

When May Someone Bring a Defendant Who Refuses to Go to Bais Din to Secular Court?

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Question:

When is it permitted for a plaintiff to take a defendant who refuses to go to *bais din* to a secular court?

What about using a secular court to get a restraining order?

Answer:

The standard procedure is for a plaintiff to have a *bais din* send a *hazmanah* (summons) to a defendant to invite him to a *din Torah*. If he does not respond to three *hazmanos*, *bais din* will give the plaintiff a *heter* to pursue the claim in secular court.

Rav Paltai Gaon learns this practice from a Gemara in Bava Kama. The Gemara finds a Torah source for a then-common expression: "If you call your friend and he doesn't answer, take a heavy wall and throw it at him." Rav Paltai explains this Gemara to be referring to the *bais din* process - if you call your friend to a *din Torah* and he doesn't come, you can strike him with the "heavy wall" of the secular courts.

There is a question in the Rishonim whether one needs explicit permission from *bais din* to go to a secular court, or if the fact that the defendant ignored the *hazmanos* is sufficient. The Teshuvos Rema says *bais din* must give the plaintiff explicit approval to take his friend to secular court. There is, however, a minority opinion, that one doesn't need an explicit *heter* from *bais din* to go to court; rather, if one sends the summonses of *bais din* and his friend ignores them, he is permitted to take him to court without any official permission from *bais din*.

With regards to a temporary restraining order, if one has enough time, it is preferable to get permission from *bais din* to use a secular court for this purpose. If, however, one is pressed for time and is afraid that the other party will take irrevocable actions, he would be allowed to obtain a temporary restraining order without first obtaining permission from *bais din*.