



BETH DIN of AMERICA

בית דין דאמריקא

LAYMAN'S GUIDE TO DINEI TORAH (BETH DIN ARBITRATION PROCEEDINGS)

The purpose of this document is to give basic information about the Din Torah process. It is not intended to replace or supplement the official rules of the Beth Din of America and is not a legally binding document upon the parties or the Beth Din, although the Beth Din of America generally follows the procedures outlined in this document. We would like it to accurately reflect what does happen in the Din Torah process, though, so if you find that it is wrong or unclear, please send comments to info@bethdin.org.

What is a Din Torah?

A din torah is the Jewish substitute for going to court. Jewish law does not allow one to be a plaintiff in a secular court without first obtaining permission from a Jewish court. In a din torah, people who have a dispute present their cases before a panel of three judges, generally rabbis. At the end, the judges issue a decision which is binding on the parties, both as a matter of secular and Jewish law.

In some cases, people with a dispute may attempt mediation. Under Jewish law, people are not obligated to mediate, and can insist on a din torah. Mediation occurs when the two sides having a dispute bring in a third party, called the mediator, to help them come to a resolution that everyone can agree to. It is not necessarily important in mediation who is right in the dispute, just what resolution everyone can accept. In mediation, the mediator cannot force everyone to accept a resolution. Mediation is often more friendly than a din torah, because both parties are working to find a resolution they can live with, while in a din torah each side is defending their own position.

Understanding What Kinds of Claims Work in Beth Din

Courts make decisions based on what each party is obligated, as a matter of law, to do.

It is important to understand that sometimes a person may have done something that hurts a claimant, but they are not necessarily liable to pay damages to that claimant, because as a matter of law they were not obligated not to perform that act. For example, an employer may fire an employee who has been working for that employer for twenty years because the employee stopped doing his or her job. Even though employee may very well be hurt the employer may not be liable to pay damages to that employee, because an employer is not obligated to continue to employ someone who is not doing his or her job.

Sometimes the defendant did have an obligation to behave better but did not cause actual damage that a court can help fix. An example is an individual who badly insults someone else for no reason. If the victim of that insult has not suffered financial damage as a result of the insult, the court might not be able to do anything more than reprimand the offender.

Finally, courts require proof. If a claimant is not able to prove their case to the satisfaction of the judges then the defendant will prevail. The nuances of what constitutes proof are quite complicated, but it is important to know that it is not sufficient that the claimant knows that he or she is right – the judges need to be convinced of that fact.

*The Process of
Bringing a Case to
Beth Din*

Parties with a dispute may end up before a beth din either: (i) because they previously agreed, in a contract, to bring their disputes before a beth din, (ii) because they are in agreement now to have a beth din decide their dispute or (iii) because they have chosen that beth din through the *hazmana* (summons) process.

When two or more people enter into a contract, they may include a provision which states that disputes arising out of the contractual relationship between the parties be resolved by an arbitration panel or organization agreed upon by the parties. If a dispute relating to the contract arises, each party is then obligated, as a matter of contract law, to appear before the designated arbitration panel. Alternatively, parties to a dispute may agree together that they will appear before a beth din to resolve their dispute.

An individual with a dispute against someone else may also choose to summon the defendant to a beth din through the *hazmana* process. If someone wants to bring a case to the Jewish court, the person can request the beth din to send a summons, called a *hazmana*, to inform the person being summoned. A *hazmana* (literally “invitation”) is not the equivalent of a summons in the secular courts of the United States. In particular, the claims do not have to be fully fleshed out, and someone receiving the summons is not expected to respond with a defense but a response to arrange a Din Torah hearing. The beth din is not ruling on the substance of the case during this stage. The beth din only needs to be convinced that the case would be one that might theoretically have merit, and it will not reject the case even if the recipient of the *hazmana* responds with an excellent defense.

A Jewish court generally sends three summonses prior to issuing a contempt decree. The court does so to make clear that the person being summoned is refusing to come, and is not merely negligent. Someone receiving a *hazmana* is required to respond and should not wait for additional *hazmanos*.

Sometimes a recipient of a *hazmana* may have a procedural objection to going to a beth din, in which case the recipient should explain the objection, in writing, to the summoning beth din. For instance, if the case was already decided in a different forum (e.g. before another beth din or if both sides already went by mutual agreement to secular court) then the beth din usually will drop the matter.

The recipient of a *hazmana* is not obligated to go to the beth din chosen by the claimant, although he or she is obligated to either settle the case or go to a beth din. If the person being summoned does not want to go to the summoning beth din, then

he or she must propose an alternative beth din. If they cannot find a mutually acceptable beth din, a “joint bet din” is formed by a procedure called “*zebla*” or “*zabla*.”

In *zabla*, each side picks one judge. The two judges that were picked select a third judge together, and the three judges together form the beth din that will decide the case. The judges must be qualified to serve as judges. The Beth Din of America therefore often recommends that both sides pick judges who regularly serve on a beth din. The judges must be independent. The judges are not lawyers for the side that picked them. A judge can decide against the litigant who chose him. However, a judge has a particular responsibility to make sure that beth din fully considers the case in favor of the side that picked him.

*Arbitration
Agreement / Shtar
Beirurin*

The Beth Din of America, like many other batei din, tries to make sure that its decisions can be enforced in secular court. The American legal system allows the parties to a dispute to sign an “arbitration agreement,” which means that both sides agree to take the case to a forum other than a court for a decision, and they are legally obligated to follow that decision. Therefore, prior to a din torah, both parties sign an arbitration agreement.

The arbitration agreement also serves a role under Jewish law. It clarifies what dispute the beth din is deciding. Also, since the parties usually have a choice of several batei din, the arbitration agreement / shtar beirurin indicates that both sides accept the decision of the particular beth din. Additionally, it usually indicates that the ruling will be according to a type of Jewish law known as “pshara” or “pshara krova l’din.” Please see the terminology section for an explanation of those terms.

*The Hearing / Din
Torah*

In principle, the parties and any witnesses should stand during the entire hearing before the beth din. Nowadays, batei din grant the parties permission to sit during the proceedings.

Usually, the hearing begins with some procedural matters. The *dayanim* (judges) check photo identification so they can identify the parties. Sometimes additional paperwork needs to be signed.

The judges should not have preconceptions about the case coming in to the hearing, so they are generally told only the basic outline of the case in advance. As such, each side should expect to present the full story of the dispute at the hearing. Usually, the claimant presents their claims first. The claimant explains what happened and tells their perspective of the dispute. After the claimant finishes their presentation, the defendant presents their view of the dispute. It is always a good idea for both parties to be as organized as possible. The claimant should make sure to explain what they are seeking, often in precise amounts of dollars and cents, and why the defendant, in particular, is obligated. The claimant should present any relevant evidence. Similarly, the defendant should present any evidence and counter the arguments of the claimant in an organized way. Both sides should expect to take notes during the other side’s presentation. The judges may and probably will interrupt at any time to ask questions and seek clarification.

In the interest of maintaining decorum during the proceedings, it is appropriate for

each side to remain silent during the other side's presentation. Any questions or counterarguments should be quietly noted and responses may be presented during a party's subsequent turn to speak.

The parties take turns presenting, going back and forth, until both sides have fully presented and fleshed out their views of the dispute. Sometimes the judges do cut a presentation short when the presenter is repeating themselves, often inadvertently, or when the presentation is not relevant to the dispute that the court is judging. The judges try to err on the side of allowing each side to speak longer than necessary rather than accidentally preventing someone from fully presenting their position and evidence.

If either side realizes that some evidence is relevant but is unavailable at the hearing, they can request to submit it later. Often, one side or the other realizes that there is something they did not think to bring that would be useful. While *dinei torah* are often concluded in one hearing, it is fairly common that the parties (after requesting permission from the judges) follow up by submitting materials that were not brought to the hearing.

Evidence has to be shared with everyone – the judges, and the other side. Therefore, if the evidence is written, all three judges and the other side should receive a copy, so each side should bring five copies of anything important – one for themselves, one for the other side, and three for the judges. When submitting evidence after the hearing, the same rule applies.

The Beth Din of America records the proceedings.

Witnesses

In beth din, like in any court, it can be essential to bring testimony to bolster one's claims. In principle, according to Jewish law, witnesses are required to be observant males above age 13 who have no stake in the outcome of the *din torah*. Two witnesses are required to establish a debt despite the debtor's denial; one witness can only force the defendant to swear that he does not owe money. As such, testimony by relatives and employees would not count as testimony under Jewish law. However, Jewish law recognizes that in many circumstances testimony will only be available from witnesses who do not meet the above criteria and will therefore accept testimony from other people, at least regarding financial claims. Please note that testimony from interested parties such as relatives and employees is always taken with a grain of salt, even if they are allowed to testify. The Beth Din of America nevertheless often allows interested parties to testify because their testimony often helps clarify the case.

Witnesses do not attend the proceedings except during their testimony. This way they can provide independent corroboration of statements made during the proceedings.

Batei din do have the ability to subpoena witnesses, both as a matter of Jewish law and as a matter of secular arbitration law.

Calling a witness in a *bet din* is somewhat different than in secular court. Jewish law does not view a party to the dispute as a witness, although the parties generally must present their story themselves, and do not have a choice whether or not to "testify." The opposing side does not have a specific right to cross-

examine either the “testifying” party or a witness. The beth din panel has a right to ask questions of the parties and witnesses. As a practical matter, in the interests of efficiency, the Beth Din of America usually does allow the opposing side to ask questions directly to a witness, but usually does not allow each side to pose questions directly to the other side. If one side wants the beth din panel to ask a specific question to the other side, they make that request to the panel, and the panel decides whether to ask. Unlike in secular court, witnesses are not sworn in, although they are obligated under Jewish law to tell the truth.

The Psak / Decision Nowadays, decisions of the beth din are issued in writing. The decision doubles as an “arbitration award,” so as to be enforceable under secular law as well. The decision may or may not explain the reasoning behind it. Jewish law does not require that the decision explain the reasoning except in certain limited cases. Unless specified otherwise, the decision is final and takes effect immediately.

Appeals Jewish law does not fundamentally have an appeal system like the secular courts. However, the Beth Din of America allows “requests for modification” as part of its rules, unlike most other batei din. Decisions are only overturned if the appellate judge reviewing the case finds a clear mistake in the original decision, but not merely if the judge would have decided differently himself.

Frequently Asked Questions

What happens if the person who is summoned to a Din Torah refuses to come?

Jewish law forbids the defendant to refuse. It is a violation of Torah law, similar to eating non-kosher food or violating other Jewish laws.

In the event that there is an existing agreement to come to a particular beth din (for example, if the parties signed a contract which refers any disputes to a particular beth din), the beth din can hold a din torah in the absence of the person who was summoned. The beth din considers the evidence that the claimant brings and issues a ruling on that basis.

Otherwise, the summoning beth din generally issues a “heter arkaos,” which grants permission to the plaintiff to go to secular court, so the defendant does not simply avoid a hearing.

A summoning beth din may issue a “seruv,” or a contempt order. A seruv is simply a public declaration by a beth din that someone was summoned to beth din but refused to meet their obligation under Jewish law to appear in front of the beth din. Sometimes, Jewish communities or synagogues impose sanctions on such people, such as not giving them *aliyos* (being called up to the reading of the Torah) or refraining from social interaction, to pressure the person to meet their obligation. The beth din is not necessarily involved at that point – the community or synagogue decides what measures are appropriate.

Occasionally a summoning beth din may issue an “ikul,” a restraining order. The Beth Din of America seldom does so.

Do I need a lawyer?

No. However, under secular arbitration law, you have the right to have a lawyer present if you want one. Sometimes a lawyer can help you organize your case, and help you identify what is important to present to the judges. Nevertheless, unlike secular court, the judges in beth din have a much greater responsibility to make sure each side fully presents their case, so a lawyer is not necessary.

If I want a lawyer, do I need a lawyer with special expertise in Jewish law?

No. The main advantage of a lawyer is to make sure that your case is organized, and that you do not neglect any evidence in your favor. The judges are responsible for identifying Jewish law relevant to the case.

Do the judges follow American law?

They follow Jewish law, but Jewish law often takes the local law into account. For example, Jewish law often considers common business practice, which in the United States is often a product of American law. If someone enters into a contract that is binding according to American law, then they are generally bound by Jewish law as well, because the business community considers such contracts binding. Also, there is a principle in Jewish law called “dina d’malchusa dina,” literally, “the law of the government is the law.” The exact

parameters are somewhat complex, but this means that Jewish law recognizes many secular laws. Bankruptcy laws are often a good example.

Do batei din recognize corporations and the related limitations on liability?

Generally, *dayanim* at the Beth Din of America treat corporations much like they are treated under secular law. Jewish law might not specifically recognize the existence of an independent entity with its own liability such as a corporation. Nevertheless, if you do business with a corporation, you are usually assumed to be following common business practice, and in the United States, limitations on liability are common business practice. Also, corporations would be effective under Jewish law according to some understandings of *Dina D'Malchusa Dina* (literally, "the law of the government is the law"). Please note that even under secular law, corporations do not always shield individuals from liability. If, for example, the president of a company guarantees a deal with his own assets, then his personal guarantee would make him personally liable. Also, sometimes it is possible to "pierce the corporate veil." This means that a corporation cannot just be a front. If it turns out that someone has a corporation that they use just like their personal bank account, putting money in and taking it out freely, they demonstrate that the corporation is not independent, and they are not protected by the corporation from personal liability. The details of exactly when this applies are beyond the scope of this guide.

What are some notable distinctions from secular law?

Jews are forbidden to charge each other interest on loans, so if a contract calls for interest, a beth din will often strike that provision. Jewish law considers many payments that allow one to pay more but pay later to fall under this prohibition, so even things that do not seem like interest may be included. Jewish law allows a workaround called a *heter iska*, which restructures a transaction with interest into a different kind of transaction with mostly similar effects, but if the parties do not enter into a *heter iska*, interest is generally unenforceable.

Every seven years, at the end of a *shmittah* year, loans between Jews are nullified, unless the creditor executed a document called a *pruzbul* after the loan was made but before the nullification. The nullification takes place immediately before Rosh Hashana following the *shmittah* year. The next such nullification will take place in 2015. There are several exceptions even without a *pruzbol*, but it is generally a good idea to have one.

Inheritance rules are very different, particularly in the absence of a will. Generally sons inherit to the exclusion of their sisters, among other differences. There are provisions that may be included in a will allowing it to be enforceable under Jewish law. Also, if the parties to a litigation stipulate that the provisions of a will should be honored, the beth din will respect the provisions of the will.

Are the judges bound by precedent?

Not really, at least not in the sense that secular courts are bound by their precedents. The judges in a din torah apply their understanding of Jewish law, and not all judges understand the law in the same manner. However, the body of Jewish law is very extensive, so many questions do have a clear resolution that the judges can be expected to follow.

Glossary of Terms

Beth Din – A Jewish court. There are many Batei Din in the United States, with no particular hierarchy.

Batei Din – Plural of Beth Din.

Din Torah – Arbitration in a Jewish Court

Dinei Torah – plural of Din Torah

Toveah – claimant / plaintiff

Nitvah – respondent / defendant

Hazmana – Summons

Hazmanos – Plural of Hazmana

Toen or Toen Rabbani – similar to a lawyer in secular court, a toen acts a representative of one of the parties. The Jewish court system does not expect the parties to have such representation, and the Beth Din of America disallows such representation except, in certain cases, with the explicit agreement of all parties and the judges.

Kinyan – An action that makes a transaction take effect, somewhat like signing a contract makes the contract take effect. One type of Kinyan is a Kinyan Sudar.

Kinyan Sudar – a Kinyan made by accepting an object of at least some minimal value, such as a handkerchief, as a symbolic agreement to be bound in a transaction. For example, parties usually are handed a handkerchief or a pen at the beginning of a din torah, which they then raise to demonstrate acceptance of the jurisdiction of the beth din.

Din – Jewish law. Sometimes used in a more narrow sense to contrast with Pshara.

Pshara – Compromise. This does not mean the court may enforce any compromise it wishes on the parties. In pshara, the judges hold a hearing, consider the evidence according to Jewish law principles, and order a settlement based on the equities of the case. As such, sometimes the judges rule entirely in favor of one side, even though they are judging according to the rules of pshara. The primary distinction between din and pshara is that the judges in din are more limited by the technicalities of Jewish law.

Pshara krova l'din – Compromise or Settlement related to Jewish law principles. This is a form of pshara in which the judges may not deviate freely from what the outcome would have been if the case were to be judged according to the rules of din. See Rules and Procedures, Section 3, for the official definitions of Din, Pshara and Pshara krova l'din contained in the Rules and Procedures of the Beth Din.