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**BETH DIN REMAINS A VALID WAY TO RESOLVE DISPUTES IN SOUTH AFRICA
- BUT ONLY IF IT COMPLIES WITH THE LEGAL STANDARDS OF SECULAR
ARBITRATION**

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In his quite outstanding article under the rubric *The Beth Din - Court of Law*, published in *Jewish Affairs*, Winter 2000, Rabbi Dennis Isaacs, Dayan on the Johannesburg Beth Din (and a veteran contributor to *Jewish Affairs*) stated as follows:

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“It is a requirement of Jewish law that when two Jews are in dispute with one another, no matter what the issue (financial or otherwise), such a dispute should not be referred to the non-Jewish courts, but to a Rabbinic authority, to the Beth Din. The hearing is known as a *Din Torah*. In recent years South African Jews have become more aware of this facility and requirement, and the number of *Dinei Torah* heard by the Beth Din has increased considerably.

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The procedure with regard to such a hearing is that the party calling for it is required to submit a formal written application, stating what the claim is and also providing a brief background to the claim. When the Beth Din receives the application contact is made with the other party informing them of the request and proposing a date for such a hearing to take place. After a positive response to the summons is received, the date for the hearing is confirmed.

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When the two parties appear before the Beth Din, the claimant is asked to state the claim briefly and concisely and both parties are required to sign a submission to arbitration which binds them to abide by the Beth Din decision. (It must be noted that, in terms of South African law, the Beth Din acts as a court of arbitration whose decision can be upheld in the secular courts.) Often people are reluctant to respond positively to a Beth Din request to appear for a *Din Torah*. Many times forceful persuasion is required for such a hearing to take place. Even if a person has good reason for not wanting to have a case heard by the Beth Din, the Beth Din requires that he appear before it to explain his position

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Since a Jew / Jewess is under solemn obligation to respond positively to a request to appear before the Beth Din (whether it be for a hearing, or a *Get*, or for any other matter), the Beth Din has the right, in the face of an arrogant refusal, to call for communal sanctions against the recalcitrant individual. This may include denying the person, if male, honours in a synagogue, such as being called to the Torah, and also being precluded from holding office in any communal institution. The Beth Din is reluctant to invoke such sanctions and does so only in the event of extreme provocation. It should be noted that the threat of such sanctions has been exercised with satisfactory results.”.

In an article dated February 9, 2001, Richmond Eustis, of the *Fulton County Daily Report*, stated in an article published under the rubric *Georgia Judge Rejects Rabbinical Court Rulings* that “an ancient rabbinical court remains a valid way to resolve disputes in Georgia (United States of America) - but only if it complies with the legal standards of secular arbitrations.”. Eustis recorded a ruling of a superior court judge in Fulton, who ruled that a Beth Din violated the rights of a party when it failed to keep a record of its proceedings. As a result, the court held that the arbitrator’s decision isn’t binding and that the aggrieved party can take his claim to the superior court in Georgia.

This was the first time that a Georgia court had recognised that the Beth Din’s procedures are a valid means of arbitration.

The Arbitration Act, Act No 42 of 1965, as amended, of the Republic of South Africa (hereinafter “the Act”) provides for the settlement of disputes by arbitration tribunals in terms of written arbitration agreements and for the enforcement of the awards of such arbitration tribunals. The Beth-Din of Johannesburg’s *Submission to Arbitration* (hereinafter “the submission”) states, *inter alia* “... and to abide by their decision according to the arbitration laws of the Republic.”. Although not expressly stated in the submission, the reference to “the arbitration laws of the Republic” in the submission must be a reference to the Act.

Section 17 of the Act deals with recording of evidence and states that if not recorded

by the arbitration tribunal itself, the oral evidence of witnesses shall be recorded in such manner and to such extent as the parties to the reference may agree or, failing such agreement, as the arbitration tribunal may from time to time direct, after consultation with the parties. 5

It follows, therefore, that a South African court would come to the same decision as that which the Georgia court came to, as set out above, if a record of the proceedings was not kept. 10

The Act consists of some 43 sections (one of which has been repealed). I wonder how many parties submitting to Beth-Din arbitration are familiar with the Act, notwithstanding their expressly stating in the submission that they agree to be bound by the Act. The Beth-Din no doubt has a copy of the Act readily available and parties submitting to Beth-Din arbitration are advised to familiarise themselves with the terms and provisions of the Act and to take expert legal advice in regard to the Act if any aspect thereof is not understood by them prior to submitting to Beth-Din arbitration. 15 20

In conclusion, when two Jews are in dispute, they should bear in mind the wise words of Rabbi Dennis Isaacs above and balance those with a clear understanding of South African law and the consequences of a concluded arbitration. 25

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