of the pious).

**Chazon Ish:
Rabbi Avraham
Yeshaya Karelitz**

The [*Chazon Ish*](#),⁹ in an important discussion of the *mitzvah* of *dinim*, proves that this level of observance is certainly enough to grant secular courts legitimacy under *dinim*. He makes a distinction regarding the validity of courts for procedural and substantive aspects of the law:

- **Procedural** – For a Noahide court to judge others according to Noahide law and the requirements of the Torah, the judges and officials must themselves be believing, religiously motivated Noahides. It makes no sense to empower an idolater to judge Noahides according to Noahide law.
- **Substantive** – For the laws passed to preserve society, we may appoint judges and courts as needed. These officials do not need to be committed Noahides, because they are not judging or administering the purely Noahide aspects of *dinim*.

Collectively speaking, modern courts derive their authority from the **substantive aspect** of *dinim*. Therefore, they are fulfilling the *mitzvah* of *dinim*, which, at its root, is about preserving order between man and his fellow (see the first lesson on *dinim* for more on this). Therefore, they are valid courts of judgment.

Yet, the individuals running our courts, are, generally, not committed Noahides. Therefore, they are not valid to administer the **procedural aspects** of *dinim*.

However, this fact produces an interesting result.

Capital Punishment

Since most judges, officials, and witnesses are valid only according to the customs and needs of society, they may only administer matters governed by the substantive laws and decrees they have made. However, they cannot judge or administer the procedural aspects. The *Chazon Ish* draws a very important conclusion from this: modern courts are not empowered to give the death penalty for transgressions of Noahide law. Courts can only impose the death penalty when most of society and the courts keep the Noahide laws and do so for the right reasons.

⁹ Bava Kamma 10:16.

Therefore, courts today do not have the right to impose the death penalty, even for murder! Most *Torah* authorities oppose the death penalty for this very reason. However, for the sake of preserving order, it may be imposed if society absolutely requires it as a criminal deterrent.¹⁰ In that case, the death penalty would fall out under the substantive aspect of *dinim*.

Modern Courts According to the Rema

Many *poskim* maintain that even those who hold of the Rema, that *dinim* imposes the Jewish legal system upon non-Jews, would agree to the validity of modern secular courts. The *Minchas Yitzchok*,¹¹ discussing this issue, concludes that the Rema holds Noahides may not initially establish their own legal system in lieu of the Jewish legal code. However, once established such a legal system is binding and valid.¹²

Can Noahides Elect to Be Judged in *Bais Din*?

Technically, yes. But why? Some Noahides have asked to have their cases judged by *bais din* because they want to be judged according to “God’s law.” However, *dinim* is also God’s law! It is true that modern courts are not fulfilling *dinim* in the ideal way, but today’s *batei din* are not operating ideally either (as discussed in an earlier lesson). We see that Jews and Noahide are both far from their ideals. God has nevertheless provided us both with our own, unique pathways to Him. As different as the paths may look, they both start and end in the same place: the wellspring of the holy Torah.

¹⁰ *Igros Moshe* CM II:68.

¹¹ IV:52.

¹² This is also the ruling of *Shu”t Keter David* 18; *Kenesses HaGedolah*; *Chelkas Yoav* and many others cited by the *Minchas Yitzchok*.

Summary

1. Many *poskim* read Nachmanides as disagreeing with Rema and supporting Maimonides and the other Rishonim.
2. *Dinim* operates on two levels: fixed requirements of procedural law, and decrees of substantive law that are made as per the needs of society.
3. Substantive decrees are valid only if just and beneficial to society.
4. Even though today's courts do not enforce all of the Noahide laws, they are nevertheless valid courts and fulfill *dinim* on the most basic level.
5. However, their fulfillment is not enough to empower them to impose the death penalty.
6. In general, Jews and Noahides are not in favor of the death penalty. However, in rare situations, they acknowledge that it may be justified if it would deter similar crimes in the future.