

BETH-DIN OF JOHANNESBURG

בית דין צדק דק"ק יוהנסברג והמדינה

Beth Din Dispute Resolution Policy

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BETH DIN DISPUTE RESOLUTION POLICY**I. Overview of Dispute Resolution at the Beth Din**

The Beth Din serves as a recognized Jewish religious court of arbitration, offering three distinct processes for the resolution of disputes. Each process is grounded in Halacha (Jewish law), with accommodations for practical, legal, and commercial considerations in the South African context.

1. Mediation

Mediation is a confidential and voluntary dispute resolution mechanism where a neutral mediator facilitates dialogue between the parties to assist them in reaching a mutually acceptable settlement. No binding ruling is issued unless a written, mutually agreed upon settlement agreement is arrived at and duly signed. The process is informal, cooperative, and designed to preserve relationships. It should further be noted that it is entirely without prejudice and, should it fail, any concessions proposed during the course of the mediation cannot be used in the arbitration going forward.

It is therefore usually the best option for settling disputes especially between individuals such as neighbours or family members who will continue to be in contact with each other after the issues have been resolved.

The Beth Din has seen an extremely high success rate for mediations and will usually encourage a mediation rather than a Din Torah.

2. Din Torah (Formal Arbitration)

A Din Torah is a formal arbitration process involving a panel of three Dayanim. It is conducted in accordance with the principles of Halacha, with proceedings structured and recorded. Witnesses may be called, evidence submitted, and a binding decision (Psak Din) ,and an award is rendered. This method is appropriate for complex or high-value disputes where a definitive Halachic resolution is sought. This will also be based on a P'shara Krovah L'Din, a compromise in certain instances which closely aligns with Halachic principles, as well as endeavouring to restore a peaceful relationship between the parties.

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3. Beit Hora'ah (Small Claims Tribunal)

For minor disputes or claims of a simpler nature, the Beth Din, with the agreement of both parties, may convene a small claims hearing before a single Dayan. This process is streamlined, cost-effective, and expeditious. The ruling of the Dayan is binding, and all proceedings are governed by the same procedural safeguards as with a full arbitration. The Dayan will endeavour to issue the Psak in 30 working days.

II. Halachic and Legal Framework

Jewish law mandates that disputes between Jews be adjudicated in a Beth Din or before a Zabla (a tribunal comprised of three Dayanim with each party choosing one Dayan who in turn agree to a third, jointly chosen by the parties. It is prohibited for a Jew to bring a civil claim against another Jew in a secular court without first seeking permission from a Beth Din.

The Din Torah process is designed to uphold Halacha while integrating practical elements such as prevailing commercial customs and relevant aspects of South African law.

All arbitrations conducted by the Beth Din fall under the South African Arbitration Act, which means that any ruling issued can be made an Order of Court and is legally enforceable.

III. Initiation of Proceedings

Proceedings before the Beth Din are initiated when the claimant submits an online application via the Beth Din's website. Upon receipt of the application, the Beth Din Legal Administrator will contact the parties by email, either inviting them to attend a mediation session or issuing a summons (Hazmana) requiring them to appear for a Din Torah on a scheduled date.

The respondent may respond to the invitation or summons in one of the following ways:

- a. By agreeing to participate in the mediation or Din Torah; or
- b. By requesting a Zabla (a tribunal of three Dayanim, each selected by the parties in accordance with Halachic procedure).

If, after proper notification, no satisfactory response is received within ten (10) working days, the Beth Din will give permission for the Claimant to seek redress through other legal channels (Heter Arka'ot). This will result in the Respondent being in contempt of the Beth Din and not receiving Beth Din services in the future.

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It is within the discretion of the Beth Din to issue a shtar seruv (a document noting that this person refuses to participate in the proceedings of the Beth Din and permitting, according to Jewish law, the claimant to publicize that fact in any manner the Beth Din sees fit).

1. Statement of Claim

A general outline of the complaint is submitted by the claimant to initiate proceedings. Under Halachic rules, the facts and supporting evidence are generally presented during the hearing itself to prevent parties from tailoring their responses.

2. Evidence and Pleadings

The exchange of pleadings and preliminary documents (such as discovery or supporting exhibits) is not automatic. It may only occur if both parties consent in writing.

3. Mediation Phase (Optional but Encouraged)

As mentioned previously, before the matter proceeds to full arbitration, the Beth Din offers the opportunity for mediation.

The mediation is conducted by a single mediator, independent of the final arbitration panel.

If an agreement is reached, the parties sign a binding document and the matter is resolved.

If no agreement is reached, either party may escalate the matter to a formal Din Torah before three Dayanim or one Dayan if agreed.

The person who conducted the mediation is disqualified from participating in the arbitration panel to maintain neutrality.

4. Legal Representation

Parties may appear with or without legal representation. Should one wish to be represented, the other party must be informed in advance to allow them to seek legal representation should they so wish.

IV. Scheduling and Duration of Hearings

Each Din Torah session is typically scheduled for four (4) hours, inclusive of any recesses or breaks.

Should the matter require further time, the Beth Din will schedule additional sessions to ensure the matter is fully heard.

Hearings are usually scheduled based on the availability of the parties, legal representatives, and the Dayanim.

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V. Written Submissions (By Agreement Only)

If both parties agree to exchange formal pleadings prior to the hearing or during the proceedings, a timeline for Statement of Claim, Statement of Defence and any Counterclaim will be provided by the Beth Din.

All written submissions must be filed with the Beth Din's administrative office and simultaneously copied to the opposing party.

VI. Pre-Arbitration/hearing Conference

At the request of the parties or at the discretion of the Beth Din, a pre-hearing conference will be scheduled in appropriate cases.

The Beth Din Administrator will contact both parties by email to schedule this meeting.

This meeting is chaired by one of the Dayanim and covers the following:

- Signing of the Submission to Arbitration Agreement.
- Timelines for submissions and pleadings.
- Discovery and document exchange deadlines.
- Hearing dates and logistics
- Use of document bundles and digital communications.

If the parties cannot reach agreement on procedural issues, the matter is referred to the full panel of Dayanim for a binding procedural ruling.

VII. Hearing of the Matter

1. Order of Proceedings

- The parties will sign a Submission to an Arbitration Agreement if not already signed.
- Opening remarks and clarification of issues by the Beth Din.
- The claimant presents their case, including evidence and witnesses.
- The respondent then presents their defence, evidence, and witnesses.
- All witnesses are subject to questioning by the Dayanim and cross-examination by the opposing party or their legal counsel.

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- The Beth Din may modify procedural order in the interest of justice and fairness.

2. Bundles and Materials

Each party must prepare and submit four sets of their document bundle, which should include:

- Documentary evidence
- A list of witnesses
- Any other material they intend to rely on

VIII. Conclusion of Proceedings

The Dayanim will formally confirm that the parties have completed all submissions.

IX. Issuance of the Award (Psak Din)

1. Delivery of Award

- The Psak Din is issued in writing and is signed by all presiding Dayanim.
- The ruling will only be released once all Beth Din fees or other costs have been paid in full.
- The Beth Din aims to issue the award within three (3) months of the closing date, subject to extension where necessary.

2. Scope of Relief

The Beth Din's ruling may include:

- Orders for specific performance
- Injunctive relief
- Legal and administrative costs
- Attorney's fees, if justified

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- Partial or interim awards, where appropriate

If the parties reach a settlement during the proceedings, the Beth Din may record the terms of the agreement, though this shall not constitute a formal Psak Din unless explicitly requested by the parties.

If a dispute arises between the Claimant and the Respondent in relation to:

- The interpretation of the award
- Compliance of the award
- A claim of judicial error
- An application to reopen the Arbitration based upon new or fresh evidence

The Beth Din shall have jurisdiction on the matter and the parties authorise the Beth Din to add to, amend or clarify the award.

X. Administrative Rules and Safeguards

1. Communication Protocol

Parties are strictly prohibited from contacting the Dayanim directly. All correspondence and submissions must be addressed to the Beth Din legal administrator, who will handle forwarding and record-keeping.

2. Liability Disclaimer

By participating in these proceedings, all parties acknowledge that the Beth Din's rulings may be submitted to a civil court to make the Psak an Order of Court. The Beth Din and its Dayanim accept no liability for any loss or damages arising from the arbitration process.

3. Fees and Payment

- All application and preliminary fees must be paid before the hearing. Any further fees must be settled before the Psak Din is released. Only parties who have paid in full will receive the complete Psak Din. The final page will be provided to the non-paying party and the complete Psak will be sent only when full payment is made, or a payment plan is agreed to.

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- Each party bears their own legal costs and witness fees.
- Joint costs are shared equally unless otherwise ordered by the Beth Din.

4. Extensions of Time

Procedural deadlines may be extended by:

- Written agreement of both parties
- A ruling of the Beth Din, upon demonstration of good cause.