



Dinei Torah: Zablo – What Is It And How Does It Work?



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When two Jews have a disagreement which would normally go before a Beis Din for adjudication, there is – as many people are aware – an alternative, whereby the litigants (Ba’alei Din) themselves choose Dayonim and create an ad hoc Beis Din. This is known as ‘Zablo’, which stands for ‘Zeh Borer lo Echad...’ (Literally ‘this party chooses one...’). But how does this work and what are the advantages or disadvantages of this option?

The source for the concept of Zablo is a Mishna in Sanhedrin 23a and it is cited as normative Halocho in Choshen Mishpot 13:1. Essentially it means that one party chooses one Dayan, the other a second, and the third Dayan is selected by the other Dayonim without further recourse to the Ba’alei Din. These selected Dayonim are often colloquially referred to as ‘Borerim’ (singular: ‘Borer’).

In practice, this works as follows: When a Claimant (Tovei’a) wishes to summon someone (the Nitba) to a Din Torah, he will write to a Beis Din, who then in turn write to the Nitba. The Nitba can then either accept the summons, or exercise his prerogative to agree to a Din Torah but request a different Beis Din. In this context one of his options will be a Zablo.

Is a Zablo preferable to a permanent Beis Din? On the one hand, by using a standing Beis Din, one is using an established set-up, which can often make communication and dealing with post-Din Torah issues easier.

On the other hand, the Gemoro specifically says that Zablo has a particular potential to lead us to the Emess (truth). The Remo (ChM 13:1) explains that this is true in two ways. Firstly, the Ba’alei Din have confidence in the process since they themselves chose the Dayonim. Secondly, the Remo writes that each of the Borerim will feel a responsibility to be fully ‘mehapeich’ (literally: turn over) the various arguments to the benefit of the Ba’al Din who selected him.

On the surface, this second point is somewhat disturbing. Even if selected by the parties themselves, surely this cannot give Dayonim license to partiality! The poskim explain that a Borer in a Zablo may – and might even be expected to – focus his thoughts and his research¹ specifically towards uncovering all reasonable Halachic arguments for his Ba’al Din. With another Borer doing the same for the other party and a more neutral Dayan to bridge between them, this could be a powerful method for achieving a thorough analysis of the case. At the same time,

all three Dayonim remain impartial in that none of them will push Halachic arguments that they do not see as absolutely genuine.

There is a famous Mishna in Pirkei Ovos (1:8) which says: ‘Al Ta’as atzmecho k’orchei haDayonim’. Though there are several explanations of this Mishna in the Rishonim², perhaps the mishna is also intimating that, in their deliberations no Dayan should behave as a lawyer tends to behave.

How do lawyers tend to behave? A lawyer, employed as he is by one side of a dispute, will present to the Beis Din whatever arguments he can possibly find (or concoct), in the hope of saying something that the Dayonim will find convincing, even if he does not find them completely compelling himself. And, if he becomes aware of arguments that work *against* his client, he will veil them altogether. A Dayan should certainly not behave in this way, even if selected to be a Borer in a Zablo.

Furthermore, there is a famous Halocho that a Dayan must not hear details of a case from one party before the other arrives. Would this apply in a Zablo situation as well? The Aruch HaShulchan says that the general Minhag is that parties *do* disclose their side of the story to their Borer. Since it has become general practice, he argues, the Ba’alei Din have, in their very agreement to Zablo, waived their right to object. Others, however, disagree, arguing that the Zablo arrangement does not entitle the Dayonim to listen to one party before the other since the basis of that Halocho is a fundamental concern that a perversion of the Din could result.

In practice of course, Dayonim who are selected will have their own opinions as to the extent of communication they will allow themselves to have with their Ba’al Din. Consequently, anyone involved in a Zablo would be well advised to clarify what the Dayonim’s policy would be on this matter and ensure that both sides end up having a similar level of access to their respective Borerim as each other.

In the final analysis, a person considering how to resolve his disputes through Beis Din should bear in mind the following. With the possible exception of highly professional Toanim (Advocates) who are in possession of all the relevant facts of a case, no-one can predict the outcome of a Din Torah regardless of who the Dayonim are. Rather than trying to do so, therefore, one should surely decide one’s method of litigation according to what would seem to deal with the dispute in the most expert, efficient and perhaps economical way possible. Ultimately, what really matters most is resolving arguments as quickly and gently as possible, and restoring peace and harmony in Klal Yisroel.

Rabbi Grunewald gives a weekly shiur on Understanding of Beis Din and Dinei Torah after the 7.30pm mincha/maariv on Wednesdays at Kehillas Toras Chaim, NW4.

1 Sma (ChM 13:6 citing Rosh, Tur, Nimukei Yosef)

2 See Bartenura, Rashi, Rambam, Rabbeinu Yonah and Tosfos Yom Tov.

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