

Rules of Procedures for Conducting Matthew 18 Batei Din

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Biblical Origin of the Bet Din

The *bet din* has its origin in the Mosaic Law:

- Moses sat as a judge of the Israelites (Ex 18:13)
- Moses delegated his judicial authority to others (Ex 18:14-23; De 1:9-17)
- Moses reserved to himself difficult matters (Ex 18:22, 25-26; De 1:17)
- Difficult matters to be judged by the priests (De 17:8-13; Eze 44:24)

Matthew 18:15-16 Seeks to Avoid a Bet Din

Scripture prefers that private offenses (sins) committed between brothers / sisters (in the Lord) be overlooked (Proverbs 19:11):

“People with good sense are slow to anger, and it is their glory to overlook an offense.”

When that is not possible or appropriate, the first attempt to resolve the offense is for the complainant to go to the respondent alone, without involving others (meeting alone assumes that the parties are of equal stature) (Matthew 18:15):

“Moreover, if your brother commits a sin against you, go and show him his fault- but privately, just between the two of you. If he listens to you, you have won back your brother.”

If the attempt to meet alone is unsuccessful, the complainant can, once again, choose to overlook the offense. If he /she does not, the next attempt at resolution is for the complainant to go (or attempt to go) to the respondent, taking one or two others with him / her (Matthew 18:16):

“If he doesn't listen, take one or two others with you so that every accusation can be supported by the testimony of two or three witnesses.”

Under Matthew 18:15-16, responsibility for going to the other is imputed to the complainant. However, under Matthew 5:23-24, it is the other way around:

“So if you are offering your gift at the Temple altar and you remember there that your brother has something against you, leave your gift where it is by the altar, and go, make peace with your brother. Then come back and offer your gift.”

The net result is that both parties to an alleged offense have a responsibility to be proactive in resolving matters of personal offense and being reconciled in peace (Romans 12:18):

“If possible, and to the extent that it depends on you, live in peace with all people.”

Matthew 18:17 Requires a Bet Din

If the foregoing attempts at reconciliation are unsuccessful, the complainant can, even at this stage, choose to overlook the offense pursuant to Proverbs 19:11. If he / she does not, the complainant's remaining recourse is to elevate the matter to a *bet din* for adjudication (Matthew 18:17):

“If he refuses to hear them, tell the congregation [ekklesia]; and if he refuses to listen even to the congregation [ekklesia], treat him as you would a pagan or a tax-collector.”

Treating an Israelite as a pagan (non-Jew or unbeliever) is a communal sanction that, in today's vernacular, is sometimes termed "disfellowship" or "excommunication." When Yeshua spoke the words recorded in Matthew 18:17, there was no *ekklesia* in existence that could pronounce such a judgment other than the established *Sanhedrin*, and local *batei din* that could be convened to resolve specific controversies.

Need for Rules of Procedure

All tribunals that render judgments have rules of procedure in order to assure due process. "Due process" is a legal term that means "fairness in judicial proceedings." Although the term "due process" is not found in Scripture, its principle most certainly is:

Exodus

20:16; 21:18-27; 23:1-3, 6-8

Leviticus

5:1, 4-5; 19:15

Numbers

5:6-7; 35:30

Deuteronomy

1:17; 16:18-19; 17:6, 11; 19:13, 15-16, 18-19, 21; 24:17

Rules of procedure in a *bet din* are designed to bring fairness and orderliness to a proceeding. Because neither Tikkun, nor the UMJC's Board of Judicial Elders have standing Rules of Procedure for *batei din*, rules have to be promulgated before each *bet din* commences. We are not without guidelines in formulating such rules, however, since the public courts of England and the United States have, for centuries, thought through and implemented rules of procedure, and both the UMJC and Tikkun have, for their occasional *bet din* proceedings, borrowed from them, and have found them useful.

Consider that the Matthew 18 Scripture comes into play when a brother sins against another brother. Therefore, the complaint has to specify what the sin is, what steps have been taken to resolve the matter (e.g. steps 1 and 2), what the result of those steps were, and how the complainant wants the *bet din* to rule that would give the complainant personal relief. Keep in mind that Matthew 18 is mainly about reconciling personal relationships and not about establishing fault on the part of the respondent. If restitution is appropriate, the *bet din* could order it, but it would still be ancillary to reconciliation.

Now consider the question: "What can be ordered by a *bet din*?" Clearly, a *bet din* cannot order parties to like each other or even trust each other. A *bet din* can, if it finds that a respondent is not repentant of a sin that was committed against the complainant, order that the respondent repent, and order such actions as would be consistent with repentance. In the case of believers, it would seem that minimum reconciliation requires that the parties forgive each other, accept each other as brothers (or sisters) in the Lord, be willing to pray for each other's welfare, receive the

Lord's Supper in each other's presence, and be willing to cooperate with each other in events, in ministries, and on occasions within the body of believers when the parties' paths intersect.

The following are the procedural stages of a typical *bet din*:

1. Pre-hearing Proceedings

- a. Complaint filed.
- b. Answer to Complaint filed.
- c. Pre-hearing Motions filed and ruled upon with or without oral presentation; e.g.:
 - i. Motion to dismiss because the *Bet din* lacks jurisdiction over either the parties or the subject matter.
 - ii. Motion to dismiss because the Complainant has accused the Respondent of offenses that are not actionable.
 - iii. Motion to dismiss because the Complainant has asked for relief that cannot be granted.
 - iv. Motion that a judicial officer to recuse himself.
 - v. Motion for discovery.

A word should be said about discovery. Discovery is a process by which a party gains access to things or knowledge that is exclusively in the possession of the other party. *Batei din* do not have subpoena ability as do the public courts, but they can accomplish everything in the way of discovery except for subpoenaing an unwilling witness. Typical motions for discovery are (a) motion for admission of facts; (b) motion to answer interrogatories; motion to submit to deposition; and (d) motion to produce physical evidence.

2. Hearing: Initial Proceedings

- a. Rule on witnesses (witnesses excluded from hearing room).

3. Hearing: Opening Statements

- a. Complainant's opening statement.
- b. Respondent's opening statement unless reserved until later.

3. Hearing: Complainant's Case

- a. Calling of Complainant's first witness.
- b. Direct examination of Complainant's first witness by Complainant, along with presentation of exhibits (if any). No leading questions are allowed unless witness is considered hostile.

- c. Cross-examination of Complainant’s witness by Respondent. Leading questions are allowed.
- d. Examination of witness by the *bet din* hearing officers if they so desire.
- e. Re-Direct examination of Complainant’s witness by Complainant. The Complainant has an additional opportunity to examine because he/she has the burden of proof.
- f. Additional examination of witness by the *bet din hearing officers* if they so desire.
- g. The witness is excused. If witness is to be re-called or called by the Respondent, he/she leaves the hearing room. If not, the witness can remain to observe the remainder of the hearing.

In the course of these examinations, objections to any of the questions may be raised by either party, and are ruled upon by the *bet din* hearing officers. The most common objections are to hearsay and relevance). Proposed physical evidence is introduced as a numbered exhibit by questioning a witness about it.

- h. Second witness, third, fourth, etc., same as above.
- i. Offering of Complainant’s exhibits into evidence & Respondent objections (if any)
e.g. “I ask that Complainant’s (my) exhibits “A,” through “D” be admitted into evidence.”
- j. Complainant rests his/her case.
e.g. “I rest my case.”
- k. Respondent motion for summary judgment.

A motion for summary judgment is made if the Respondent believes that the Complainant has not presented enough evidence to have made a *prima facie* case (e.g. making an accusation of theft without having presented evidence that anything has been stolen). A *prima facie* case is one in which the Complainant’s evidence is sufficient to prove his complaint if there is no contradicting evidence presented.

4. Hearing: Respondent’s Case

Same as for Complainant’s Case except that if Respondent has not made his/her opening statement earlier, he/she may make it now.

5. Post-hearing Proceedings

- a. Final motions.

Either or both parties can offer final motions. The most common final motion is a “Motion by the Respondent to Dismiss Complaint.” Motions for dismissal are predicated on their being no need for the *Bet Din* to judge the evidence because the case is fatally flawed and considering the evidence would make no difference in the outcome. An example of such a flaw would be if the

Complainant has not made a prima facie case. It would be similar to the earlier motion for summary Judgment.

- b. The *Bet Din* deliberates and rules on the motions.

6. Closing Arguments

- a. Complainant's closing argument.
- b. Respondent's closing argument
- c. Complainant's supplementary closing argument. The Complainant is given a second closing argument because he/she has the burden of proof.

7. Judgment of the Bet Din

- a. The hearing officers of the *Bet Din* retire to consider their judgment.
- b. The hearing officers of the *Bet Din* either deliver their judgment verbally and follow it up in writing, or they take what they have heard under advisement and communicate their judgment in writing at a later date.