

Ethical Business Practices under Jewish Law

Lesson One: Payments for Court Expenses

Lesson Subjects:

1. One who lost a courtcase – is he obligated to pay back expenses to the winning party?
2. Payments for expenses incurred when coercing the defendant to appear in court.
3. When is the refusing party obligated in payments?
4. How are the refusal payments set?
5. If both parties agreed to come to court, and one did not show up.
6. One who sued his colleague in order to hassle and bother him.
7. Payments of expenses for the lawyer's fee.
8. Aggravation payments.
9. One who cannot show up in court – should send an apology note.
10. The decision of HaGaon Rabbi Moshe Sternbuch regarding payments of court expenses.
11. Summary

© Pirchei Shoshanim 2005

This lesson may not be reproduced in any form without permission of the copyright holder



Introduction and Historical Prospective

This series is intended to bring to light the legal reasoning of over 3,000 years and show just how applicable and alive this reasoning is in our modern day world. Our approach will be to study the source of this Jewish Law (*Halacha*) in the **Talmud** and record the key opinions of the earlier Sages (**Rishonim**)¹. We will then record the **Code of Jewish Law** (*Shulchan Aruch*) and explain it by bringing in the comments of the key commentaries.

The authors of the Commentaries are generally affectionally referred to by the name of the particular Legal Treatise they authored or by a shortened name often times derived through the use of the letters of their names, such as Rashi (R' Shlomo Yitzchaki) or Rabbeinu Tam (R' Yaakov ben Meir). They were all very pious individuals who are still revered and respected generations after their passing. Every word was well thought of before being spoken and all that they spoke is held in high regard whether or not the opinion is the one which is ultimately followed in determining the final law. As in secular law the facts of the case and the thought process in applying the proper law to the facts is the all important factor in determining the final legal conclusion. Therefore, the all important analysis is a critical factor in determining ultimate truth and thereby being able to compensate the wronged party.

The Oral tradition of the Talmud further elucidated through the Code of Jewish Law (**the Shulchan Aruch**) and its commentaries provide us with the guide to truth in righting the wronged. We will give a brief biography of the commentaries that we refer to so all can appreciate the time frame and greatness of each of these distinguished individuals and the difficulty they faced in composing their great works. Many of their lives were in danger and in several instances they died for the furtherance of ultimate truth. Much of our

¹ The Rishonim – guided the Jewish Nation from the tenth through the fifteenth centuries. They laid the cornerstone and created the structure for learning both the Scriptures and application of Jewish Law (*Halacha*) for all subsequent generations.

secular law today has a basis in traditional Biblical or Torah law and this way of thinking should provide much needed light to an otherwise dark world.

Lesson Objective: Who is liable for payments of court expenses? One who sued his colleague in court, won the case, and is now interested in forcing the loser to pay for court expenses. According to Jewish Law, can one obligate the one who was sued, and lost, in order to reimburse the claimant for expenses incurred – hiring a lawyer, travel, and others? The lesson will also deal with the question whether the claimant can receive damages for aggravation.

Furthermore, the lesson will deal with the din of a claimant who is aware that his claim does not have a valid basis, and his purpose is only to hassle the opposing party – can we obligate the bothersome claimant for expenses incurred by the winning sued party.

Introduction

Both plaintiff and defendant are summoned for the hearing on a certain date and time. The plaintiff arrives at the hearing at the appropriate time but the defendant does not appear. The Jewish Court (*Beis Din*) generally sets an alternative time for both parties to appear at another hearing.

Sometimes it occurs in Jewish Court (*Beis Din*) that the above scenario repeats itself. The plaintiff arrives on time and the defendant does not show up at all. In light of the above, the Beis Din sets another time for yet another hearing, with the addition of a word of warning, that if the defendant will not arrive at the hearing they will issue a *claim of refusal* against the defendant, which will be handed over to the plaintiff. Generally all sides come to the next hearing, including the defendant. However, if the defendant does not show up, and the Jewish Court (*Beis Din*) writes a *claim of refusal* against the defendant based on the fact that he refuses to come and be judged according to the Laws of the Torah (*Din Torah*), then the Plaintiff is given permission to settle his dispute in a Secular Court. Seeking resolution of a dispute between two Jewish parties in a Secular Court is considered a serious transgression of Torah Law and is strictly forbidden unless there is no other proper or unbiased forum available to adjudicate the case.

The Defendant is sent three summonses to appear in front of the Jewish Court (*Bais Din*) in order to utilize all possibilities to bring the defendant to Beis Din, and not have to come to settle the dispute in an ordinary courthouse. If the defendant does not reply by the 3rd summons the Plaintiff may subpoena the defendant to a Secular Public Court as the Jewish court does not have the power of enforcement as does a Government

empowered Court system... Going to a Jewish Court (*Beis Din*), to settle disputes is a strict Torah mandate.

This situation generally incurs extra monetary expenses for the plaintiff, loss of time and considerable aggravation. The plaintiff arrives at the hearings at the appointed time and hour, sometimes during working hours, pays for travel expenses, prepares himself for the hearing (sometimes even hiring a lawyer or Rabbinical attorney who make the effort to come to the hearing and whom both receive wages even if the hearing did not take place) etc. In the event the defendant does not come the second time too, the above expenses are again repeated.

The questions remains, can the defendant be obligated to compensate the plaintiff for expenses and aggravation caused by his lack of mandatory appearance before the Jewish Court (*Beis Din*)?

We must also clarify the law regarding a plaintiff who knows that his claim has no other basis except to harass and bother the second side. Can we then force this plaintiff to reimburse expenses for the winning defendant?

Is one who Lost the Case Obligated to Reimburse Expenses to the prevailing party?

First we will the discuss the law of running expenses which the prevailing side paid out during the case, such as obtaining and organizing legal documents, travel expenses etc. (the Law of compensating expenses laid out for a lawyer or a Rabbinical Attorney will be discussed later on).

In the Talmud² Sanhedrin at the end of the Chapter entitled Zeh Borer page (*daf*) 31b it is brought: “For Rav Dimi comes to say that Rabbi Yochanan³ says, one who harasses his

² Talmud – After the Tanach (The Bible), the most important book of the Jewish people is the Talmud which was completed approximately in the year 500 C.E. The Talmud – discusses all aspects of Jewish life and law. It records the discussions, arguments and teachings of the Amoraim, (Sages). The Talmud is the written recording of the Oral Tradition given to the Jewish people at the time of the receiving the Torah by Moses at Mt. Sinai.

colleague in court, one says we shall be judged here and the other says we shall go to the place of the Court (*Vaad*), the first party is forced to go to the place of the Court (*Vaad*)”. Rashi⁴ explains: “A difficult plaintiff who harasses his colleague and his colleague therefore does not want to be judged in that particular court may choose to have the venue changed to have the hearing in the presence of a board of many Torah Scholars (*Talmidei Chachamim*), so that the plaintiff should feel uncomfortable in their presence”. Thus we find that the defendant can force a difficult plaintiff to come and be judged in a Beis Vaad (the higher court of judgment).

The Talmud continues to cite the words of Rav Elazar: “Rav Elazar said in his presence, Rabbi, one who is trying to obtain a certain amount of reimbursement from his colleague,

³ The Rabbi’s mentioned in the body of the Talmud are referred to as Amoraim such as R’ Yochanan and R’ Dimi. The term Amoraim is derived from the word amar which means “to speak”. The Amoraim from the third until the fifth century recorded and guided the Rabbinic legislation and customs that have become binding upon the Jewish Nation worldwide. This portion of the Talmud is commonly referred to as Halacha or Jewish Law. The efforts of the Amoraim guide us until today in understanding the Talmud and subsequently proper living. The Amoraim were great scholars and were fluent in Torah wisdom as well as being outstanding in both ethical and moral behavior. The discussions in the Talmud is a brief summary of a detailed analysis of a legal problem which the learning academies and courts of the time were presented with. A one line discussion could have taken place over many months before a final decision was rendered. After the destruction of the Second Temple in Jerusalem the Oral tradition of Torah Law was laid to writing. Rabbi Yehudah HaNasi (Judah the Prince) along with the men of the Great Assembly (*Sanhedrin*) the Supreme Court of the Land were concerned that the depth and understanding of the Torah Law would be lost. R’ Yehudah HaNasi took on this huge task which culminated with his passing in approximately 192 of the Common Era. Subsequent to his death the Amoraim began the monumental task of producing the Talmud. The Talmud was developed over a period of five generations from approximately 200 to 350 C.E. in both Israel and Babylonia (where most of the Jews were exiled after the destruction of the Second Temple). Rav Ashi in Babylonia for a period of 56 years organized the material of the Talmud Bavli in the order we have it today. After his death in 427 his students continued the monumental task of compiling and editing the Talmud until the year 500 which was accepted as the end of the Talmudic era. No later opinions or amendments were allowed after that time as well as no one has the right to disagree with the opinions expressed by the Amoraim. Determining what the exact Law (Halacha) is required a tremendous amount of research from the entire Talmud before a conclusion could be reached. This awesome responsibility was undertaken by the Sages of the subsequent generations such as the Geonim, continuing on with the Rishonim and Achronim continuing on until this day. Rabbi Yosef Karo (1488-1575) after having fled with his family from the persecutions of Spain in 1492 eventually at the age of 34 and then living in the Land of Israel spent the next 32 years writing a commentary on the Baal Haturim (written approximately 200 years earlier) which was considered to be the basis of understanding of Jewish Law until that point. Realizing that his work was too difficult for the layman to understand to use as a guideline for his daily life he began his classic work on the code of Jewish Law (Shulchan Aruch) containing only the bottom line (the final outcome) This work became the basis and guideline for all of world Jewry to understand the depth of the Talmud and as well provides the basis of our work.

⁴ R’ Shlomo Ben Yitzchaki of Troyes – Rashi - Born: Troyes, France, 1040. Died: Troyes, France, 1105 .Notes: Traced his ancestry all the way to King David through Hillel the Elder and other Tanaim. He settled in Troyes as a respected scholar at age 25. He set out to write a commentary on the Bible focusing on the plain and exact meaning of the text, which is included virtually in all editions of the Bible (Chumash), as well as on Nevim and Kesuvim. His lucid and terse commentaries on the Talmud end with Makkot 19b and are included in all editions of the Talmud. He wrote his commentaries and taught while earning his livelihood as a wine merchant. He is of the greatest Biblical commentator of all times.

must he pay out a payment for his payment? Therefore his colleague can be forced to be judged in their city”. Rav Elazar thereby opposes the previous words of Rav Dimi and Rav Yochanan, and claims that it does not seem possible to obligate the plaintiff to go and present his case in another city, for there seems to be no logic that the one who claims compensation from his colleague, should be obligated to pay out travel expenses in order to claim his monetary case, therefore, it seems obvious that he can demand that they be judged in their city and not go to the higher court of Judgment (*Beis Vaad*) in another city.

Apparently we must understand what Rav Elazar meant when he said “One who is trying to get reimbursement from his colleague, must he pay out a payment for his payment” – why did he understand that the plaintiff loses because he is forced to go and be judged in the Beis HaVaad according to the request of the defendant. Surely, if the defendant will lose the case, he will pay back travel expenses, for he is the one who is causing him to travel for nothing. Therefore we can prove from the words of Rav Elazar that there is no obligation for the losing defendant to reimburse the plaintiff for travel expenses, therefore he asks – can it be logical that the plaintiff should also have to pay out money for travel expenses even if his entire claim does not exceed this travel amount.

The Rosh⁵ also points out there in (Perek Zeh Borer Siman 40) from the above Talmud (Gemara) in Tractate Sanhedrin 31b and writes: “From here we have proof that one who was obligated to come to court, does not reimburse the opposing party’s travel expenses, even though it was he who made him come and be judged in another city.” According to the Rosh, there is no law (*din*) that the losing side has to pay back court expenses. This is also brought in the Tosfos⁶ in Sanhedrin which begins with the words “Vayotzi”.

Also the Mordechai⁷ in Sanhedrin (Siman 437) understands from the above cited Gemara,

⁵ Rosh - R' Asher Ben Yechiel, Born: Germany, c. 1250. Died: Toledo, Spain, 1327. **Notes:** Talmudist and Halachist, one of the most important in Jewish history. He was a descendent of the Meor Hagolah and a leading student of the Maharam M'Rottenberg and his successor as the leader of Germany. Left Germany in 1303 in the aftermath of the Rindfleisch massacres and was welcomed by the Rashba in Barcelona. Became Rav and head of the Judicial Court of Toledo in 1305 and became the leading authority in Spain after the death of the Rashba. In this capacity he introduced in Spain the methods of the Tosefists and Ashkenazic customs. Opposed any attempt to give precedence to secular learning having prohibited such studies less than 25 year of age. Author of a commentary on the Mishneh, **Peirush HaRosh**, a commentary on the Talmud patterned after the Rif, **Hilchos HaRosh** (also known as **Piskei HaRosh**), a compilation of Halachas which is the basis for subsequent compilation including the Tur, **Tosefot HaRosh**, where he clarifies the Tosefot, Teshuvot Ha Rosh, a compilation of his responsa, and **Orchot Chaim**, on Ethics. Among his students was his son the Tur.

⁶ Tosefos – literally means to add on. These were commentaries on the Talmud stretching over a two hundred year period; also known as the school of Tosefos. The early Tosefos consisted of the Grandchildren of Rashi

⁷ Mordechai - R' Mordechi Ben Hillel HaKohen Ashkenazi - Born: Germany, c. 1240. Died: Nuremberg, Germany, 1298. Notes: A relative of the Rosh, son-in-law of R' Yechiel of Paris, brother-in-law and student of the Maharan M'Rottenberg and a student of Rabbeinu Peretz. Died with wife and five children in the Rindfleisch Massacres. Author of Mordechai, Legal digest of the Talmud and early

[Sanhedrin 31b] that one is not obligated to pay back expenses. Regarding our scenario where expenses are incurred by the plaintiff from the defendant who forced him to come and be judged elsewhere he writes: “From here Rav Yochanan proves, that if Reuven incurred travel expenses, in order to force Shimon to come to Court, then Shimon does not have to pay back these expenses even though Reuven won the case, for if this would not be the case, why would we say ‘one who is trying to get reimbursement from his colleague etc.’ for in any case the loser will pay everything back, but rather the judgment is that he does not have to pay these expenses”.

It seems that the Rishonim viewed that the loser cannot be obligated to pay back court costs for the opposing side. This is also the judgment of the Shulchan Aruch in Choshen Mishpat Siman 14 Seif 5: “One who is found guilty in court is not obligated to reimburse expenses for the opposing side, even if he was the one who forced the case to be heard in another city”.

Payment for Expenses which were incurred in order to coerce the Defendant to Appear in Court

Now we can explain what the reasoning is regarding expenses the plaintiff incurred in order to force the defendant to come to Court - expenses for letters sent, expert witness’s and travel expenses etc.

Previously we cited the words of the Mordechai who specifically writes about expenses which the plaintiff incurred by forcing the defendant to come to court, and holds that the defendant does not have to reimburse the plaintiff even when the defendant won the case (this is what the Talmud proved previously).

On this point, however, the Rosh opposes the Mordechai. Previously we cited the words of the Rosh who holds that the defendant who lost is not obligated to pay back expenses to the plaintiff even if these expenses were incurred because the defendant forced the plaintiff to have the hearing in another city (the plaintiff’s travel expenses).

Regarding expenses which were incurred in order to force the defendant to come to court, the Rosh writes in continuation of that which he wrote previously: “But if the

authorities following the format of the Rif. Considered to be of the greatest commentators on the Talmud before his life was so tragically cut short. Thousands of students around the world follow his works until today.

defendant refused to come to court and it was necessary for the plaintiff to spend money on expenses in order to force him to come to court, then Rabbi Meir says he is obligated to pay back all these expenses”. Meaning, these expenses must be reimbursed by the defendant who refused to come.

The Rosh proves from the Gemara in Baba Kama 112b, that just like in the case of one who borrowed money and refused to pay back, where we obligate him to pay back expenses for the scribe who wrote the deed of excommunication at the instruction of the Jewish Court (*Beis Din*), so too do we obligate the defendant who refused to come to Court to pay back expenses incurred on behalf of the plaintiff in order to coerce the defendant to appear in court.

The Shulchan Aruch there held as the Rosh that if the defendant refused to come to Beis Din and the plaintiff had to pay expenses to force him to appear in court – the defendant is then obligated to pay back all expenses.

In the S'ma⁸ Seif Katan 8 he cites the words of the Revosh⁹ (Siman 475) who writes that this law is only when the defendants were found guilty in court.

In the Tumim (he mentions the Nesivos HaMishpat¹⁰ in Seif Katan 4) he writes that sometimes even when the defendant won in court he is obligated to pay back expenses for refusal to come, such as if the plaintiff came in naively for he thought that he would win the case (it should be pointed out that regarding this Law of the Tumim¹¹, it is written in the Yeshuos Yaakov¹², Dayonim, Siman 14, “And his words are not proven”).

⁸ S'ma – R' Yehoshua Ben Alexander HaKohen Falk - **Born:** Lublin, Poland, c. 1550. **Died:** Lemberg, Germany, 1614. **Notes:** Talmudic scholar and Rosh Yeshiva in Lemberg. Author of **Drisha u' Prisha**, twin commentaries on the Tur, **Sefer Meiras Einayim/SMA/The Book that Enlightens the Eyes**, a commentary on Shulchan Aruch Choshen Mishpat, included in the standard editions of the Shulchan Aruch.

⁹ Revosh – R' Yitzchak Ben Sheshet Perfet - **Born:** Barcelona, Spain, 1326. **Died:** Algiers, 1408. **Notes:** Talmudic and halachic scholar. A student of the Ran. Lived in Spain most of his life presumably until around the time of the Spanish Massacres of 1391. Settled in Algiers where he became the Chief Rabbi. Author of commentaries on the Talmud preserved as part of the Shilta Mekubetzet, as well as responsa. He warned against the study of philosophy and Kabbalah. His students included the Rashbatz.

¹⁰ Nesivos HaMishpat – R' Yaakov ben Yaakov Moshe of Lissa - Chavos Daas. **Born:** Loberbaum, Poland, c. 1759. **Died:** Loberbaum, Poland, 1832. **Notes:** Author of **Derech HaChayim**, a prayer book with a compilation of laws about daily life, a commentary on the Codes as well as at least 15 other books. **Nesivos HaMishpat** (The Paths of Justice, see Mishlei 8:20) is a commentary to **Choshen Mishpat** that is organized in a manner similar to Urim V'tumim, with one section called Beurim devoted to a straightforward explanation of the Shulchan Aruch, and another section called Chidushim, including extensive discussions of various topics. It includes discussion and disagreements with Ketzos HaChoshen. In turn, **Chavas Daas** focuses on **Yoreh Deah**.

¹¹ Urim V' Tumim – R' Yonatan Eibeshutz - **Born:** Cracow, Poland, 1690. **Died:** Hamburg, Germany, 1764. **Notes:** Talmudist, Kabbalist and Rav of Altona/Hamburg/Wandsbeck. Founder of a Yeshiva. Author of **Ahavat Yonatan**, homiletical interpretations of Haftorah. Author of **Creiti U'Pleiti** on Yoreh Deah, **Urim V'tumim** on Choshen Mishpat. Accused by many, including R' Yaakov Emden of being a secret follower of Shabbetai Zvi, he gathered strong support from Polish and other Eastern European Rabbis.

¹² R' Yaakov Orenstein – Chief Judge – Lvov, Poland

It should be pointed out that which the Maharik writes (Shoresh 11). He draws out a Law (*Halacha*) from the finding in this case regarding refusal expenses for the plaintiff who forced the defendant to come to court, and writes that according to this finding we learn that a letter against refusal should not be written in question, such as in the case if there is a query whether the defendant received all the summons to court by hand or if there is a factual question if he actually did show up to the hearings etc.

This is because if he is categorized as one who refused, he will have to pay back the plaintiff for all of his expenses, and therefore a *deed of refusal* should not be unnecessarily written in order not to cause the defendant to pay back expenses when in doubt.

From What Point in Time is One Who Refused to Appear Obligated to Pay Back Expenses?

In the answer of the Rosh (Klal 73 Seif 2) he relates to this question and writes as follows: “And the question is from when is the one who refused obligated to pay back the expenses incurred on his behalf, is this from the time when the deed of refusal was written for him or 30 days after?”

It seems to me that this payment, if from the time when he refused (even before the deed of refusal was written) because Marana Vrabana Meir z”l cites a proof from Perek HaGoze (112b) that “just like one who comes to pay money for a *deed of refusal*, and now that we know that he has to pay money for the deed of refusal, the same applies here in this case – from when is he obligated to pay the expense, even before the deed is written – meaning from the time when he refused”.

The Rosh proves that from the time when he refused to come to court, from then on he begins his obligation to pay back his refusal expenses to the plaintiff, even before the deed of refusal was written.

It has also been brought in the Shach¹³ Choshen Mishpat Chapter (*Siman*) 14 Seif Katan 11 that from the time when he became a refusal, he must pay, even so, that they have not as of yet written out the deed of refusal for him.

¹³ Shach – R’ Shabbetai Ben Meir HaKohen - **Born:** Amstibov, Lithuania, 1621. **Died:** Hollischau, Bohemia, c. 1663. **Notes:** Halachist. Lived in Vilna until he had to flee due to persecution. He then settled in Dresnitz and Hooischau, Bohemia. Author of **Sifte HaKohen/Shach/Lips of a Kohen**, a major commentary on the Shulchan Aruch Yoreh Deah and Choshen Mishpat, which includes attempts to rule on issues where the Mechaber and the Rama differed. Author of **Nekudos HaKessef**, a response to the Taz, with whom he conducted a sharp controversy.

How are the Refusal Payments Set?

Now we can look into what the plaintiff must prove in order to get his expenses back, and what is the estimated amount according to which we can ascertain the amount of expenses which were laid out when forcing the refusal to come to court.

In the answer of the Rosh (Klal 107 and the end of Seif 6 which begins with “Uma Shetava”) he writes as follows: “And the expenses which I obligated Mr. Cohen to pay back Mr. Furman are, after Mr. Furman (the plaintiff) clarifies via witnesses that he summoned Mr. Cohen (the Defendant) to court for this claim and he refused to come to the hearing, but there will be not be any compensation of expenses via an oath of Salomon if he will swear how much he paid and must get back. Rather, Mr. Furman should clarify the entire proceedings which were necessary in order to force Mr... Cohen to come to court, and the messengers which were sent etc, and the salary of the scribe. The Jewish Court (Beis Din) will then evaluate the estimated value of how much it was necessary for Mr. Furman the Plaintiff to pay for the above etc. and according to this estimation the Jewish Court (Beis Din) will demand from Mr. Cohen (the Defendant) to pay Mr. Furman all of the expenses incurred until he was brought to Jewish Court (*Beis Din*) and the case was settled”.

According to the words of the Rosh it seems that there are two things which the plaintiff who paid out the expenses must clarify:

1. He should investigate the witnesses who summoned the defendant to court when the defendant refused to come with them.
2. He should clarify and prove which expenses were necessary in order to force the defendant to come to court.

The Rama¹⁴ ruled similarly (Choshen Mishpat Siman 14 Seif 5) that the plaintiff must clarify how much he paid for expenses or the Beis Din must evaluate his expenses.

¹⁴ Rama – R' Moshe Ben Yisrael Isserlis - **Born:** Cracow, Poland, 1525. **Died:** Cracow, Poland, 1572. **Notes:** Talmudic commentator and Halachist. Descendent of a wealthy and illustrious family from Cracow, he served as Rabbi of Cracow where in 1552 he founded a prestigious Yeshiva that he led until his death. Leader of Polish Jewry he is a major halachic authority for the Ashkenazic world. Author among others of **Darchei Moshe**, glosses on the Beit Yosef, **Shaalot U'Teshuvot HaRama**, a compendium of Responsa, **Toras Chatos**, a compendium on the dietary laws, **Toras Ha-Olah**, a work on the symbolic meaning of the sacrifices, as well as several works on Kabbalah, including a commentary on the Zohar. Arguably his most famous work is **Mapah**, Glosses on the Shulchan Aruch, where he brings the Ashkenazic views into what is otherwise mostly a Sephardic work thereby making it into a universal Code of Jewish Law. His tombstone bears the inscription “From Moses to Moses there was no one like Moses”, the first Moses referring to the Rambam and indeed sometimes he is referred to as the Rambam of the Polish Jewry.

In the S'ma he mentions two reasons why the plaintiff will not be believed if he swears how much he paid out in expenses:

1. Because in order to get money back from his colleague it is necessary to clarify and not just to swear.
2. So that the plaintiff should not claim any amounts he so desires, with the intention that the defendant should pay back a larger amount.

In the Sefer Nesivos HaMishpat (Seif Katan 6) he adds the innovative idea that if the plaintiff cannot clarify how much he spent and the Beis Din can not estimate these expenses too, then the plaintiff can be believed in his oath for the amount of his expenses.

If Both Sides Agreed to Come to Court and One did not Show Up

In the Mordechai in Sanhedrin, in the Perek Zeh Borer Siman 707 (mentioned previously) in the continuation of his words we find: “Although if Richard said to Simon, let us go to the Main Jewish Court (*Beis Din HaGadol*) and Simon said I will come after you to that Beis Din Hagadol, then if Richard will go back and claim against Simon by saying I wasted my money on going to the Beis Din for our case against you and you did show up, therefore I am demanding my expenses back from you, Rabbeinu Meir obligated Simon to pay all the expenses even though he did not promise him to do so. It is also not possible for Simon to say I fooled you in this matter, for there are several things which are valid even without an agreement (*kinyan*)”.

The Mordechai ruled that in a case where there was a mutual agreement between the colleagues to come to court in a certain Jewish Court (*Beis Din*) and in the end one of the sides did not appear to that (*Beis Din*) but the second side did show up, then the one who did not come is obligated to pay back his colleague for all expenses which were laid out in order to come.

This ruling also is also held by the Rama in Choshen Mishpat Siman 14 Seif 5. The explanation of this ruling is apparently that this is considered as a Gramei (direct damage, which one must pay reimbursement payments for) and not as a Grama (an indirect damage, for which one is not obligated to reimburse payments).

One Who Sued His Colleague in Order to Harrass and Bother Him

In the Sefer Yeshuos Yaakov (Choshen Mishpat Siman 14) he writes: “It seems that in the case of a lender who forced his borrower to go to the Beis Din HaGadol, after which it was discovered that he lied in his claim, then according to all views he (the lender) is obligated to pay for all expenses, because he was the one who forced the other party to go and because of his demand expenses were incurred”. He continues: “But in a case where it was discovered that the plaintiff only sued in order to harass and he wanted to trouble the second party by forcing him to come to court, then he is definitely obligated to cover all expenses”.

One, who sued his colleague in order to cause him aggravation and expenses, must reimburse for all expenses. This can be clarified when the defendant brings witnesses in order to justify his testimony, and to oppose the plaintiff’s claim.

Similarly, in the classic work (*Sefer*) Teshuvos V’Hanhagos (Part 4 Siman 303) by HaGaon R’ Moshe Sternbuch Shlita it says: “And it seems furthermore, that in any place where it is obvious that the plaintiff knew himself that his claim has no valid basis, and he intentionally wanted to harass and cause damage to the defendant, that if the defendant incurred expenses of a lawyer etc., the plaintiff is then obligated to reimburse for all expenses”. He concludes there in the continuation of his words: “Should it be discovered, that the plaintiff knew all along that his claim was false and he has no chance of winning the case, and he only wanted to harass and harm the defendant, in this case he is obligated to pay back all expenses incurred in this case”.

We therefore find, that according to them, in this type of a case where it seems to Beis Din that the plaintiff knew that he had no chance of winning in court, nor did his claim have any valid basis, and even so he sued in order to harass the second side and to cause monetary loss for nothing, he is then obligated in all court related expenses which his colleague incurred.

Payments for Expenses of a Lawyer’s Fees

Regarding the law of payments for case expenses and the manner in which the opposing party in the case (*Baal din*) is required to pay them, HaGaon Rabbi Moshe Sternbuch Shlita writes in his book (*Sefer*) Teshuvos V’Hanhagos (Part 4 Siman 303) as follows: “And it seems that even if he pays back expenses he is not obligated to pay back for a

Rabbinical attorney or a lawyer, because in this case he was only like a Grama (Indirect damage), because he can say that it was necessary to bring a lawyer, especially at the start of the hearing. But if he told his opponent, I am coming with a lawyer, and will incur expenses from this, and the second side promised to come, and intentionally did not show up, this is like the case of one who says ‘go, and I will follow you’, in which case he is obligated in all expenses, as was decided (*pasek*) by the Rama”.

One who did not come, or refused to come, is exempt from paying back lawyer expenses, because he was only a grama (he caused damage indirectly, in which case he is exempt from paying back), unless he was informed that a lawyer was hired, and he promised the opposing party he would come, but he failed to show up.

Aggravation Payments

In many cases, the winning party demands (or one who came several times to the summoned hearing but the defendant never showed up) aggravation payments. Is there any Legal (*Halachic*) basis for this claim and does this matter have any standing or is it a triable issue in a Jewish Court (*Beis Din*)?

It would be possible to discuss exactly what category of damage “aggravation” goes under and if it is at all included in the obligations of “Boshes” (payments for shame) which is one of the five obligations which one who damages must pay the one he damaged (the Laws (*Dinim*) of payments for embarrassment (*Boshes*) are brought down specifically in Shulchan Aruch Choshen Mishpat Siman 420 Seifim 34-40).

However, even if we conclude that aggravation payments are indeed part of shame payments, we still cannot obligate these payments for three reasons:

1. Generally this type of damage is only done in a manner of Grama (indirect damage) and payments are not obligated for grama
2. Even if it would be part of embarrassment (“boshes”), the worst case scenario it can be is spoken shame (for he did not harm him or hurt him physically), and one is not obligated to pay back for spoken shame (as is brought in the Shulchan Aruch Seif 38).

3. Additionally, in our days embarrassment (*bosbes*) payments are not obligatory at all (even physical harm), as is brought in the Shulchan Aruch Choshen Mishpat Siman 1 Seif 2, because today we only judge that which is present and which one has a monetary loss from, as is brought in Shulchan Aruch Seif 1, and aggravation is not harm which causes monetary damage.

These days this is the custom of the Jewish Courts (Batei Din) that one side is not obligated to pay aggravation payments incurred by one of the opposing parties during the hearing.

One Who Cannot Show Up to the Hearing – Should Send a Letter of Apology to the Court (*Beis Din*)

In the Maharik Shoresch 11 he also cites the rule of writing a *deed of refusal* for one who refuses to come to a Din Torah, and he adds: “And even so that it is written from Harav R’ Naftali that a certain person named Levi had to go outside his boundaries etc. in any case he had to send a messenger to the Court (*Beis Din*) to hand over a letter of apology and to request an alternative hearing, therefore Levi was wrong if he did not send this note within 30 days”. Any party, who was unable to come to the hearing at the appropriate time, must send a letter to the Jewish Court (*Beis Din*) to explain why he was unable to come to the hearing.

Similarly, the Rama Siman 11 Seif 1 say: “One who was unable to come to Court (*Beis Din*) because he had to travel, must inform the Court (*Beis Din*) via a note of apology and to request an alternative hearing. And if he did not do this, he is ostracized even if he was unable to come”.

It is therefore understood, that even though there are parties who have a good reason not to show up, however, they must make it their business to inform the Court (*Beis Din*) of the reason and not wait until they are called a second time in order to apologize for their absence during the first hearing.

It should further be pointed out that which is brought by HaGaon R’ Moshe Sternbuch in his authoritative works Teshuvos V’Hanhagos (Part 4 Siman 303) regarding those who do not show up to court cases which they were summoned to in Jewish Court (*Beis Din*):

“And lately there are those who have become used to making light of the Court (Beis Din), and when they are summoned they do not come until the third time, and the truth is that in order to write a deed of refusal they have to not show up three times. But really one who does not show up deserves a tongue lashing after the first time around, when he was obligated to show up, unless it was really not his fault”.

The Legal Decision (*Psak*) of HaGaon Rabbi Moshe Sternbuch on Payments of Court Expenses

We have brought above examples of just when one is obligated and when one is exempt in payments for court expenses incurred via the opposing side. However, we refer to that which is written by HaGaon R' Moshe Sternbuch in his book regarding the Law of payment for court expenses: “And in the Court in Jerusalem (*Yerushalayim*) it is accepted that we never state expense payments, and perhaps the reason for this is that we are concerned with the opposing view of the Gra¹⁵ on the Rama, where we can say that everything is only a Grama (Indirect Damage) and the obligation is only a Heavenly one (*B'Dinei Shomayim*). But when the Court (*Beis Din*) sees that one is deceitful, and his case is invalid, then apparently he should be warned that he will have to pay expenses like the view of the Rama, and there is an important reason for this, in order to make peace and judgment in Israel, for if one will be obligated to pay expenses he will not dare try to fool and bring a case which is invalid”.

Afterwards he writes a word of warning to one who harasses an opposing party: “And even so that in the *Beis Din of the Aida HaChareidis* (the Main Religious Court in Jerusalem) it is not customary to request expense payments, as mentioned previously, however, sometimes R' Sternbuch warn's any deceitful party who brings an opposing party to

¹⁵ Gra – R' Eliyahu Ben Shlomo Zalman of Vilna – The Vilna Gaon, **Born:** Vilna, Lithuania, 1720. **Died:** Vilna, Lithuania, 1797. Arguably the greatest Torah scholar of the past two centuries and one of the most marking figures in halachic Judaism since the Beit Yosef he is revered throughout the Jewish world for his vast knowledge and saintly character. He devoted every minute of his life to Torah study never having slept more than two hour a day. He never took any position as a Rav or Rosh Yeshiva. He is the author of countless Seforim; many recorded and published by his students. He was the author, among others, of **Aderet Eliyahu**, a commentary on the Torah, a commentary on Ecclesiastes, **Divrei Eliyahu**, a commentary on Neviim, **Shenos Eliyahu**, a commentary on the Mishneh, a commentary on the Mishneh Torah, **BeYur HaGra**, glosses on the Shulchan Aruch, **Hagahos HaGra**, emendations on the Talmud included in all the traditional editions. He is also the author of a commentary on **Sefer Yetzirah**, one of the main Seforim in Kabbalah. In turn, the **Siddur HaGra** is based on his rulings. His students include R' Chaim of Volozhin, the founder of the Yeshiva of the same name which greatly contributed to the spread of the methods of Torah learning of the Gra.

Court (Din Torah) just to cause him expenses, that he should know that he is causing damage intentionally, and B'Dinei Shomayim [in the Heavenly Court] he will be obligated, for even in actual Grama, although one is exempt from Dinei Adam {in the court of Man}, but he is obligated in the Heavenly Court (*Dinei Shomayim*), and therefore according to the Heavenly Court (*Dinei Shomayim*) he is obligated to pay now too, even if we do not force him to do so". The plaintiff must know that even so that according to Torah Law he is exempt from paying court expenses, however, many times, he is obligated to pay them due to the Heavenly Court (B'Dinei Shomayim)".

Summary Questions:

1. **Can one obligate the losing party to pay court expenses to the winning side?**

The loser cannot be obligated to pay back court expenses to the winning side.

2. **Can the defendant be obligated to pay for expenses incurred from letters, traveling etc.?**

Expenses which were laid out by the plaintiff in order to force the defendant to come to court, such as letters, hiring people to convince him, travel etc. are obligated to be paid back by the defendant.

3. **One who refuses to come to court, from when is he obligated to reimburse expenses for the plaintiff?**

From the time he refuses, he is obligated to pay back expenses to the plaintiff, even if the deed of refusal has not yet been written.

4. **What does the plaintiff have to clarify in order to receive his reimbursement for expenses?**

In order for the plaintiff to receive reimbursement for expenses he must clarify how much he spent or Beis Din should estimate his expenses. If the plaintiff cannot clarify how much he spent, and Beis Din cannot estimate the value, the plaintiff is believed in his oath of expenses.

5. **If there was a mutual agreement for both sides to come to a certain Beis Din, and one of the sides did not show up, what is the din?**

In a case where there was a mutual agreement between both parties to come to a certain Beis Din and in the end one of the parties did not show up, and the other did, the one

who did not come is obligated to pay the opposing party for all expenses incurred for coming.

6. **One who sues in order to harass the second side, is he obligated to pay back expenses?**

When it is obvious to the Beis Din that the plaintiff is aware that he has no valid basis for his case, and he only wants to harass the opposing side in order to cause him loss, he is then obligated to cover court expenses incurred by his defendant.

7. **One who refuses to come to court, is he obligated to pay the lawyer's fee?**

It seems to be that he is exempt from paying the expenses for hiring a lawyer, however, this is only in the case where he said "go and I will follow you". But regarding one who refused to come to court and is obligated to pay back expenses which were incurred in order to get him to come, apparently in this case he must also pay the lawyer's fee (in the event that he was summoned to Beis Din but did not show up).

8. **Is it possible to demand aggravation payments in Jewish Court (*Beis Din*)?**

Aggravation payments are not obligated by the Jewish Court (*Beis Din*), and are not even discussed.

9. **One who is unable to show up to one of the court hearings, what must he do?**

Even if he has a justified reason, he should take care to inform the court (*Beis Din*) and not to wait until the second summons in order to apologize for missing the first hearings. And one who makes light of this, and does not come the first time, nor does he send an excuse, deserves a tongue lashing, unless it really was not his fault.

10. **What is customarily done in our times by the Jewish Court (*Beis Din*) regarding court expenses?**

There are Courts (*Batei Din*) where it is not customary to obligate for expenses, but in any case they warn a deceitful plaintiff who causes loss for his colleague, that he should be aware that he caused intentional damage, and is obligated in the Heavenly Courts (*Dinei Shomayim*). For even if in the case of indirect Damage (*Gramma*), he is exempt from the Laws between Men (*Dinei Adam*), however, he is still obligated in the Heavenly Courts (*Dinei Shomayim*), and is obligated to pay back, although the earthly Court (*Beis Din*) does not force him to do so.

Comparrison Between Jewish Law and California Statutes

LESSON ONE: PAYMENTS FOR COURT EXPENSES

1. Is one who Lost the Case Obligated to Reimburse Expenses to the prevailing party?

Summary of California Law: Typically a prevailing Plaintiff may seek to recover costs associated with bringing the claim including filing fees, fees for service of process, but it is at the discretion of the court whether or not to award such costs as provided in California Code of Civil Procedure section 1032 and 1033. Permissible costs are defined under section 1033.5. Plaintiff may also seek to recover interest at 10% per annum pursuant to California Code of Civil Procedure section 685.010. Defendants as prevailing party may also recover costs pursuant to section 1032(4).

(i). Prevailing Plaintiffs

Pursuant to California Code of Civil Procedure 1032 (4):

"Prevailing party" includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034.

Pursuant to California Code of Civil Procedure 1033:

- a) Costs or any portion of claimed costs shall be as determined by the court in its discretion in a case other than a limited civil case in accordance with Section 1034 where the prevailing party recovers a judgment that could have been rendered in a limited civil case.
- (b) When a prevailing plaintiff in a limited civil case recovers less than the amount prescribed by law as the maximum limitation upon the jurisdiction of the small claims court, the following shall apply:
 - (1) When the party could have brought the action in the small claims division but did not do so, the court may, in its discretion, allow or deny costs to the prevailing party, or may allow costs in part in any amount as it deems proper.

- (2) When the party could not have brought the action in the small claims court, costs and necessary disbursements shall be limited to the actual cost of the filing fee, the actual cost of service of process, and, when otherwise specifically allowed by law, reasonable attorneys' fees. However, those costs shall only be awarded to the plaintiff if the court is satisfied that prior to the commencement of the action, the plaintiff informed the defendant in writing of the intended legal action against the defendant and that legal action could result in a judgment against the defendant that would include the costs and necessary disbursements allowed by this paragraph.

Pursuant to California Code of Civil Procedure section 1033.5, the following items are considered allowable costs:

- (1) Filing, motion, and jury fees.
- (2) Juror food and lodging while they are kept together during trial and after the jury retires for deliberation.
- (3) Taking, videotaping, and transcribing necessary depositions including an original and one copy of those taken by the claimant and one copy of depositions taken by the party against whom costs are allowed, and travel expenses to attend depositions.
- (4) Service of process by a public officer, registered process server, or other means, as follows:
 - (A) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.
 - (B) If service is by a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code, the recoverable cost is the amount actually incurred in effecting service, including, but not limited to, a stakeout or other means employed in locating the person to be served, unless such charges are successfully challenged by a party to the action.
 - (C) When service is by publication, the recoverable cost is the sum actually incurred in effecting service
 - (D) When service is by a means other than that set forth in subparagraph (A), (B) or (C), the recoverable cost is the lesser of the sum actually incurred, or the amount allowed to a public officer in this state for such service, except that the court may allow the sum actually incurred in effecting service upon application pursuant to paragraph (4) of subdivision (c).
- (5) Expenses of attachment including keeper's fees.
- (6) Premiums on necessary surety bonds.
- (7) Ordinary witness fees pursuant to Section 68093 of the Government Code.
- (8) Fees of expert witnesses ordered by the court.
- (9) Transcripts of court proceedings ordered by the court.
- (10) Attorney fees, when authorized by any of the following:
 - (A) Contract.
 - (B) Statute.
 - (C) Law.
- (11) Court reporters fees as established by statute.

- (12) Models and blowups of exhibits and photocopies of exhibits may be allowed if they were reasonably helpful to aid the trier of fact.
- (13) Any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal.
 - (b) The following items are not allowable as costs, except when expressly authorized by law:
 - (1) Fees of experts not ordered by the court.
 - (2) Investigation expenses in preparing the case for trial.
 - (3) Postage, telephone, and photocopying charges, except for exhibits.
 - (4) Costs in investigation of jurors or in preparation for voir dire.
 - (5) Transcripts of court proceedings not ordered by the court.
 - (c) Any award of costs shall be subject to the following:
 - (1) Costs are allowable if incurred, whether or not paid.
 - (2) Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation.
 - (3) Allowable costs shall be reasonable in amount.
 - (4) Items not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion.
 - (5) When any statute of this state refers to the award of "costs and attorney's fees," attorney's fees are an item and component of the costs to be awarded and are allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a). Any claim not based upon the court's established schedule of attorney's fees for actions on a contract shall bear the burden of proof. Attorney's fees allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a) may be fixed as follows: (A) upon a noticed motion, (B) at the time a statement of decision is rendered, (C) upon application supported by affidavit made concurrently with a claim for other costs, or (D) upon entry of default judgment. Attorney's fees allowable as costs pursuant to subparagraph (A) or (C) of paragraph (10) of subdivision (a) shall be fixed either upon a noticed motion or upon entry of a default judgment, unless otherwise provided by stipulation of the parties.

Attorney's fees awarded pursuant to Section 1717 of the Civil Code are allowable costs under Section 1032 as authorized by subparagraph (A) of paragraph (10) of subdivision (a).

(ii). Prevailing Defendants

Pursuant to California Code of Civil Procedure section 1268.10 a defendant may recover his or her litigation expenses whenever:

- (1) The proceeding is wholly or partly dismissed for any reason
- (2) Final judgment in the proceeding is that the plaintiff cannot acquire property it sought to acquire in the proceeding.

Reimbursement for litigation expenses under section 1268.10 are established under subdivision (d) which provides:

- (d) Litigation expenses under this section shall be claimed in and by a cost bill to be prepared, served, filed, and taxed as in a civil action. If the proceeding is dismissed upon motion of the plaintiff, the cost bill shall be filed within 30 days after notice of entry of judgment

Pursuant to California Code of Civil Procedure section 1025:

“When, in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court, for plaintiff, the amount so tendered, and the allegation is found to be true, the plaintiff can not recover costs, but must pay costs to the defendant.”

(iii). Costs for Arbitration

Pursuant to California Code of Civil Procedure section 1297.318

- (a) Unless otherwise agreed by the parties, the costs of an arbitration shall be at the discretion of the arbitral tribunal.
- (b) In making an order for costs, the arbitral tribunal may include as costs any of the following:
 - (1) The fees and expenses of the arbitrators and expert witnesses.
 - (2) Legal fees and expenses.
 - (3) Any administration fees of the institution supervising the arbitration, if any.
 - (4) Any other expenses incurred in connection with the arbitral proceedings.
- (c) In making an order for costs, the arbitral tribunal may specify any of the following:
 - (1) The party entitled to costs.
 - (2) The party who shall pay the costs.
 - (3) The amount of costs or method of determining that amount.
 - (4) The manner in which the costs shall be paid.

Comparison of Jewish Law and California Law: It appears here that Jewish Law and California Law are in opposition as under Jewish Law costs and expenses do not appear to be recoverable, while in California it is possible to recover costs and expenses at the discretion of the court.

2. Payment for Expenses which were incurred in order to coerce the Defendant to Appear in Court

Summary of California Law: Again these costs are recoverable under California Law as discussed above. However, generally a Plaintiff in the California court system may seek to have judgment entered against the Defendant if he/she fails to appear in court.

Comparison of Jewish Law and California Law: Here Jewish Law and California Law are in line as both permit recovery of expenses associated with coercing or forcing the Defendant to appear in court.

3. From What Point in Time is One Who Refused to Appear Obligated to Pay Back Expenses

Summary of California Law: Again, costs are at the discretion of the court and reasonable costs will usually be permitted. (Please see above California Code of Civil Procedure section 1033.5 for permissible costs). Generally, costs from the time a Defendant refused to appear is the time period from when expenses may be calculated.

Comparison of Jewish Law to California Law: Pursuant to Jewish Law, a Defendant may be obligated to reimburse expenses from the time he refuses initially even though the deed of refusal has not yet been written.

4. How are the Refusal Payments Set?

Summary of California Law: Costs for Defendants failure to appear are at the discretion of the court. However, a Plaintiff will usually provide documentary evidence to prove all such costs.

Comparison of Jewish Law to California Law: Under Jewish Law, refusal payments are decided by the Jewish Court (Ben Deis). A Plaintiff must clarify such expense spent or the Ben Deis may estimate such expenses. If the plaintiff cannot clarify such expenses and the Ben Deis is unable to estimate, the plaintiff is believed in his oath of expenses. This is very similar to California Law where costs are at the discretion of the court and typically a plaintiff will try to provide documentation and any other evidence to show the court the exact amount of costs associated with the proceeding.

5. If Both Sides Agreed to Come to Court and One did not Show Up

Summary of California Law: Sanctions may be imposed upon the plaintiff for failing to appear. Judgment may be rendered against a defendant for failing to appear

Comparison of Jewish Law and California Law: Under Jewish Law, when there is an agreement by both sides to appear before the court and one party fails then that party is obligated to pay expenses. Under California Law it is irrelevant whether the parties agreed to appear. Once a formal action is instituted in the courts both parties are required to appear and may be punished for failing to do so.

6. One Who Sued His Colleague in Order to Harass and Bother Him

Summary of California Law: These are suits that may be characterized as frivolous or in bad faith. Not only may costs be awarded against the Plaintiff bringing the suit, but punitive damages sufficient to punish and deter such conduct may be awarded as well at

the discretion of the court. Typically, a lawyer bringing one of these suits may be severely sanctioned. Pursuant to tort law, there is a cause of action known as abuse of process for using the court system for the purpose of harassing another.

Pursuant to California Code of Civil Procedure section 128.5:

- (a) Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.
- (b) For purposes of this section:
 - (1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint or cross-complaint only if the actions or tactics arise from a complaint filed, or a proceeding initiated, on or before December 31, 1994. The mere filing of a complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section.
 - (2) "Frivolous" means (A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party.
- (c) Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers; or the court's own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order.
- (d) In addition to any award pursuant to this section for conduct described in subdivision (a), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.
- (e) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section.

Pursuant to California Code of Civil Procedure section 128.6

- (a) Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of

Title 3 of Part 3.

- (b) For purposes of this section:
 - (1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint or cross-complaint. The mere filing of a complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section.
 - (2) "Frivolous" means (A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party.
- (c) Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers; or the court's own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order.
- (d) In addition to any award pursuant to this section for conduct described in subdivision (a), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.
- (e) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section.
- (f) This section shall become operative on January 1, 2003, unless a statute that becomes effective on or before this date extends or deletes the repeal date of Section 128.7.

Pursuant to California Code of Civil Procedure section 128.7:

(a) Every pleading, petition, written notice of motion, or other similar paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise provided by law, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

- (1) It is not being presented primarily for an improper purpose, such as to

- harass or to cause unnecessary delay or needless increase in the cost of litigation.
- (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.
 - (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
 - (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
- (c) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.
- (1) A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court unless, within 21 days after service of the motion, or any other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.
 - (2) On its own motion, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b), unless, within 21 days of service of the order to show cause, the challenged paper, claim, defense, contention, allegation, or denial is withdrawn or appropriately corrected.
- (d) A sanction imposed for violation of subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (1) and (2), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment

to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

- (1) Monetary sanctions may not be awarded against a represented party for a violation of paragraph (2) of subdivision (b). (2) Monetary sanctions may not be awarded on the court's motion unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.
- (e) When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed.
- (f) In addition to any award pursuant to this section for conduct described in subdivision (b), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.
- (g) This section shall not apply to disclosures and discovery requests, responses, objections, and motions.
- (h) A motion for sanctions brought by a party or a party's attorney primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, shall itself be subject to a motion for sanctions. It is the intent of the Legislature that courts shall vigorously use its sanctions authority to deter that improper conduct or comparable conduct by others similarly situated.

Comparison of Jewish Law to California Law: Jewish Law and California Law are on par as both provide for the awarding of expenses if the purpose of the suit is to harass or bother the other.

7. Payments for Expenses of a Lawyer's Fees

Summary of California Law: Generally, attorneys' fees are only recoverable if they are provided by agreement under which the parties are governed by and is in some way the subject of the litigation or if there is an applicable statute granting a private right of action which specifically provides for the recovery of attorneys' fees by the prevailing party. There does appear to be a sort of general catch all section under the California Code of Civil Procedure that will allow a party to recover reasonable attorney's fees if certain conditions are met and gives the court the discretion on the amount of attorneys' fees to award. Attorneys' fees maybe recovered as reasonable costs under contract, statute, or law as provided in California Code of Civil Procedure section 1033.5 (Please see above under costs).

Pursuant to California Code of Civil Procedure section 1021:

“Except as attorney’s fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided.

Pursuant to California Code of Civil Procedure section 1021.1:

“(a) Reasonable attorney’s fees may be awarded in an amount to be determined in the court’s discretion, to a party to any civil action as provided by this section, and that award shall be made upon notice and motion by a party and shall be an element of the costs of suit.”

“(b) A party may be entitled, in the discretion of the court to an award of attorney’s fees under this section if all of the following conditions are met.” (Please see applicable code section for conditions).

“(c) In exercising its discretion to award attorney’s fees the court shall consider the following factors.” (Please see applicable code section for factors)

Comparison to Jewish Law: It appears that attorneys’ fees are generally not recoverable under Jewish Law, except in very limited circumstances such as when one refuses to come to court. As compared to California law, Jewish Law is much stricter in this regard as California Law permits the recovery of attorneys’ fees in a majority of cases

8. Aggravation Payments

Summary of California Law: There are certain private causes of action that one may pursue which include the intentional and negligent infliction of emotional distress. However, this does not appear to be in exact reference to aggravation payments as defined under Jewish Law. A cause of action for Defamation, including libel, public disclosure of private information, false light, etc. may be more on par with the Jewish definition of aggravation payments for shame and embarrassment.

Comparison of Jewish Law and California Law: Under Jewish law this is not an expense that may be recovered. Under California law any recovery would have to be on the above stated causes of actions. However, there is no such recovery in general for aggravation payments in bringing a general civil claim as I understand the interpretation of Aggravation payments

9. One Who Cannot Show Up to the Hearing – Should Send a Letter of Apology to the Court (Beis Din)

10. The Legal Decision of (Psak) of HaGaon Rabbi Moshe Sternbuch on Payments of Court Expenses