

Can One Make A Modaah to Annul a Settlement He Made Under Threat of Being Taken to Secular Court?

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Questions: Two individuals have a din Torah and the Dayanim rule in accordance with one of the parties. Afterward, the one who lost the din Torah tells the winner privately that if he doesn't agree to a compromise settlement with him, he will go to a secular court and have the bais din overruled. Under duress, he agrees to the settlement, but before signing, he issues a *Modaah* that he does not really consent. Will this *Modaah* negate the settlement?

Answer: Since the individual was given a clear ruling from bais din, there is no ambiguity regarding the amount he is entitled to. Therefore, any settlement he agrees to has the status of a *matanah*, a gift to the other party. Accordingly, a *Modaah* should definitely work to negate the settlement.

In truth, the mere threat to go to court may not always be considered a real *oness*. Because neither side can be certain that they will win in court, we cannot automatically assume that the threat is serious enough to deem the settlement a forced one. Moreover, generally speaking, overruling the mutually agreed-upon arbitration of a bais din in a secular court is very unlikely.

Having said this, if the person did go to the effort of issuing a *Modaah*, this indicates that he did feel pressured by the threat of going to court and the *Modaah* probably would work to cancel the settlement.

Additionally, nowadays the expense of being taken to court and having to hire lawyers is in itself a very real threat, even if the outcome is uncertain. The Maharsham writes that even in his times, it had become common for litigants to turn to the secular courts even if they were unsure of the outcome. They did so because they knew that the court system is expensive and time consuming, and they hoped to wear down their adversary until he finally gave in to their demands. Therefore, he says that a threat to go to court could be considered a viable threat and it is certainly something that a *Modaah* would work for, even in a case of *mechirah*.