

Does a Litigant Have to Accept a Bais Din of Zabla?

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Question: It seems like the Zabla system of each side choosing a *dayan* and having the two *dayanim* choose a third does not work in today's times.

Although, it functioned well in the times of the Mishnah. Today, each side often "hires" a representative to speak on his behalf, and there is only one neutral *dayan*. If a bais din is being arranged in this way, can one party refuse to take part in it and demand to go to a traditional bais din instead?

Answer: Using this type of practice for large *dinei Torah* has been a prevailing custom for a long time and has been bemoaned by Poskim throughout the generations. Indeed, it is a very flawed system. When this practice is used, one of the *dayanim* is paid to advocate on behalf of one of the parties, even though he is a *dayan* on the bais din, which is obviously absurd. Just hearing one side's argument without the other being present is against halacha, so actively working with one side is definitely problematic. In addition, *dayanim* have the power to cross-examine witnesses, and if one *dayan* does so on behalf of his client and tries to twist their testimony to his liking, it is obviously very problematic.

Although this system is very flawed, the Aruch Hashulchan says that if both sides agree to it, it can be used; however, many Poskim clearly say that if one side does not want to use this system, he cannot be compelled to participate.