



Dinei Torah: Representation

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3

People often wonder whether they require representation or help from a To'ein (Rabbinical Advocate) or lawyer when attending Beis Din. To understand this issue, one must first appreciate the nature of the Halachic 'legal system'.

All legal systems, fundamentally, fall into one of two categories – adversarial or inquisitorial¹ – and in each of these two systems the judiciary has distinctly different obligations. In an adversarial system, the presentation of both the legality and the relevant facts are the responsibility of the advocates, and the judge is somewhat of a referee to decide who presents the most compelling legal case. In the inquisitorial model, on the other hand, the court itself must enquire and probe, to uncover all relevant factual and legal information.

In this country, the civil law system is primarily adversarial, so that the litigant himself carries much of the burden of presenting his legal case. Consequently, engaging a professional to do it for him may be of critical importance. Halcho, however, is a much more inquisitorial system², so that this is certainly not the case³. Ba'alei Din (litigants in halachic terminology) need simply to present their case as clearly, truthfully and accurately as possible. For this reason, Rabbi Moshe Feinstein did not generally encourage the use of Toanim or other representatives.

Nevertheless, there are certainly specific situations in which an advisor or representative – or possibly a knowledgeable and clear-thinking friend or relative – may be a good idea, and the following may serve as useful guidelines:

1. Pre-litigation advice is generally to be recommended. It is very difficult for any Ba'al Din to be objective about the strength of his case, and objective advice can sometimes save a person much money and heartache by avoiding Beis Din altogether. I myself once witnessed a Din Torah in which I am sure that the Nitba (respondent) would have saved himself more than £10,000 by accepting an out-of-court settlement that had been offered several months before the matter eventually came to Beis Din.
2. Often, people benefit from help organising relevant information so as to clearly and concisely present their case. Likewise, Ba'alei Din with a giving nature may somehow admit – particularly under pressure – to more than they truthfully ought to, and prior discussion can prevent this.
3. Occasionally people have halachic rights of which they are unaware, but which are entirely reasonable.
4. In some cases, a skilled individual or professional may, through detective work, uncover facts, such as transactions, which have a significant bearing on the case.
5. Even when otherwise unnecessary, it is often advisable to have a To'ein simply because the other side has one; so as not to be overwhelmed or somehow manipulated by a forceful advocate⁴.
6. Finally, one might utilise a To'ein simply to offer halachic arguments or sources in one's favour. Whilst the value of

this is debatable, as good Dayonim will be able to clarify the halachic issues without help from the To'ein, many Botei Din will be willing to give proper consideration to all such submissions.

Notwithstanding these possible benefits, one who is considering engaging professional help of this sort must surely reflect upon the famous mishna in Pirkei Ovos (1:8) which states: *Al ta'as atzmecho k'orchei hadayonim*. Roughly translated, this mishna is usually understood to mean that one should avoid behaving as lawyers tend to behave⁵.

Unfortunately, it is not easy to pinpoint the meaning of this dictum with precision, and various different approaches are to be found. The mishna may be reflecting a very stringent approach, warning against using Toanim even for the benefits enumerated above. From the Rambam in Mishneh Torah, on the other hand⁶, it seems that the Mishna is merely cautioning against Dayonim compromising their impartiality as if they were advocates. According to this second understanding, it would be completely in order for advocates to act as advocates!

From the Rambam in Peirush Hamishnayos, however, as well as one explanation offered by Rashi, it seems that this mishna is prohibiting anyone from coaching Ba'alei Din to give particular devious answers when challenged by a Dayan by particular questions. Essentially to this view, the mishna is warning us that professional services of this sort – which can give insight into the mind set of the Dayonim – carry with them a dangerous temptation to be economical with the truth or subvert the Din in other ways⁷.

As a closing thought, it has been only a few days since we experienced the beauty and power of the Yevorechecha Hashem V'Yishmeracho which we heard from the Kohanim on Yom Tov – and we were again reminded of it in the Krias HaTorah of Parshas Nasso. As Rashi explains, this first phrase of Birkas Kohanim asks Hashem to bestow a brocho on our material and financial assets, and then to guard them from harm. May this shemira bestowed on us by the Kohanim protect us from disputes, so that our learning about Dinei Torah – fascinating as it is – remains in the realm of theoretical Torah Lishma!

¹ This is a well-established distinction discussed in many sources.

² See Professor Eliav Shochetman's magnum opus Seder Hadin b'Batei Hadin HaRabbani'im, Introduction, page 11.

³ In fact, one may well argue on the basis of halachic sources that representation was historically not the norm and was not seen as a halachic ideal; see, SMA and SHACH on Choshen Mishpat 124:1. Aruch HaShulchan there, however, makes clear that, today, the custom is to regard it as completely acceptable.

⁴ It should be noted in this context, however, that, in such situations, even the Dayan may assist the Ba'al Din to a limited extent. This is known as the principle of Pesach Picha L'Ileim, and is stated by the Rambam in Hilchos Sanhedrin 21:11. Rambam further explains that the Dayan must take great care not to do this to too great an extent.

⁵ See my discussion of one possible aspect of this in this publication, several weeks ago.

⁶ Hilchos Sanhedrin 21:10, and see Radvaz there.

⁷ Though the Rambam's approach in Hilchos Sanhedrin should probably be regarded as the normative understanding of the Mishna, it would certainly seem wrong to coach Ba'alei Din in this way because of the clear lack of integrity involved.

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QUIZ TIME
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3. Moshe was commanded to cleanse the *Levi'im* by sprinkling on them "mei chatas." What is "mei chatas"?