

לוקוטי ופסקי הלכות

"חוקי חיים"

ותלמוד
"חוקי חיים"
לעשות רצונך
בלבב שלם



שע"י "חדר הזדאה" שכונת מנחת יצחק פעיה"ק ירושלם תובב"א - בדאשות הרב חיים אהרן בלייער שליט"א

Halochohs compiled by HaRav Chaim Bleier – Translated from the Hebrew edition by R' Zerachya Shicker

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Going to Court

Parshas Mishpatim 5780

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Not Judging Cases by Non-Jewish Law

Disregard for the Issur

- Among our many sins, the issur of going to non-Jewish courts of law needs much reinforcement. Disregard for this topic is very common, ר"ל, even among frum and chareidi Jews, both in Eretz Yisroel and in Chutz La'aretz. Perhaps this is because people do not know how severe the issur is or because their money is too dear to them. Therefore, we saw fit to call attention to the matter.
- Jewish beis din today.** Another excuse for the disregard in this area is that many people distrust the system of batei din. However, lately there has been real improvement in the quality, knowledge, management, and professionalism of many batei din, as well as in their understanding of the business world. Therefore, this is not an excuse not to take monetary disputes to batei din and settle them there, as required by our holy Torah.

Seriousness of the Issur

- One may not take another Jew to non-Jewish judges or courts, even about something they would rule the way a Jewish court would (שריע) ואלה" (שמות כ"א, א') – "These are the laws you shall place before them" – but not before non-Jews (ע"ב) (גיטין דף פ"ח ע"ב).
- When their ruling is the same as ours.** Even if the non-Jewish law will be the same as the Jewish law and no money will be wrongfully extracted, it is still forbidden to take a case before a non-Jewish court (רש"י עה"ת שם, סמ"ע שם סק"ב).
- Deoraisa.** Most poskim hold this is an issur deoraisa (שערי) (תשובה שער ג'; שו"ת רשב"ץ ח"ב סי' ר"צ, שו"ת דברי יואל חו"מ סי' קל"ה).
- Called a rasha, chillul Hashem.** If someone takes a case before non-Jews, he is a rasha; it is as if he is cursing and attacking Hashem; he is making a chillul Hashem; and he is rebelling against the Torah of Moshe Rabbeinu (שו"ת חו"מ סי' כ"ו ס"א). One who leaves behind Jewish dayanim in favor of non-Jewish judges shows that the Torah of Moshe Rabbeinu and its laws are not true, ch"v, and that he is searching to see if the truth is with other nations (ד"סמ"ע סק"ד). Just as one would never ask a non-Jew his Yoreh Dei'a shailos or daven in a foreign house of worship instead of a shul, one may not take cases before their courts instead of a beis din..
- If a person wrongfully goes to court, he may not be a shliach tzibbur on Rosh Hashanah or Yom Kippur (מ"ב נ"ג סק"ב); he does not count for a minyan (בסוף הקדושים); one may not eat from his shechitah (שו"ת הרב) and he is unfit to write sifrei Torah. Accordingly, he may not be given the customary honor of writing a letter in a sefer Torah when it is being finished (שו"ת מהרש"ג יו"ד סי' כ"ו).
- "Dina demalchusa" does not apply.** One may not take a case to a non-Jewish court. The heter of "dina demalchusa dina" only applies to something that benefits the king or the citizens, such as land tax, other taxes, and the like. It does not mean that when two people have a dispute, they should take it before a non-Jewish court (שו"ת הרשב"א ח"ג) (סי' ק"ט, רמ"א חו"מ סי' שס"ט ס"א).
- Considered an informer ["מסור"].** There is a machlokes among the poskim whether one who goes to court without beis din's permission has the status of an informer (רמ"א סי' שפ"ח ס"ד). The consensus of most poskim is that he does (ש"ך שם סק"ב), and he must pay the other party any losses he caused.

- 10. Thief, unfit to testify.** If a person was awarded money in court that he wouldn't have gotten in a din Torah, he is a thief and must return the money he won. He is unfit to be a witness until he pays back the money; if he was mekadeish a woman with that money, the kiddushin is totally invalid (רע"א הג' שריע שם); and if he bought an esrog with the money, he is not yotzei his chiyuv.

Both Sides Consent

- Even if the two sides consent to go to a secular court, it is still assur (רמב"ן עה"ת, שריע שם). Even if one accepted it upon himself with a kinyan to take a case to a secular court, e.g., it says in his contract that disputes will be taken to secular courts, it is still assur for him to do so (שריע סי' כ"ו ס"ג).
- Written hischayvus.** If one committed himself in writing with the wording of "התחייבות" to go before a secular court, some poskim say they may go (סמ"ע סי' כ"ו סק"א) for matters that can't be taken to Jewish dayanim (סמ"ע סי' ס"א סק"י"ד). However, most poskim argue and hold even a commitment and kinyan does not help, and the issur to go to court remains in force (נושא כלים שם).

Judge, Lawyer

- 13. Lawyer.** If a frum lawyer is requested to represent a Jew who has no heter from beis din to go to a secular court, according to halachah he must refrain; otherwise, he will be assisting sinners. However, he may represent a defendant who was summoned to court against his will by a plaintiff who refused to go to a beis din in order to save a victim from his oppressor (שו"ת יחוה דעת ח"ד סס"ה).
- 14. Judge.** It is obvious that a Jewish judge may not preside over Jewish litigants in a secular court, as the cases are not decided according to Torah law. He may preside over non-Jews in a court, e.g., in Chutz La'aretz (רמב"ם פ"י מלכים ה"א, ערוך השלחן העתיד, סי' ע"ט סוף ס"ו, בעל מנחת יצחק). (יצחק הובא בקובץ נועם ח"ח עמ' רכ"ג, והודפס בשו"ת מנח"י ח"ד סי' נ"ב).

Definition of "Courts"

- 15. Secular Israeli court.** Secular Israeli courts have the same status as non-Jewish courts. Actually, it is even worse than the rest of the world, as Jews are judging based on a made-up system and exchanging the Torah for worthless laws in rebellion against the Torah of Moshe Rabbeinu (שו"ת צ"א ח"ב סי' ט"ז). Some poskim are unsure if there is any heter whatsoever to go to a secular Israeli court even with the consent of beis din (see below, 22) since doing so causes the judge to do an aveirah when he rules based on non-Jewish laws (הגר"מ פיינשטיין).
- One may not even go to courts in Eretz Yisroel that specialize in a particular area if they do not rule according to the Torah. This includes magistrate courts, district courts, small claims courts, family courts, labor courts, and the like (הגר"ש, תשובות והנהגות ח"ה סי' שס"ג).
- 17. Rabbanut Beis Din.** There are several areas of monetary law in which the Rabbanut Beis Din in Israel do not have the authority to rule according to Torah, but rather must rule according to the law of the state known as the Monetary Relations Law, e.g., when dividing property between a couple getting divorced or dividing an estate between heirs. Usually, Rabbanut courts present the law before the litigants, and if they agree to the ruling, they make a kinyan to divide the property according to the law. However, since this is against Torah law and the Rabbanut court does not have the option to rule according to the Torah, this falls under the issur of going to the courts (בנס הדיינים תשס"ח) (הגר"א דרונטל, בנס הדיינים תשס"ח).

18. Therefore, one may not go to courts for these issues. They must be taken to batei din not bound by the law of the country to be judged according to our holy Torah. Once an accepted beis din issues a psak, the litigants can get a Rabbanut court's authorization and endorsement of the psak, just as they may get an authorization from a secular court on a properly conducted psak from beis din.
19. **Based on an arbitrator's opinion.** The two parties may agree to go before a non-Jewish arbitrator who will rule according to his judgment and is not bound by any laws (ערוה"ש סי' כ"ב סק"ח).
20. **Union members.** If members of a union, e.g., a labor union of a particular craft, agreed among themselves to stick to certain rules, and that when there are differences of opinion, they will present their case before someone who rules according to his opinion, not according to a legal system or government laws, they may go to this person to issue rulings. An example of this is a Diamond Center arbitration body that rules according to the policies and norms Center.
21. **Complaint to a lawyers' union.** Similarly, one may submit a complaint against a lawyer who did not perform his job properly since lawyers enter their profession with the agreement that they will follow the rules of the bar association and receive a complaint in the event of client dissatisfaction (הגר"מ שפרן, חוקי חיים - פרידמן דינים עמ' שמ"א).
30. The way this is looked at is that since the insurance company will cover the damages, it is the defendant. Being that the company announced it would not recognize a din Torah, it is viewed as a party that will clearly refuse to listen to beis din, and the claimant may turn to the courts. Ideally, he should get a heter from beis din (עמ' רכ' קונ' אוריתא יז, עמ' רכ').

Someone Who Refuses to Come to a Din Torah

31. If someone refuses to come to a din Torah for judgment, *lo aleinu*, beis din issues a letter of refusal regarding him and allows the claimant to approach the authorities or whatever body is necessary for him to save his money. He may then claim of the defendant in court (ש"ע כ"ו ס"ב).
32. **"Refuser" [סרבן].** To be termed "a refuser," one must refuse to come to a din Torah before a beis din, whatever sort of beis din it is; stop coming or cooperating after starting a din Torah in beis din; ignore three summonses from a beis din; delay the case with various excuses in a way that based on what they see, the beis din's dayanim feel he is just avoiding the din Torah; or agree to go to beis din for judgment but not agree to sign an arbitration agreement. Not signing the agreement is considered refusal since without his signature on it, the ruling cannot be carried out (ש"ת נאות דשא סי' נ"א, מהרש"ם ח"ג סוף סי' קס"ה).
33. **Letter of refusal [כתב סירוב].** Beis din writes a letter of refusal about someone who refuses to come to beis din. The claimant may show the letter to others or hang it in the refuser's beis medrash if he thinks it will pressure the refuser or that others will succeed in convincing him to come to beis din. This is not lashon hara.

When May One Turn to the Courts?

With Beis Din's Permission

22. There are some scenarios in which one may go to a non-Jewish court. The basic principle is that one may go after getting permission from a Jewish beis din, i.e., they heard the situation and authorized one of the parties to go to court. Without beis din's permission, however, one may not go to court no matter what (ש"ע סי' כ"ו ס"ב).
23. **Reasons for the heter.** Several reasons are given for the heter to go to the courts with beis din's permission: 1) the non-Jews are like beis din's shlichim, so there is no issue to go before them, as it is like beis din is judging (ש"ת חת"ס חו"מ סי' ג'); 2) in a situation of monetary loss, one may carry out judgment himself (כלי חמדה פ' משפטים) [but the poskim ask, how does this allow one to transgress the Torah?]; 3) if someone is forced to go to the courts, he is not "giving honor to foreign gods," and he is allowed to go mideoraisa. Getting beis din's permission is to fulfill "ההיתם נקיים" (הר"י מלאטש, הג' על הטור אות ז').
24. **Heter from a single dayan.** Some poskim hold a single dayan may give one of the sides a heter to turn to the courts (ש"ת מהר"ל דיסקין פסקים). However, he must listen well to the considerations and weigh the matter seriously based on the context.
25. **Heter from a beis din of three dayanim.** However, now that there is widespread disregard for this issue and everyone does as he sees fit, the contemporary poskim hold that a heter may only be issued by a beis din of three experienced dayanim, in writing, after thorough investigation (הגר"ש"א, הגר"ש וואזנר, הגר"ן קרליץ מכתב כרוז שנת תשנ"ח).

Disobeys Beis Din ["לא ציית דינא"]

26. **Doesn't keep Torah and mitzvos.** If one of the litigants is a secular person who doesn't keep Torah and mitzvos, ו"ו, and it is quite clear ["אומדנא דמוכח"] that he will not obey the psak of a din Torah, or if it is known that he will not even think about coming to a din Torah if summoned, one may take him to court (כסף הקדשים חו"מ סכ"ו ס"ב). If it isn't clear that he won't come, he must at least be summoned to a din Torah. If he doesn't come, even after only one summons, one may turn to the courts after receiving beis din's permission (ש"ת מנח"י ח"ט).
27. **Keeps Torah and mitzvos.** It is completely assur to take someone who keeps Torah and mitzvos to court, even if he says explicitly that he will not come to a din Torah, unless beis din gives a heter after he refuses to come to beis din three times or responds to the first summons that he does not plan to appear before beis din.
28. **Government organization or body.** If one has a claim against a government organization or body in Israel, e.g., the city municipality ["iriyah"], whose rules explicitly state all claims brought against them will only be settled in a court of law, he may take them to court without getting beis din's permission, as they themselves proclaim they will not go to beis din under any circumstances; this is the clearest possible refusal.
29. **Insurance company.** Someone who had insurance was being charged with damages. The two sides agreed to take their case to a din Torah, but the insurance company announced it would only recognize a verdict of liability from a court of law, not a din Torah. He asked if he is allowed to submit a claim to a court of law so that the insurance company would cover the damages.

Asset Freeze

34. Sometimes there is a need to freeze the defendant's assets so that he doesn't get rid of, sell, or transfer his property to someone else's name before the ruling. If the claimant fears one of these possibilities and wants to cause an official asset freeze, he has to open a file in the courts to show that he at least has a claim against the individual.
35. To do this, he must go to beis din to explain the need to freeze the defendant's assets. They will decide if it is a valid need, and if it is, they will allow him to start the process immediately. However, the proceedings of the actual case must still take place in beis din, not the courts (תשובות והנהגות ח"ב סי' תשי"ג).
36. **Travel ban.** The same is true regarding a travel ban. If there is a fear that someone will flee and it is crucial for a travel ban to be issued right away, one may request a travel ban on the defendant and inform him it was done, and then take the dispute to beis din (תשובות והנהגות שם).

A Court Extracted More Money Than a Din Torah Would Have

37. If one got a heter to go to the courts, and they obligated the defendant to pay more than a din Torah would have, most poskim agree he may not take more money than a din Torah would have awarded him – the whole heter to go to the courts is so that one can recover what was rightfully his (לשון הרמ"א). Not so that he can collect more than he deserves (נתיבות סי' כ"ו סק"ג, ש"ת אבני נזר י"ד סי' קל"ג אות ב').
38. **Interest on a loan.** If the court obligated a defendant to pay interest on a claim stemming from a loan, the claimant may not collect the interest due to the issur of ribbis.
39. **Interest on something other than a loan.** If the court obligated him to pay interest for a monetary issue, such as a theft, a rental, wages, etc., some poskim allow him to collect it since it is not halachically considered ribbis (ש"ת שואל ומשיב מהדו"ב ח"ד סי' קכ"ג, ש"ת אבני נזר י"ד סי' קל"ג, מ"ד בברית). Others say it is assur since it is still extra payment for a delay (יהודה פ"ב סי"ז ש"ת מהרש"ם ח"א סי' צ').

Court Fees

40. When a defendant has the status of a refuser from beis din, and the claimant got a heter to go to the courts and needed to pay fees in order to open a case and recover what was rightfully his, if the defendant is found to be liable, he must also pay for all the court fees the claimant had to pay (רמ"א חו"מ סי' י"ד ס"ה).

Summoning a Dayan to Court

41. One of the most shameful things is when, out of great anger or wickedness, a refuser or defendant who is found liable in beis din summons the dayan himself or the beis din to court. A person who does this rebels against the Torah of Moshe Rabbeinu and Moshe himself, and will be held accountable in Shomayim.

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