



## Rabbinical Council of California

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### Frequently Asked Questions

*What happens if the person who is summoned to a Din Torah refuses to come?*

Jewish law forbids the defendant to refuse. It is a violation of Torah Law, similar to eating non-kosher food or violating other Jewish laws.

If a defendant will not appear, the Beth Din may issue a “heter arkaos,” which grants permission to the plaintiff to go to a secular court.

*Do I need a Lawyer?*

No. You have the right to have a lawyer present if you want one. Sometimes a lawyer can help you organize your case, and help you identify what is important to present to the judges. Nevertheless, unlike secular court, the judges in Beth Din have a much greater responsibility to make sure each side fully presents their case, so a lawyer is not necessary.

*If I want a Lawyer, do I need a lawyer with special expertise in Jewish law?*

No. A lawyer will help ensure that your case is organized, and that you do not neglect any evidence in your favor. The judges are responsible for identifying Jewish law relevant to the case.

*Do the judges follow American law?*

They follow Jewish law, but Jewish law often takes the local law into account. For example, Jewish law often considers common business practice, which in the United States is often a product of American law. If someone enters into a contract that is binding according to American law, then they are generally bound by Jewish law as well, because the business community considers such contracts binding. Also, there is a principle in Jewish law called “dina d’malchusa dina,” literally, “the law of the government is the law.” The exact parameters are somewhat complex, but this means that Jewish law recognizes many secular laws. Bankruptcy laws are often a good example.

*What are some notable distinctions from secular law?*

Jews are forbidden to charge each other interest on loans, so if a contract calls for interest, a Beth Din will often strike that provision. Jewish law considers many payments that allow one to pay more but pay later to fall under this prohibition, so even things that do not seem like interest may be included. Jewish law allows a workaround called a *heter iska*, which restructures a transaction with interest into

a different kind of transaction with mostly similar effects, but if the parties do not enter into a heter iska, interest is generally unenforceable.

Inheritance rules are very different, particularly in the absence of a will. There are provisions that may be included in a will allowing it to be enforceable under Jewish law. Also, if the parties to a litigation stipulate that the provisions of a will should be honored, the Beth Din will respect the provisions of the will.

*Are the judges bound by precedent?*

Not in the sense that secular courts are bound by their precedents. The judges in a din torah apply their understanding of the Jewish law, and not all judges understand the law in the same manner. However, the body of Jewish law is very extensive, so many questions do have clear resolution that the judges can be expected to follow.