

'Order in the Court!': Is There?

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The Din Torah process in contemporary times

It is

not uncommon for people to question the beis din's procedures, action, and motives, especially when they are first exposed to a beis din as a party to a case. The first step toward understanding how and why a beis 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

beis 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 beis din will summon the opposing

party to appear so they may address the claim.

When one

turns to a beis 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 Parashas Korach, Moshe sends a messenger to summon Dasan & Aviram to appear before him. From here the Gemara derives the proper procedure of summons to beis din. To avoid the appearance of partiality toward the plaintiff, a shaliach, rather than the dayan himself, will approach the defendant in person and summon him in the name of the dayan or beis 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 beis din needs to hear some facts about the case for a number of reasons.

Firstly, the *hazmana* must include the name of the *tove'a*, 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 beis 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 beis din.

The

beis din must also make sure that the plaintiff has the authority to make the claim.

The beis din may also want to be sure that the case is appropriate for this beis 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 beis din must be careful

to avoid even the appearance of partiality. In such a case, they may be referred to a different beis 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 beis 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 beis din by flouting a first *hazmana*.

If they do respond, they can ask for the case to be heard in another beis din. If, after some time, the defendant has still not scheduled a din torah with the other beis din, the plaintiff can ask their chosen beis din to resume the *hazmana* process, or you can return to the first beis 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, beis din will try to accommodate.

With the third *hazmana*, the beis din will usually issue a warning that it is the final *hazmanah* and that failure to respond may result in a *seruv*. 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 beis din may issue a *heter arkaos*, 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 beis din.