

# S·E·P·H·A·R·D·I·C HALACHA JOURNAL

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## ‘ORDER IN THE COURT!’: IS THERE?

*The Din Torah process in contemporary times*

*Adapted from a Shiur by Dayan David Englander*

It is not uncommon for people to question the *Bet Din*'s procedures, action, and motives, especially when they are first exposed to a *Bet Din* as a party to a case. The first step toward understanding how and why a *Bet Din* acts is to attempt to see things from the perspective of a neutral party. As simple as this may sound in principle, it is quite difficult to put into practice.

A *Bet Din* is duty-bound to resolve the matter without unnecessary delay. But for proper resolution, both sides must appear in court to present their case in the presence of each other. For this purpose, the *Bet Din* will summon the opposing party to appear so they may address the claim.

When one turns to a *Bet Din* to resolve a claim, it will summon the defendant to appear before the court to address the plaintiff's claims.

Essentially, a *Hazmana* is but a relaying of the *dayan*'s order to appear and respond to a claim. In *Parashat Korah*, Moshe sends a messenger to summon Dattan & Aviram to appear before him. From here the *Gemara* derives the proper procedure of summons to *bet Din*. To avoid the appearance of partiality toward the plaintiff, a *Shaliah* – an emissary – rather than the *Dayan* himself, will approach the defendant in person and summon him in the name of the *Dayan* or *Bet Din*.

In our day, instead of a messenger, the custom of *Batei Din* is to issue a *Hazmana* writ

and to rely on the postal authority for delivery. Some *Batei Din* still will attempt to ascertain that the written *Hazmana* arrived at the correct address.

Prior to issuing the *Hazmana*, the *Bet Din* needs to hear some facts about the case for a number of reasons.

Firstly, the *Hazmana* must include the name of the *tovea* (plaintiff), and the basic subject of the case. A defendant must be informed who is making the claim against him so that he may seek resolution or prepare a defense. Sometimes, the *Bet Din* will require that the *Hazmanah* must specify the amount or the item being claimed, so the defendant can choose to pay up to avoid the indignity of going to *Bet Din*.

The *Bet Din* must also make sure that the plaintiff has the authority to make the claim. The *Bet Din* may also want to be sure that the case is appropriate for this *Bet Din*. Imagine if, at some point in the *Din Torah*, a litigant were to discover that one of the *Dayanim* also provides *kashrus* certification to a business owned by his opponent! A *Bet Din* must be careful to avoid even the appearance of partiality. In such a case, they may be referred to a different *Bet Din*.

The *Hazmana* process has a built-in schedule to ensure that it is followed up with. Each *Hazmana* features a date and time, usually about ten days from when it is being sent. If no response is received by the end of the time of the appointment on the *Hazmanah*, a second *Hazmanah* can be sent out.

Although the recipients are obligated to comply with the first *Hazmana*, the prevailing custom is that the *Bet Din* sends a second and third *Hazmana* before declaring him in contempt. But it should be noted that one is still not permitted to simply thumb his nose at *Bet*



*Adapted from a Shiur by Rav Yosef Greenwald on Parashat Mishpatim*

### *Who's Boss: Eved Ivri and The Torah's Message for Employees*

הגישו אדוניו אל האלוהים והגישו אל הדלת או אל המזוזה ורצע אדוניו את אזנו במרצע ועבדו לעולם (שמות כא:)

*Halacha* recognizes two types of workers:

- Employee paid by the hour, e.g., an office manager hired for a 9-5 job
- Employee paid by task, such as a contractor hired to build a deck

The *Gemara* (77b-78a) rules that a worker may sometimes quit a job after beginning it due to the principle of stated concerning — we are servants to Hashem, and not to other humans.

He may quit even in the middle of the day.

He must be paid for the work that he did already.

If his leaving will cause a loss (e.g. a time sensitive job for which there is no one else to replace him), he may not quit.

A contractor may generally not retract without completing the job.

If the

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spotlight

Session II in Halacha Seminar Series for Attorneys

What language in a document makes it enforceable in *Bet Din*?

These and other business Halacha questions related to the real estate industry were the focus of the second shiur in the *Bet HaVaad* series for lawyers presented by Dayan Shmuel Honigwachs.

(continued on back)

(continued from front pg.)

Din by flouting a first *Hazmana*.

If they do respond, they can ask for the case to be heard in another *Bet Din*. If, after some time, the defendant has still not scheduled a *Din Torah* with the other *Bet Din*, the plaintiff can ask their chosen *Bet Din* to resume the *Hazmana* process, or you can return to the first *Bet Din*.

The defendant may request a change of date if he needs it. According to *Halacha* one must give a valid reason for postponement but as long as one is acting in good faith, *Bet Din* will try to accommodate.

With the third *Hazmana*, the *Bet Din* will usually issue a warning that it is the final *Hazmanah* and that failure to respond may result in a *Seruv* (lit. failure to comply). The *Seruv* is a grave declaration, conveying to the entire community that the recalcitrant party is a *Mesarev L'Din*, and should be treated with all attendant consequences. It is a punitive instrument of enforcement that most *Batei Din* use very judiciously, so as to preserve its weighty significance for only the most compelling instances. If a litigant feels a *Seruv* is in order, he may request it.

Alternatively, since the defendant is a *Mesarev*

*L'Din*, the *Bet Din* may issue a *Heter Arka'ot*, which is a license to bring the matter before a secular court.

The entire *Hazmana* process can take anywhere from a few weeks to several months, depending on how compliant the defendant is.

If that sounds like a long time, keep in mind that if one were litigating in secular court he would still be months or even years – and hefty legal fees – away from a trial. He would have to hire an attorney to serve and file a complaint, to which the opponents would be given three weeks to respond. If the plaintiff survived their “Motion to Dismiss”, he would wait again for preliminary conferences to fight over the discovery process. Then, months of discovery can easily stretch into years of depositions, interrogatories, subpoenas, delaying tactics and all sorts of *shtick*. Then, if the case makes it past “Summary of Judgment” intact, it would go on pretrial order. The protracted trial still hasn't begun, and the litigants have already expended a significant portion of their life and fortune on the legal process.

As justice systems go, you're in the fast track with *Bet Din*.

(continued from front pg.)



worker was paid up front before he began working, may he still quit?

– Only if he has money left now to return for the work left undone.

Maharik/Rema (Y.D. 333:3) – Yes, and he can repay the rest of the money later.

May one sign a long-term contract with an employer for more than three years?

Rema (C.M. 333) – No

– A rabbi may sign with his community for lon-

ger as long as he may still quit in the middle.

The message for us:

Our true job in life is to serve Hashem, our employment is simply the means to maintain a livelihood, and should not control us.

The ears are pierced when wanting to stay because he did not heed this message heard at Har Sinai of being primarily the servants of Hashem.

The Brisker Rav: Our job is our livelihood, but if we are asked who we are, we respond like Yonah (Yonah chapter 1): *Ivri Anochi, V'Et Elohe HaShamayim Ani Yare – I am Jew and I fear Hashem, G-d of the Heavens...*

# The Daf in Halacha

Bring the Daf to Life!

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### This Week's Topics

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- דף ע' SURROGATE MOTHERHOOD IN HALACHA
- דף ע"א WHAT IS KEDEI ACHILAS PERAS?
- דף ע"ב THE BERACHA OF A BEN PEKUA



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