

סדר י הדיונים של

בית דין קבוע

שעל יד ועד הרבנים דבאלטימאר

PROCEDURES OF

THE BALTIMORE BAIS DIN

Initially Drafted in June '94 by the Baltimore Bais Din Procedures Committee:

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1. Objective of the Bais Din:

In all matters of dispute between members of our people that can not be reconciled out of court, the Torah obliges us to seek a Halachic settlement before a בית דין (Bais Din - Rabbinical Court), whether through דין (Halachic Ruling) or פשרה (compromise). To seek redress in the civil court system is an overt חילול השם חייו (Divine Disgrace), in that it demonstrates a rejection of דין תורה (Torah Law) as the Divinely ordained law that governs our people. (Potentially it also may lead to גזל by allocating funds שלא כדן.) Conversely, the recognition and acceptance of the authority of Bais Din, and ultimately that of all of Torah Law, is itself a great קידוש השם (Heavenly Honor).

To facilitate the fulfillment of this obligation, the Vaad HaRabbonim of Baltimore has undertaken to establish a Bais Din that will service the community in this capacity. The responsibility of this Bais Din will be to provide a readily accessible and efficient system of דיני תורה (Torah Justice) that will be handled in an organized and consistent manner, and at minimal cost, to all members of our community. Full consideration will be given to the rights and concerns of all parties, in monetary matters as well as in issues of marriage and divorce.

The purpose of the Bais Din is to respond to claims of involved parties one upon the other, in context of דיני תורה (Torah Justice), not to issue statements on public policy, which remains the role of the communal leadership.

2. Scheduling, Location:

It is the express intent of the Baltimore Bais Din to handle all cases expeditiously, yet without undue haste (balancing עיניו הדין, הווי מתונים בדין, and the rights of the parties involved), in both the commencement and resolution of each case. The Baltimore Bais Din will sit on a regular basis, scheduling Sessions to accommodate parties to the cases before them, usually on Sundays, but alternatively during the week as well. The Baltimore Bais Din is presently located in the building of the Agudath Israel of Greenspring - Adath Yeshurun Mogen Abraham Congregation at 6107 Greenspring Avenue Baltimore MD 21209.

3. Submission of Claims:

The initial contact of all parties with the Baltimore Bais Din will be with the Mazkir (secretary) of the Baltimore Bais Din. He may be contacted by phone [at 410 484-1047] or by fax [at 410 484-1082], and will have voice mail on his phone line upon which messages may be left when he is not available.

The plaintiff [תובע] will inform the Mazkir of his interest in making a claim in the Bais Din, whereupon he will be asked to explain the nature of the case, what relief or payment of damages he seeks, and who the defendant [נתבע] is. The Mazkir will request of the plaintiff [תובע] to submit a very short, written description of the basic claim, including the names, addresses and telephone numbers of all parties. This writing is simply for purposes of clarification, for use by the Mazkir in making the הוזמנה (Summons), and will not be submitted to the Daiyonim. It does not need to be a full presentation of the claim, and does not require any professional preparation.

The Mazkir will then contact the defendant and explain to him the nature of the complaint [תביעה], and listen to his response. If the defendant so requests, the plaintiff will be asked to provide a more detailed description of his claim in advance. If the defendant has any counterclaims that he would want to bring before the Bais Din at the same time, the Mazkir will request a similar written statement, and relate this information to the plaintiff.

The Mazkir will keep record of the claims and counterclaims as they are given to him, in these oral contacts with the parties, and in the written statements that they submit to him. Based upon these records, he will compose the written notification that each party will receive (see below, par. 4).

Some disputes may not need to be resolved by Bais Din at all. The Mazkir will inquire whether the parties would consider any means of reconciliation, and may attempt negotiation, mediation, or counseling, either with himself or by referral to someone else, so as to avert the need of a דין תורה (Judgment of Bais Din). Discussions entered into with the Mazkir will be on a privileged basis, such that statements made before him would not be admissible evidence. If at any point either litigant is not satisfied with these alternate efforts, they maintain the right to a hearing before, and resolution by, the Bais Din.

4. Notices and Summons:

A written summons (הוזמנה) will be sent to the defendant, as well as a notice of such summons sent to the plaintiff. Each notice will identify the parties and the subject of the claim(s), and will be sent along with a copy of this booklet and a list of the Daiyonim of the Baltimore Bais Din. Each party will be

requested to submit five names from the list that they would prefer to serve as the Daiyonim on their case, in order of preference.

If a defendant refuses to cooperate with the Mazkir regarding the claim, the Bais Din may issue a כתב סירוב (Declaration of Contempt of Bais Din), a היתר ערכאות (Authorization to Initiate Civil Litigation), and/or an Injunction [כתב עיקול וצו בי"ד] restricting actions that may prejudice the situation. The party in contempt may be held liable for reasonable legal fees incurred by the other party in defending against the contemptive actions. Other actions may be taken against the party in contempt as well. These actions may also be applied to noncompliance with the Bais Din at other stages of the דין תורה (Bais Din case).

5. Counsel:

There is no requirement to engage any counsel, neither a legal attorney nor a טוען רבני (rabbinic advocate), upon preparing for a Hearing before the Bais Din, and it is usually unnecessary. The primary parties will be required to make presentations of claims, as well as to respond to questioning, themselves (see below, par. 12). The Bais Din is sensitive to the difficulties the parties may have in making their presentations, and will guide them accordingly, to assist them in making a full and proper presentation. Nonetheless, it remains the option of each party to have such counsel as they believe will be helpful in preparing their presentation before the Bais Din, to assist them in an advisory capacity. They may consult with such counsel in advance of the Din Torah, and at certain points during Bais Din sessions. The counsel may also be helpful in collecting and organizing the information and/or documentation that the party will present before the Bais Din.

Any party intending to bring counsel to the Bais Din sessions, must notify the Mazkir of such in advance, so that the other party can be duly informed of such while preparing themselves for the Din Torah.

6. Composition of the Bais Din

The Baltimore Bais Din is composed of a list of Daiyonim (Rabbinical Judges), consisting of an initial group of Rabbonim that had been active in דיני תורה (Torah Judgments) prior to the formal establishment of this Bais Din, and other respected תלמידי חכמים (Talmudic Scholars) approved and accepted by the initial Daiyonim. These Daiyonim together are the דיינים קבועים (regularly sitting Daiyonim) of the Baltimore Bais Din, and they alone sit on panels of the Bais Din.

One particular Daiyon has been appointed to head the Bais Din, filling the roll of the אב בית דין (Av Bais Din – Head of the Rabbinical Court). He responds to procedural questions posed through the Mazkir, makes determinations regarding issuance of any כתב סירוב (Contempt of Bais Din) and היתר ערכאות

(invoking civil litigation), presides at Sessions of the Bais Din, writes the Piskei Din/Decisions of the Bais Din, responds to requests for clarification of such, and maintains records of cases heard in the Baltimore Bais Din. [He has also been referred to as the דיין קבוע (Daiyon Kavuah), due to the extent of his regular involvement in all cases of the Baltimore Bais Din.]

7. Selection of Daiyonim:

Two of the Daiyonim from the list of the Baltimore Bais Din will be selected to hear each case together with the Av Bais Din. Whenever feasible, they will be selected in accordance with the preferences that each of the parties submitted to the Mazkir (above, par. 4). Generally, the first names from each party's list of preferences will be assigned to the case. However, the Daiyonim may decline to accept any particular case, and the Mazkir may exercise discretion in this process as well. In case an urgent need requires an expedited Hearing, the Bais Din may be assigned and scheduled without requesting preferences. Questions arising throughout this process will be referred to the דיין קבוע (Head Daiyon), whose decision will be final.

The Av Bais Din will serve as the third member of the Bais Din assigned to all cases, except when he finds reason to recluse himself. In such cases, if one name was requested by both parties, he will be the third Daiyon. If not, the first two Daiyonim, usually chosen by preference, will choose the third Daiyon from the list. Should any of the Daiyonim retire or otherwise become unavailable to continue sitting on a particular case, another Daiyon from the Baltimore Bais Din may be appointed in his stead.

The Mazkir will generally not tell the Daiyonim which party requested them, so as to add to their objectivity. [It might often be the case that both parties request the same name, which would be a strong reason for inclusion.] The parties would likewise not necessarily know whether a particular name was selected due to their request, or to that of the other party.

8. Ex-Parte Communication:

There will be no ex-parte communication of any sort between the Daiyonim and any litigant (or agent of litigant), as well as with any of the witnesses. This applies to the time before sitting, between sittings, and post resolution of the case. The Daiyon will rebuff any litigants' overtures, and refer all contact to the Mazkir. This policy is essential to maintain the objectivity of the Bais Din, and adherence to it is imperative.

9. Fees:

The plaintiff [תובע] will be charged a fee of \$75 for the הזמנה (summons). Additional charges may be assessed for cases of an involved nature that may require extended sessions. There may also be

additional charges to offset expenses incurred by the Bais Din in the course of the proceedings (e.g. for witnesses called in by Bais Din, long distance phone calls, etc.). These costs will be shared equally by both parties, unless otherwise assigned by the Bais Din at the end of the case.

[These nominal fees apply specifically to members of our community. Higher fees per Session may be collected for cases from outside the Baltimore community. These fees will likewise be shared equally by both parties.]

All monies received will go to the overall fund of the Baltimore Bais Din, NOT to any of the specific Daiyonim of a case.

10. **Arbitration Agreement:**

A standard Arbitration Agreement will be utilized for all case of the Baltimore Bais Din, and modified to define the issues of each particular case. This arbitration agreement is a legally binding contract, which can be upheld in civil court if/when necessary, committing all parties to accept the decision of the Baltimore Bais Din as final, and to adhere to its procedures and instructions.

The Arbitration Agreement will include a Statement of Claim, incorporating the claims and counterclaims, if any, as well as the relief (i.e. payment or other settlement) sought by each party, as recorded by the Mazkir (see above, par. 3), unless either party requests to amend such statements at this time (i.e. before signing). It will also include authorization for the Daiyonim to accept some forms of evidence as relevant and revealing (an אומדנא), although they might not be actual עדות (Halachic testimony). It will also authorize the Bais Din to make a judgment on the basis of פשרה קרובה לדין (Halachically based compromise), as well as to arbitrate a compromise decision according to their findings of the justice and righteousness of the case (לפי הצדק והיושר) and/or according to their sense of fairness (הכל לפי ראות עיני הדיינים), and to follow the majority opinion in all cases.

A מעשה קנין (act of commitment) will be made on the commitment to adhere to this agreement. Each of the litigants will sign the arbitration agreement, and receive a copy thereof. This will be done at the very beginning of the first sitting.

11. **Two Sittings System:**

Many cases will require two separate sittings:

The first - the Initial Hearing of the case - to enter into an Arbitration Agreement; to present the claims, initial arguments, and documentation of each party; and to determine upon which issues it will be relevant to bring further evidence.

The second - an Evidentiary Hearing - to present witnesses and additional evidence; to present additional arguments for each side; to determine if any further investigation is necessary (i.e. additional documentation and/or witnesses, disclosure of information suspected of being withheld, study of physical and/or legal facts involved in case).

[The Daiyonim may resolve a case at the first sitting, based on the טענות (claims) presented, and/or after reviewing evidence readily available.]

Generally, all proceedings before the Baltimore Bais Din are with a **closed door policy**, not open to the public. The Mazkir should be notified in advance regarding all persons who wish to attend the sessions. The parties involved always have the right to be present, with the exception of when the Daiyonim determine that testimony should be heard in confidence. Witnesses will be sequestered, i.e. not allowed to be present during the presentation of the claims and arguments, nor during any testimony other than their own.

12. First Sitting / Initial Hearing of the Case:

In the Initial Hearing, the first order of business is the completion and signing of the Arbitration Agreement. After this, each of the litigants will present their own individual cases themselves. Although they may employ counsel (see above, par. 5), the primary parties involved must first state their own claims personally, as well as answer to questioning of the Bais Din themselves. The Bais Din may restrict the litigants from conferring with their counsel before responding to questions regarding the facts of the case, although they will generally be allowed such consultation regarding questions on the legal issues of the case. Opportunity will be provided afterwards for such counsel to clarify points in their clients' cases, as well as to present any additional information or arguments that were omitted by the primary parties. The Bais Din reserves the right to dismiss any person it feels is disruptive to the Bais Din's interests of seeking the אמת לאמיתו (i.e. to truthfully present the case to the best of their ability), or that does not conduct themselves with the respect and honor appropriate to the Bais Din.

The plaintiff presents his complaint first, and the defendant responds. If the defendant has a counterclaim, then the procedure continues with the defendant presenting his counterclaim and the plaintiff's response. The Bais Din will allow each party in turn to present its case with minimal interruption, posing or permitting requests for clarification only. Questioning of the presentations by the Bais Din, and questioning of either side by the other, will follow afterwards. The Bais Din will be the judge of the relevancy, appropriateness, or redundancy of questions posed, but will allow a questioner to explain the benefit they see in their line of questioning before imposing such judgment.

Generally, no עדות (testimony of witnesses) will be heard at the Initial Hearing, and witnesses should not be brought to this session. Each litigant should come prepared to present any documentation that they have available at this point to support their claim, with multiple copies to be given to the Daiyonim and to the opposing party. The Daiyonim will issue guidelines regarding the relevance of evidence to the issues of the case, so as to instruct and guide the litigants as to regarding which issues it would be appropriate to bring additional evidence at the next sitting.

At the conclusion of the Initial Hearing, the Daiyonim will set time and date for the next sitting, as soon as feasible. (Normally the second sitting will be within one week from the first.)

13. Second Sitting / Evidentiary Hearing:

At the second sitting, the litigants will each be able to present their עדות (witnesses) and other evidence, as well as any additional arguments that they (or their agents) wish to present, including arguments and/or information (e.g. Halachic sources, legal considerations) they feel provide justification for their positions על פי דין (Halachically). The questioning of the witnesses will follow the pattern of the questioning of the initial presentations (above, par 12).

If the litigants have difficulty getting their עדים (witnesses) to come to this evidentiary sitting, they should call the Mazkir in advance for assistance. At the conclusion of the second sitting, the Daiyonim will inform the litigants of a time frame within which the P'sak-Din will be issued, in oral session, or in writing.

[Cases that are extensive, time consuming, and/or complicated, may require additional sittings.]

14. Acceptable Evidence:

Generally, all testimony, documents, and other forms of evidence that are relevant to the issues of the case, will be heard and reviewed by the Baltimore Bais Din, from any person, regardless of race, religion, gender, or age. The relevance of any evidence will be judged by the Daiyonim, as well as the weight that it will carry. They will also determine which forms of evidence may be accepted as actual עדות (testimony) or as גילוי מלתא בעלמא (matter of general knowledge), and which may be utilized in forming an אומדנא (assessment of fact) upon which to base their decision.

15. Inquiries with Experts - for Facts and Opinions:

It may sometimes be necessary for the Daiyonim to ascertain facts regarding civil law, business and accounting procedure, current norms of practice, or standards accepted in an industry, as they relate to particular cases.

When this information involves knowledge of the particulars of a case rather than general knowledge of that field, the Daiyonim will either consult with neutral experts in their fields, with the consent of both parties, or they will request these experts to issue this information in writing, which will then be made available to all the parties.

When these experts are requested to not only provide factual information, but to offer professional opinions on the particulars of the case at hand as well, they will be asked to either appear and testify at an evidentiary sitting of the Bais Din, or to give written opinions, including the factual basis upon which such opinions are based, which will also be made available to the parties. The concerned parties will have the right to likewise summon experts of their choice to testify on these matters to clarify and/or to challenge these facts and opinions.

16. Recordings:

The proceedings before the Baltimore Bais Din are generally recorded. The tapes remain the exclusive property of the Baltimore Bais Din, and will be retained until the enforcement of the Psak-Din, or so long as the Bais Din sees fit. Copies of the recordings can be purchased, at the expense of the requesting party, upon written request from an involved party only, within thirty days of the Psak-Din, upon show of good cause for such, and at the discretion of the Bais Din.

17. General Considerations in the Din-Torah:

In all cases, full consideration will be given to the entitlements of all parties concerned, regardless of race, religion, or gender. It is the specific intent of the Baltimore Bais Din to treat all parties with maximum dignity and respect, particularly so regarding the sensitive issues of marriage and divorce. In cases of divorce settlements, careful consideration will be given to the needs of all parties. In cases of custody and/or visitation settlements, primary consideration will be given to the best interests and welfare of the children. Consideration will be given to the legal guidelines that apply to this determination, however it remains within the discretion of the Bais Din to judge the application of these guidelines to the particular case at hand.

18. Psak-Din (Decision):

The Psak-Din will record the conclusion reached by the Bais Din, including background information as necessary, claims and issues presented, findings of fact, the Halachic issues dealt with, and the specific resolution of the case.

In most cases, the Psak Din is composed in writing and sent to the parties via mail, some time after the final session. In some cases it may be given orally, directly to the parties involved and on the record, at

the final session. At such time, the Daiyonim may choose to clarify other points, and/or respond to questions, as they deem appropriate. The Daiyonim will not offer any further comments regarding their Decision afterwards, other than in the context of a further sitting (see below, par. 20). When the Psak is given orally, a written copy of the Psak-Din, limited to the specific resolution of the matter(s) at hand and any instructions the Bais Din chooses to issue, may be given to each party, either at this final sitting, or soon thereafter via mail.

As a rule, all three Daiyonim of the case will sign the P'sak-Din based on the majority opinion (i.e. including the dissenting minority). However, it will be considered valid with only two signatures as well, even in cases of פשרה (compromise).

19. Limitation of Liability:

The basis of the rulings of the Baltimore Bais-Din is ultimately the best judgment of the Daiyonim. Although their intent is to reach a decision in accordance with the Shulchan Aruch, the accepted practice is frequently not to judge pure Din Torah, as this is often extremely difficult to do, as stated in the Shulchan Aruch itself (סוף סי' י"ב). For this reason, the Baltimore Bais Din commits itself only to rule based on the best judgment of the Daiyonim, within the framework of a פשרה קרובה לדין or a פשרה לפי הצדק והיושר, or however they see appropriate, לפי ראות עיני הדיינים (see above, par. 10).

Therefore, the Baltimore Bais Din and/or their Daiyonim will not be held personally liable in case of possible error in judgment according to true Din Torah, whether that of שיקול הדעת (matter of opinion) or of טעה בדבר משנה (matter of Halacha). Acceptance of this basis of judgment will be incorporated into the Arbitration Agreement. They will however reverse such decisions as the Halacha mandates be reversed, when they conclude that such decisions were based in error. (See שו"ע סי' כ"ה סעי' ג' ברמ"א.) They will likewise agree to write a כתב מאיזה טעם דנתוני (Explanation for Basis of Decision) when appropriate, which will be signed by the three Daiyonim of the case.

20. Review of Proceedings:

The Baltimore Bais Din is committed to carrying out all proceedings in the good faith and impartial objectivity of a Din-Torah. Towards this end much attention and consideration is continuously given to develop and maintain proper procedures and methods of handling various cases and situations.

If a party has questions regarding their case, they may first address those questions directly to the Daiyonim at the time of the issuance of the Psak-Din when given orally, as provided for above (par. 18), or in the alternative by written request to the Bais Din, with copies sent to the other party. The Av Bais Din will respond in writing, with copies sent to all parties.

In the event that after this they still feel that they have grounds of complaint regarding their case, parties may request a formal hearing to review the matter. Such request must be submitted in writing to the Mazkir within thirty days of the P'sak-Din, specifying the nature of the complaint. The Bais Din will determine if sufficient grounds have been presented to warrant a formal Review, either due to procedural complaints of significance, or reasonable grounds for reconsideration. Accordingly, a Review Hearing will be convened before an enlarged sitting of the Bais Din, including two additional Daiyonim of the Baltimore Bais Din not previously involved in the case, to be selected in the manner provided for above (par. 7). All parties will be called upon to attend this additional sitting and notified of its scheduling (although their attendance is not imperative). This enlarged sitting of the Bais Din will hear the complaint, consider the explanation of the original Daiyonim, and determine what further action, if any, should be taken. [The complainant may be assessed fees for this process, as well as charged the cost of transcribing the recordings of the case.]

21. Acceptance of Decision:

The decisions of the Bais Din are binding and final. As part of the Arbitration Agreement, all parties commit themselves to accept the decision of the Bais Din, and to not attempt to introduce any outside authorities (i.e. other בתי דין, רבנים, or להבדיל civil court actions) in any effort to override or negate the P'sak against the opinion of the Bais Din that heard the case and delivered the Psak-Din, other than that which would be authorized by the Review Panel of the Baltimore Bais Din.

It is our sincere hope and prayer that the integrity of this Bais Din and the outstanding community that it serves, will join together to uphold and enhance the honor and respect of Torah Law, בעזרה"ש.
