

## Three Model Dinei Torah – Rabbi Chaim Jachter

### **Introductory Concepts:**

1. The Mitzvah to adjudicate a monetary dispute in a Beit Din (and why civil courts are pleased with such alternative dispute resolution).
2. Sh'tar Beirurin – the need to satisfy two masters.
3. Choice of Beit Din – A sitting Beit Din or a “Zabla” Beit Din (its advantages and disadvantages).
4. Choice of Law – Din, Peshara and Peshara Kerova L’Din.
5. Lawyers’ role in Beit Din

### **Introduction to Case Number One**

1. Burden of proof – Hamotzi Meichaveiro Alav HaRa’ayah.
2. Shevu’at Modeh B’Miktzat - the oath required by Torah Law by one who has admitted to part of a claim.
3. Pidyon Shevuah - Peshara as a substitute for an oath.

### **Case Number One**

1. Southern California in 2009.
2. \$24,000 (\$120 x 200) or \$100 (25% of \$400)?
3. Shach C.M. 333:44 and Ketzot HaChoshen 331:3 – If one hires someone without discussing the fee arrangement, one pays the lowest wage available in the area even if this is only what a minority of workers would accept.

### **Lessons**

1. Get everything in writing – avoid Machloket!
2. Settle outside Beit Din – Beit Din and lawyer fees reduce the amount recovered.
3. **Psychological barriers to settling outside of Beit Din.**

### **Case Number Two**

1. Do neighbors have the right to object to a dental office being opened in a residential apartment building?
2. The Beit Din – The State of Israel District Rabbinic Court of Ashdod in 1982. Three leading Dayyanim adjudicated this dispute – Rav Shlomo Dichovsky (Av Beit Din), Rav Masood Elchadad and Rav Yaakov Eliazoroff.
3. The Beit Din is challenged to both decide unresolved issues in the Shulchan Aruch as well as applying the ancient Halacha to the contemporary scene.

**The case:** A dentist opened an office in an apartment building in a Chareidi neighborhood in Ashdod and offered the only separate hours dental office in the city. Neighbors complained of the nuisance created by the traffic and reduced property values.

### **The issues**

4. Bava Batra 20b-21a – Neighbors may object to a store opening in a residential area and a doctor establishing a practice in such an area.
5. Bava Batra 21a – Neighbors may not object to a Rebbe teaching Torah to students in a residential area.

6. Shulchan Aruch C.M. 156:3 – Neighbors cannot object to the opening of any Mitzvah related enterprise such as a Shul or Tzedakah distribution center. Shulchan Aruch, though, legitimates neighbors' complaints concerning a doctor.
7. Unresolved problem – Why may neighbors object to a doctor? Differing classic solutions offered by the Taz, Chatam Sofer and Aruch HaShulchan.
  - **Taz** – The doctor can go to the patients.
  - **Chatam Sofer** – The doctor is for non-life threatening maladies.
  - **Aruch Hashulchan** – The doctor is one who teaches medicine but does not practice medicine.
8. Teshuvot Tzitz Eliezer (10:25:30) – In a 1970's ruling, Rav Eliezer Waldenberg permits a physician to open a clinic in a residential area despite neighbors protests.
9. **The question – Does the dental clinic with separate hours qualify as a Mitzvah enterprise?**

#### **The rulings of the Beit Din members**

- **Rav Eliazoroff** – follows Chatam Sofer and considers civil zoning rules.
- **Rav Elchadad** – consults Rav Eliashiv who rules in favor of the dentist but requires him to indemnify the neighbors for their reduced property values.
- **Rav Dichovsky** (Av Beit Din) – rejects Rav Eliashiv's approach. Psak which incorporates Pesharah (equity).

#### **Case Number Three**

##### Introduction

1. The scope of responsibility of a Shomer and one who damages another's property (Adam HaMazik).
2. The Beit Din – Rabbi Jachter in 2002 adjudicating a dispute among his TABC students.
3. Advice with competent Halachic and technical consultants.

The Case – Compact Disc player flew out the car window.

##### The Issues

4. **Shomer Chinam** – was the driver Poshei'ah (negligent)? Consultation with a physicist.
5. **Did the driver assume responsibility as a Shomer** for the CD player by consenting to the CD player being placed in his car? The debate between the Tanna Kama and Rebbe (Bava Kama 47 and Shulchan Aruch C.M. 398:5).
6. **Sho'el** – Lack of a Kinyan: Two opinions presented in Shulchan Aruch C.M. 291:5 and 307:2.
7. **Adam HaMazik** – Is one responsible even in a case of Oness Gammur (complete duress)? The debate between Tosafot and Ramban (Bava Kama 27b and Shulchan Aruch C.M. 378:1).
  - a. The Decision of Rav Hershel Schachter
  - b. Lesson to be learned
    - i. Civility between litigants – both agreed to the facts of the case.
    - ii. Asking a rabbi (often better to consult a Rav other than one's shul Rav for this type of matter) to resolve a monetary dispute.