

# The Bais Din Process: Part IV

## THE DIN TORAH PROCEDURE

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A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

### B'TZEDEK TISHPOT ES AMISECHA:

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From the pasuk in the Torah of “b'tzedek tishpot es amisecha”, judge your fellow man with righteousness, the Gemara derives a most important concept about the beis din process. The Gemara defines “tzedek” to mean that each side must be represented equally when they are in beis din.

We find another Chazal that use this pasuk to teach us that in general, we are to judge our friends' actions favorably. There is even a well-known “vort” that the reason Hashem created the concept of a “krume kop”, a distorted way of thinking, is to enable judging another favorably even where it isn't warranted.

When it comes to beis din, however, the opposite is learned from this pasuk. They must adhere to a balanced perspective, striving for a just and true ruling. To achieve this, both sides have to be treated equally. The Shulchan Aruch expounds on the details of this halacha and says that both sides have to be given an equal opportunity to speak before the beis din and present their claims. Furthermore, the dayanim have to treat both parties in the same way and may not speak in a gentler way to one side and a sharper way to the other. The reason is that if one side feels that he is being mistreated, he will become disheartened and will be unable to present his case as well as he otherwise could. This could ultimately result in an unjust outcome.

### UNEQUAL REPRESENTATION:

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Also included in this halacha is that one party should not be dressed in fancy clothes if the other party is dressed like a pauper. The Shulchan Aruch writes that if one side is wearing expensive clothes and the other is dressed in rags, fine clothing should be given to the poorer party to ensure that both are viewed equally. This ruling is not enforced today. I can attest that I have never seen a beis din provide clothing for any litigant. The Maharshal says that already in his times the contemporary batei din do not insist on the parties being dressed in a similar fashion; however, he says that they should reassure the party dressed in inexpensive clothes that this will have no bearing on how they rule in

the case. The Tumim says that today's batei din will not even mention the clothing worn by the litigants and it is presumed to be obvious that the dayanim will not be affected by the way the parties dress.

What is more relevant to us is how the sides are represented in beis din. If one side comes to beis din accompanied by many people or with several to'anim on his side, while the second party comes alone, the second person may feel intimidated and may be unable to present his case properly, which would create an unjust situation. The Shulchan Aruch says that for this reason, either side may insist on restricting the participation of irrelevant parties. Even if a person has a din Torah with several partners, he may demand that the partners only be in beis din one at a time, or that he, too, be permitted to bring in some relatives to provide him with support and allow him to feel equal to the other side.

### EX-PARTE COMMUNICATION:

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Another very relevant aspect of this halacha is that in order to maintain full impartiality a dayan is not permitted to hear one side's claim without the other side being present. The Gemara in Sanhedrin says that it is both forbidden for a dayan to listen to one party's complaints without the presence of the other party, as well as for the litigant to tell his claims to a dayan before the other side is present. This is often relevant if one party arrives in beis din before the other, he cannot be allowed to begin presenting his case before the other party arrives.

The Gemara adds that if one party would tell his complaints against the other to a dayan without the other party being there, this would be a prohibition of lashon hara. Furthermore, the Gemara in Shavuos says that it would be a transgression of midvar sheker tirchak, as the truth will certainly be stretched in favor of the party that is present. One ought to realize that when a person tells you his complaints against someone else, it is natural for him to twist the truth to make himself seem right. Even if he does not intend to lie, he will naturally present the story in a way that favors him. As opposed to when he is in beis din, face-to-face with the other party, the facts will often be

presented in a more factual way, or it will immediately be rebutted by the other party.

## BIASED REPORTING:

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We have personally experienced this countless times. The Bais Havaad maintains a phone line for people to call with their shailoahs. We get many calls involving ribbis questions, hashavas aveidah, and the like. Occasionally, we can handle small-claims disputes over the phone. One time, a young man called the hotline and said that his tenant paid his rent in advance and then moved out because there was mold in the apartment. He asked whether he was permitted to keep the rent that had been prepaid. I asked him how much mold there was, he said it was a tiny amount. I told him that I couldn't answer him without hearing from the tenant and suggested that he have the other side call me as well. The tenant called a while later, and when I asked him how much mold there was, I wasn't at all surprised when he told me that the entire apartment was covered in mold. It was clear that both sides were biased and related the story in a way that benefitted them. That is why it is important never to issue any ruling without hearing both sides of the story.

Another application of the rule of b'tzedek tishpot es amisecha is regarding the evidence and documentation that is brought to beis din. The Rashba rules that evidence does not need to be provided to the other party because it will lead him to alter his claims and possibly lie to refute the proofs against him. The Rosh, however, takes the opposite approach and says that the other party has a right to see all the evidence so as to be allowed to present his arguments in the best way possible. He says that if the evidence is real, it will stand up to scrutiny. If it is not, the other party should have the opportunity to dispute it.

## AFTER THE RULING IS ISSUED:

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According to the letter of the law, when parties choose a mutually agreed upon beis din, when issuing their ruling they do not have to explain their reasoning. However, if a party was forced to come before a particular beis din, he has a right to know the reason behind the beis din's decision. The Nodah B'Yehuda adds that a beis din should be confident in their ruling and have no reason not to reveal it.

The Shelah in Maseches Rosh Hashanah writes that even when a beis din does not technically have to explain itself, providing the reasoning is a recommended practice because it will allow the parties to be satisfied with the decision.

The policy here at the Bais Havaad is to only provide the reasoning behind our rulings after both sides agree to abide by the decision regardless of what the reasons were. This way, the explanations for the ruling cannot be used as an excuse not to obey.

## APPEALS:

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Of course, there are those who are dissatisfied even after being provided with an explanation for the beis din's decision. They may go to others and show them the documented explanation together with their side of the story, which makes it seem that the beis din was incorrect. When people hear such a story, they should be aware that they are only hearing one side of the story from a biased source. As for appealing the decision, once a reputable beis din issues a ruling, another beis din is not allowed to have their case reheard.

In Eretz Yisroel, the Rabbanut has a system where designated batei din act as appellate courts, with the "Beis Din Hagadol" serving as the highest court. Presumably, this is permitted because that is how the system operates, and by utilizing this system both sides implicitly agree to its processes.

Rav Elyashiv zt"l actually served on the Beis Din Hagadol. He was asked how it is permitted for people to go to a higher beis din after another beis din already heard the case and issued a ruling. He pointed out that there is a halacha that if a beis din makes a halachic mistake, the case can be reheard. Thus, the higher beis din is merely ensuring that the lower one did not make a mistake. It should be noted that regarding this halacha of a beis din that makes a mistake, the Tumim writes that another beis din should only look into the ruling of the first beis din if there is a major cause to be suspicious.

In closing, the Chofetz Chaim says in Hilchos Lashon Hara that a person's obligation to judge others favorably definitely extends to a beis din as well. If a beis din issues a decision, even if one doesn't understand it, he should bear in mind that the dayanim are talmidei chochomim who lack his personal bias, they have heard all the arguments of the case and deliberated over it, and in all likelihood have issued a fair and just ruling.

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