Pitfalls to Avoid in Obtaining a Get

By Rabbi Chaim Malinowitz

An Experienced Dayan Provides Some Practical Advice

First and foremost, do not initiate an action in the civil courts. You may feel you will do better there; you may be apprehensive about stories you have heard of corrupt *batei din*; you may have heard that it is permitted today, but the irrefutable facts are that:

1. According to *halachah,* going to court is forbidden except under the conditions permitted by the *Shulchan Aruch.*
2. Going to court runs the risk of acquiring funds to which you are not halachically entitled.
3. It carries the risk of resulting in a court-ordered *get* which may quite possibly be invalid.
4. Taking this step may shut off avenues of aid such as rabbis, organizations or synagogues. Also, *batei din*, as a general rule, will not order that a *get* be given while one side is pursuing the case in civil court.
5. Civil court action can be extremely adversarial. Court raises the decibel level — *beis din* generally lowers it.
6. Civil court cases are inevitably longer, more arduous, more emotionally draining, much more expensive, more frustrating and much more subjective than a *beis din* proceeding. It is relatively easy to obtain frequent postponements and prolong the case. You are subject to withering cross-examination; you can't simply sit and tell your story; and you run the risk of the single judge being capricious and arbitrary.

● If at all possible, try to have the *Din Torah* at an established, neutral *beis din*, one that will be there tomorrow and is answerable to the public. A "*zabla*" [an *ad hoc beis din* where each litigant chooses a *dayan* and the two pick a third], which you may think is advantageous to you, always takes an effort to get everyone together (regardless how pressing the matter), and is essentially answerable to no one. *Zabla* is much more costly than the established *batei din*. Any advantage you think your *borer* [*dayan*] is gaining for you is matched by your spouse's *borer* and will turn the *beis din* into glorified *to'anim* [rabbinical lawyers]. It is most preferable to have an established, professional *beis din*, ideally one that is internationally recognized, and especially one whose rulings and *gittin* will be automatically recognized by the State of Israel.

● It is not essential that you bring a *to'ain*. They are expensive, *halachically* unnecessary and may even be undesirable (see *Avos* l:8). Remember, if you have one, your adversary will surely want one too. At times they are unnecessarily contentious and actually lower the level of professionalism.

● If a settlement is suggested, consider it. Demanding everything you feel you may be entitled to may be counterproductive, increasing the chances for an insoluble crisis.

● A *beis din* functions in a judicial context. A *beis din* needs hard facts, proofs, even indications to support claims and accusations wherever possible. Do not demand that a *beis din* accept your word without attempting to provide proof, even if you know you are right. It is an emotional time for all parties but a *beis din* cannot base verdicts on your word. Nor may a *beis din* show emotion. People mistake the *dayan's* cool demeanor for a non-caring attitude. Also, realize that the mere desire for a *get* is not grounds for one — nor is it grounds for a *heter meah rabbonim*. Keep in mind that it is *your* task to convince the *beis din* that objective grounds exist. Truth is absolutely necessary and the lack of it will poison the atmosphere and the problems created may be irreversible.

● The *sh'tar birurim* is the document which empowers the *beis din*. This is a crucially important document and can be as broad or as narrow as it is allowed to be. It is in everyone's interest to broaden the *beis din*'s powers, so that the *dayanim* will not be strictly bound by the letter of the law; unless specifically empowered, a *beis din* must adhere to the strict letter of the law and not allow the spirit of the law to influence its verdict. The more latitude it is given, the more issues can be dealt with; the more special circumstances can be taken into account; the more they can obligate parties more than the technically correct amount; the stronger the verdict can be; and the more they can base the rulings on their perception of the whole situation.

● Before signing a *sh'tar birurim* at a *beis din*, try to determine how the *beis din* enforces compliance with its verdict. You should know this *beis din*'s general approach in advance. At times, specific powers can be granted the *beis din* through an addition into the *sh'tar birurim*.

● *Dayanim* are human beings as well as members of a court. Therefore, be courteous and respectful. Be reasonable. Don't make demands merely for show or to "strengthen" your position. Respond promptly to summonses, requests for information or documentation, and any and all questions. Conduct yourself in a dignified manner. The *beis din* will respond more favorably to requests for elaboration and/or explanations if they are presented in a calm, composed manner. Don't lecture the *beis din*. Remember, you are a party to the case, with a considerable interest in the outcome. A proper *beis din* has no reason to be other than objective. You understandably feel that your future life is at stake; yet it is the *beis din* that is most qualified to impartially analyze your case. JA

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