

How Can someone Protect Himself From a Modaah?

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Question: I want to reach a settlement with someone but I am worried that he will make a Modaah that will invalidate the entire deal. How can I protect myself from someone using the halachos of Modaah to negate a legitimate transaction?

Answer: The Mahari ben Lev writes that the way to write an agreement that would be protected from a previous Modaah is to incorporate four things in the document:

1. The party should admit that he made no previous Modaahs.
2. *Bittul Modaah*: It should be declared that all previous Modaahs are batul and what is said today will override anything from the past. The Rosh rules that bittul Modaah is effective, and even if the Modaah states that it is meant to be mevatel a bittul Modaah, the bittul Modaah can be mevatel that too.
3. The Rambam argues with the Rosh and rules that a bittul Modaah does not work; however, even the Rambam agrees that one can make a declaration that: "Anything I previously said that could be undo this transaction is now batul." Once one makes this statement, all previous Modaahs are canceled. Therefore, this declaration should also be included in the shtar.
4. The Rashba says that a solution to protect oneself from Modaahs is to invalidate the witnesses on the Modaah by saying that the party admits that any witness on a modaah is [as far as they are concerned] an invalid witness. This solution of invalidating the witnesses should be used in the shtar as well.

An additional two ways that are commonly used to work around the power of Modaah in a settlement are as follows:

1. In the agreement, they include a clause that any further disputes must be brought back to the same place where the settlement was made. This would mean that it would be nearly impossible to overturn, as any future complaints must be brought to the same body that issued the settlement.
2. The agreement states that the claimant agrees to a "kabalas daas yachid", meaning that any halachic opinion that validates the settlement must be adhered to. As we mentioned in a previous segment, the Maharashdam is of the opinion that a settlement cannot be invalidated by a Modaah. According to his opinion, the settlement is certainly valid. If the claimant agreed to abide by any opinion that validates the settlement, he will have to accept the Maharshdam's view.