

out an agreement, thereby negating the need to go to Bais din. Second, so that he will be able to prepare his case for when he arrives before the Bais din.

Since the Ritvah is basically giving the same reason as the Shach, this may indicate that he agrees with him. However, the Ritvah only uses this reasoning to explain why the defendant has a right to know who the claimant is, but he does not take it so far to say that this entitles him to know the nature of the claim. Conversely, this may indicate that he does not have to be told why he is being called to Bais din.

The Tumim writes that even according to the Beer Sheva, the party being summoned has a right to ask for the amount of the claim. To this extent, he agrees with the Shach that he has a right to at least know this important fact, so that he can try to work out a deal without going to Bais din.

Practically speaking, the defendant can claim “kim li” like the opinion of the Shach and require the plaintiff to reveal to him the nature of the claim. However, he can only demand to know the basic outline of the litigation, not all the finer details of the case being made against him. This idea is seen in a teshuva from Rav Moshe Feinstein to the Agudas Harabanim, where he says that even though we rule like the Shach, the claimant does not have to reveal all of the details of his case.

It is important to note that the logic of the Shach is limited. The reason the party being summoned must be told about the case is so that he can try to work it out outside of Bais din. It is not intended to allow him the means of meticulously preparing a good defense for himself.

HOW MUCH TIME IS THE DEFENDANT GIVEN?

Of course, the defendant cannot be expected to drop everything and run to Bais din the second he receives a hazmanah. While the Gemara says that Korach was told to appear “tomorrow”, this is not usually the case today. The Meiri says that the defendant should be given enough time so that he does not have to rush to Bais din. He is to be given enough time to be prepared and offer his rebuttal to the claims against him.

The Rema rules that the one being summoned has the right to ask for three days to prepare to come to Bais din. If he asks for more time, there is a Teshuvos Harashba that says that Bais din must ascertain why he is asking. If he is simply stalling and playing games, they are not to grant him the time. But if he needs the time to prepare his case, they should agree because this is part of the process of arriving at the truth.

Nowadays, a defendant will usually be given enough time to prepare his case and a mutually beneficial time will be arranged.

WHEN DOES BAIS DIN ISSUE A “SIRUV”?

The Gemara says that if someone does not come after the first hazmanah, a second one is issued, if he still doesn't come, a third one is sent. If he doesn't come after that, he is to be excommunicated.

The reason three hazmanahs are sent is that we are concerned that the party may not have received the first two, or that he literally could not come; however, if it is known for certain that he got the first one and willfully ignored it, it is not necessary to send the other two. In fact, the Gemara says a story of a woman who was sent one hazmanah and, when she failed to appear, she was placed in cherem that very day. It explains that a man has to be sent three hazmanahs because he may not be home when the messenger arrives to summon him. This woman, however, was home all day and definitely got the first hazmanah; therefore, it was unnecessary to send her any more.

Still and all, the Tumim says that the minhag is to always send three hazmanahs before taking action. However, if it is clear that the party has no intention of complying with Bais din, he could be censured after receiving just one hazmanah or a heter could be issued to go to secular court, depending on the circumstances.

In Chazal's times the punishment for someone who ignored a Bais din's summons was to be placed in excommunication. Since such a penalty is unenforceable today and would not be effective, the practice is to issue a “siruv”. The “siruv” proclaims that the individual is subject to everything the Shulchan Aruch says about people who flout a Bais din and is deserving of the punishments detailed there.

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The Bais Din Process

PART 1

By Rav Dovid Josilowsky - Dayan at the Bais Havaad

A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

The first thing a person ought to know about the Bais din process is that it differs fundamentally from the secular court system, l'havdil. The focus of the Bais din process is on reaching "tzedeck", a just and fair ruling. The secular court system, however, is overly focused on decorum and adherence to a set of policies. Fairness and truth are not as important as following protocol. This is a fundamental difference between the two systems.

In this series, we will be discussing the steps and procedures of the Bais din system. We will provide an outline of how it operates and why.

HAZMANAH L'DIN:

The first step of the Bais din process is when one litigant approaches a Bais din to send a hazmanah l'din, a summons to another party to appear for a din Torah.

The Gemara (Mo'ed Koton 16) says that the source of this procedure of sending a hazmanah l'din, is found in the Torah's description of the dispute between Aharon Hakohen and Korach. Of course, the first lesson we learn from Korach and his assemblage is that one should always try to avoid disputes altogether. There is a clear prohibition not to be like Korach and his followers. This means that one should avoid machlokes if it is at all possible. If there is a way to work out a disagreement without involving a Bais din to adjudicate, that would be the most preferable option.

If someone does have to call his friend to a din Torah, the Gemara tells us that a messenger is dispatched to summon the relevant parties. This is why Moshe "sent [a messenger] to Dasan and Aviram", to summon them to Bais din. The Gemara then derives that the defendant himself is also to be summoned to Bais din, because Moshe also summoned Korach to the din Torah. Most Rishonim learn that Moshe himself was the messenger to summon Korach.

The Gemara then teaches that when a party is summoned to a din Torah, he is told that he is being called to appear before

a gavra rabbah, a great person. This is learned from the fact that Korach was told to come and appear before Hashem. In this story, Hashem was the "gavra rabbah". The reason for this seems to be to stress the magnitude of the summons. If the party fails to appear, he is showing contempt for a Bais din and for the gavra rabbah, which is a most serious offense.

The Gemara further learns from the story that the defendant has to be told the identity of the other party in the case. In the story of Korach, he was told that he would have a din Torah with Aharon. The Gemara adds that a date is to be set for the din Torah. We learn this from the fact that Korach was told to appear "tomorrow" in front of the Bais din. Finally, the Gemara derives that the defendant is issued three summonses, and if he still fails to appear, he is to be excommunicated.

DOES THE DEFENDANT HAVE A RIGHT TO KNOW WHY HE IS BEING CALLED?

The Gemara clearly says that the defendant is entitled to know the identity of the other party, but it is not as clear what other information he has a right to know before he goes to Bais din.

There is a dispute amongst the Poskim about whether he has a right to know what he is being charged with, and why he is being taken to Bais din. The Shach cites the opinion of the Be'er Sheva, who says that the claimant does not have to reveal in advance the reason he is calling the defendant to a din Torah. Shach himself disagrees and says that the defendant has a right to ask why he is being called to Bais din, because if he knows what the complaints against him are, he may be able to work out some sort of agreement and avoid going to Bais din altogether. Therefore, so long as he is unaware of the nature of the complaint against him, he cannot be forced to come to Bais din.

There is a Ritvah in Mo'ed Koton that is cited as proof for both opinions. He says that there are two reasons why someone being called to Bais din has a right to know the identity of the plaintiff. Firstly, so that he will have a chance to try to work