

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

To'ein Rabbani Lesson One

Mareh Makomos for this Shiur

Gemara, Bava Kamma 113a

Gemara, Rosh Hashana 31b

Rambam (Mishnah Torah, Laws of Sanhedrin 25:8)

Maharik, Shoresh 11

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Summons to Beis Din



Siman Eleven Seif One

To summon (1) a litigant to Beis Din, Beis Din (2) sends a messenger to notify the person [1] as to the day he should come. If the person does not comply, [2] he is summoned a second time. If again he does not come, he is then summoned a third time. If he does not answer that summons, Beis Din waits for him the whole day. If he does not come they place him in nidui, effective the following day. These words apply [3] to litigants who live in faraway, small villages. So although they sometimes come to town, they are again far away when they go home. By contrast, if a litigant is usually in town, only one day is set for his litigation. If he does not answer the summons and fails to come the entire day, they immediately place him in nidui, which goes into effect the next day.

Rama: If the Beis Din goes elsewhere, the litigant must go to them. If he does not do so [4], they place him into nidui (Beis Yosef).

A messenger of Beis Din is believed if he says, “He cursed (or insulted) me,” or “He cursed (or insulted) the Dayan,” or “He refused to come for judgment.” On the strength of his report, Beis Din imposes nidui on the litigant. [5] However, no document can be written to declare and record this action until two witnesses testify to the litigant’s refusal. A messenger of Beis Din who reports such things as a lone witness [6] is not considered to have spoken Lashon Hara (slander).

Rama: If someone (faced with a summons) says that directives of Beis Din or a chacham do not faze him or concern him, then even if he comes to Beis Din after receiving a summons, he is placed into nidui.

Because he stated that his arrival was not due to the directive, he is considered to have behaved in a lawless fashion. See Yoreh Deah, Siman 334. If he says to the Beis Din, "I will not have my case judged by you," and he wants to go before a different Beis Din, see further on, Siman 14. If someone is unable to comply with a summons, for he needs to travel afar, he is obligated to notify the Beis Din, provide his excuse and request an alternative date for his litigation. If he fails to do so he is placed in nidui, despite his inability to comply with the summons (Maharik, Shoresb 11). If someone accepts that two [7] will judge him (and he makes a kinyan – a formal act of commitment to that effect), when they summon him, if he does not come, he is placed into nidui [8] by a Beis Din of (at least) three (Beis Yosef in the name of a responsa of the Rashba Summoning a Litigant to Come to Beis Din

The Source

BAVA KAMMA 113A

Rav Chisda says, "Litigation is fixed for Monday, Thursday and Monday. One time and then again, and after a third time they write for the morrow."

Rashi explains that when someone comes to *Beis Din* and files a monetary claim against his fellow Jew, the court sends a summons, inviting the defendant to come to *Beis Din* on a certain Monday. If the defendant does not come to *Beis Din* on that Monday, the *Beis Din* sends another summons telling him to come that Thursday. If he does not answer that summons, they summon him to come on the following Monday. If he does not come then, they wait the entire day, hoping that he will come. But if he does not, they place him in *nidui* on the following day. They then order that a document be written to record and explain the action. This document is called a *shtar peticha* – a writ of excommunication.

The Gemara asks (*Moed Katan 16a*)

Where in the Torah is the source for the idea that the *Dayanim* of *Beis Din* summon litigants to come before them?

It answers

In verses about the Korach rebellion, the Torah (*Bamidbar 16:16*) records that Moshe Rabbeinu commanded Korach, "You, they and Aharon shall be before HaShem tomorrow."

Monday Thursday

SIMAN 11:1

When the Jews returned to Israel after the exile in Bavel, one of the ten decrees made by Ezra (*Bava Kama* 82a) was that throughout the land, wherever there was a *Beis Din*, it would judge litigation on Mondays and Thursdays. As explained by the **Prisha** in our *Siman* (*Seif Katan 1*) this is why when a *Beis Din* sends a summons, the defendant is invited to come only on a Monday or Thursday.

The **Tur** (in the first *Siman* in Choshen Mishpat) provides two reasons why Ezra chose Mondays and Thursdays -- the weekdays when the Torah is read.

- 1) On these days “the many are found in one place.” In olden times, large numbers of people who lived in rural districts would travel to the nearest *Beis Knesses* to hear the Torah reading. For near their homes there were no Torah scrolls, or they had scrolls but could not assemble a *minyan*. Thus, if two or more people were having a dispute, these were the best days for finding all of them in the same place. They had assembled for the Torah reading.
- 2) Also, writes the **Tur**, there is “the trouble of moving a *sefer* Torah.” The **Prisha** explains that in olden times, when most people made their livelihood from farming, the *Beis Knesses* usually was located out in the fields. After the public reading on Mondays and Thursdays, afraid to leave the *sefer* Torah in the *Beis Knesses*, lest it be stolen, they would take it to the nearest city and store it there. The less a *sefer* Torah has to be moved, the better. The *Beis Din* would hear cases specifically on Mondays and Thursdays, because the *sefer* Torah anyway had to be moved from storage on those days, to be brought to the *Beis Knesses* for the public reading. Apparently, the judges wanted a *sefer* Torah on the premises of the *Beis Din* in case the *Beis Din* needed to have a litigant take an oath over it.

Immediate Nidui for Failure to Heed a Summons

In *Bava Kama*, after the *Gemara* quotes the statement of **R’ Chisda**:

Rav Ashi paid a visit to **Rav Kahane**. During the visit, **Rav Ashi** observed that **R’ Kahane** had summoned a woman to come before him for litigation “in the evening,” but she did not come. The next morning, **R’ Kahane** ordered that a writ of excommunication be written against her. Seeing this, **Rav Ashi** pointed out that according to **Rav Chisda**, when a litigant is sent a summons to come to *Beis Din* on Monday, if he does not appear, he is not put into *nidui* immediately. Not only is he given a second

chance; he is even given a third chance! **Rav Ashi** asked, “Sir, do you dispute **Rav Chisda**?”

“No,” answered **R’ Kahane**. “**Rav Chisda** was speaking only of men, who due to circumstances beyond their control are often not in town.” That is, they have to support their families, which often takes them far away from the place of the local *Beis Din*. By contrast, women generally remain in town, for their duties are in the home. Therefore, when a woman is summoned to come before *Beis Din*, if she does not come on the designated day, she is deemed “rebellious” and is placed into *nidui* immediately.

Applying the Rule to Men

In the name of the **Beis Yosef**, the **Prisha** writes (*Seif Katan 1*) that **R’ Kahane’s** ruling is not limited to women. It applies to men too, whenever it is known that the man remains in town. If such a man is summoned and fails to come, he is placed into *nidui* immediately, for it is considered that he rebelliously ignored the summons. As we will see later, so rules the **Rambam**.

If the Dayanim Have Left Town

In a different *Gemara* (*Rosh Hashbana 31b*) we find a somewhat similar story that reveals yet another law about a summons to *Beis Din*. This story, too, is about a woman. She was summoned to appear before **Ameimar** in **Nehardigh**, a town in **Bavel**. On the appointed day, when she arrived, she found that **Ameimar** was not there. He had gone to **Mechuza**, also in Bavel, and the woman did not go to him. In **Mechuza**, when **Ameimar** saw that the woman had not come before him as required by the summons, he had a writ of excommunication (*shtar peticha*) drawn up against her. He put her into *nidui* for not making the trip to **Mechuza**.

Here, too, **Rav Ashi** was on hand to question the action, but this time, the precedent that he cited was not the ruling of **Rav Chisda**. Rather, he cited a *Mishna* about witnesses coming to Jerusalem to give testimony about sighting the new moon so that the *Beis Din* there can hear the testimony and the head of the *Beis Din* can pronounce and sanctify the new month:

The *Mishna* states:

*According to one of the decrees of R’ Yochanan ben Zakkai,
even if the head of the Beis Din is not in Jerusalem when the witnesses arrive,
the witnesses who sight the new moon need come only to Jerusalem, to the place of the Beis Din.*

Although only the head of *Beis Din* is authorized to pronounce the new month, if he is out of town, the witnesses need not go find him. If so, how could **Ameimar** have placed that woman into *nidui*? He had summoned her to **Nehardigh**, and afterwards he had gone to **Mechuza**!

Seemingly, according to the *Mishna*, it was enough that she came to **Nehardigh**, just as with the sighting of the moon, it is enough that the witnesses come to **Jerusalem**. If the witnesses do not have to search out the head of the *Beis Din* so that he can pronounce the new month, why was this woman obligated to search out **Ameimar**?

Olden Times

Ameimar answered that regarding the new moon, when the head of the *Beis Din* is not where he is expected to be, if witnesses were required to go search him out, it would endanger the whole procedure of sanctifying the new month. Witnesses would not be willing to come to **Jerusalem** to report seeing the moon, for they would be afraid of having to trouble themselves to find the head of the *Beis Din*, who for some reason might have left town! In short, **Ameimar** explained that sanctifying the moon is a special case. It is an exception to the rule. In normal cases, such as the case of the woman summoned by **Ameimar**, if the *Dayan* responsible for the summons for some reason is not in the *Beis Din* on the day fixed for the litigation, the litigant must trouble himself to seek him out. If he fails to do so, it is “rebelliousness.” It is an affront to the honor and authority of the *Dayan* who called for the summons and such an affront warrants *nidui*. See later, for practical application of this law in our times.

When Someone must be Summoned

For these two reasons, when someone had to be summoned for litigation, he was invited to come only on a Monday or Thursday, for only on those two weekdays was *Beis Din* in session to handle litigation.

Modern Times

In modern times, however, a *Beis Din* is likely to meet on every weekday, so the date on a summons does not have to be specifically Monday or Thursday. Still, the *Dayanim* of *Beis Din* are allowed to summon people to come before them only on days when the *Beis Din* hears litigation on a regular basis. If a *Beis Din* does not meet regularly on Wednesdays, for example, no summons can invite a litigant to come to that *Beis Din* on any Wednesday. Even if the *Beis Din* plans to make an exception and be in session on a certain Wednesday, it cannot issue a summons that calls one to litigation on that Wednesday, for a reason that will become apparent as we continue with this lesson.

More on Failure to Heed a Summons

The **Rambam** rules (*Laws of Sanhedrin 25:8*) that if a man is found in town, if he is summoned to *Beis Din* for litigation but does not come, that single failure is enough. He is put into *nidui*, “and there is no need to summon him a second or third time.”

In other words, **R' Chisda's** ruling (cited above) that a litigant is given three chances has limited application. It applies only to litigants who often leave town, so they might well be unaware of the summons, or they know of it but are unable to comply. So it was in the old days, when *Beis Din* would meet only on Mondays and Thursdays, and men often traveled far from home to make a living. For these reasons, men were given three chances to answer a summons and there was a distinction between men and women. In those times, if a woman was summoned to *Beis Din* and failed to come, she was given no second chance, for women were always at home. They would know about a summons and could obey it with no problem. Therefore, for failing to come on the designated day, she was placed into *nidui* immediately. So it was regarding a man, too, even in our times, if it is known that he was aware of the summons and could have complied with it.

The Believability of a Messenger of Beis Din

A messenger of *Beis Din* is sent to summon someone to come to court for litigation. The messenger comes back and reports, “He cursed me,” or “He cursed the *Dayan*,” or “He refused to come to court.” The one that the messenger accuses of such behavior is put into *shamta* (i.e. *nidui*), “on the strength of the messenger’s word (alone).” We see, therefore, that the derogatory testimony of the messenger is not considered *Lashon hara* (slander). For this reason, the *Beis Din* is allowed to believe the messenger’s report and take action based on his words.

Beis Din, just on the strength of the testimony of its messenger, has the power to put such a litigant into *nidui* (*shamta* – excommunication) because in declaring the *nidui*, the *Dayanim* are not “extending their hand onto the person’s body or into his money.” On the other hand, as to punishing such behavior by means that would cause the litigant financial loss, the hands of *Beis Din* are tied. Without testimony from two witnesses, the *Beis Din* is powerless to take such measures.

AS RAVA SAYS (BAVA KAMA 112B):

A messenger of Beis Din is believed like a pair of witnesses (i.e. as if someone has backed up his words), but only regarding shamta (nidui – excommunication), but not with respect to peticha.

As to *peticha* -- writing down the writ of *nidui* – the word of the messenger does not suffice, for this matter carries financial loss for the accused.

As explained, when *Beis Din* places someone in *nidui*, a document is written that records the action, and the person who was sentenced to *nidui* must pay the scribe a fee for writing the document. Therefore, no such document that imposes financial consequences can be written, unless the deviant behavior of the litigant is established by testimony of two witnesses.

Introduction

In our *Seif*, the **Shulchan Aruch** sets forth all of the above rulings, and the **Rama** adds related rulings. In the lines that follow, we will cite the rulings and some of the details and elaboration supplied by the commentators.

THE SHULCHAN ARUCH WRITES:

To summon a litigant to Beis Din, Beis Din sends a messenger to tell the person on what day he should come.

The **Shach** writes (*Seif Katan 2*) that the claimant in the case is responsible to shoulder the costs of sending the messenger.

THE SHULCHAN ARUCH CONTINUES:

If the person does not come, he is summoned a second time.

If again he does not come he is then summoned a third time.

If he does not answer that summons, they wait for him the whole day, and if he does not come they place him in *nidui*, effective on the following day.

According to the **Sma** (*Seif Katan 1*) it is up to the claimant on what day the messenger is sent (today, the normal procedure is to send summons by mail) but the summons must call the defendant to *Beis Din* on a day that the *Beis Din* normally meets.

Explanation

Apparently, the reason is as follows: Were a summons to call the defendant to *Beis Din* on a day when the *Beis Din* does not normally meet, if the defendant ignores the summons, it is not a sure sign of rebellion or lawlessness. Even if the *Beis Din* had made an exception and had decided to meet on the day mentioned in the summons, the *Dayanim* would be forbidden to impose *nidui* on someone who failed to heed such a summons. After all, the defendant could claim that he never meant to insult the *Beis Din*. He could claim that he knew the days when the *Beis Din* regularly meets, and when he saw that he was summoned to come on a

different day, he was certain that the day written on the summons was a mistake. The door would be left open for him to claim that only for that reason did he not heed the summons, so there was no reason to place him into *nidui*. By virtue of the requirement that a summons call a defendant to *Beis Din* only on days when the *Beis Din* regularly meets, no litigant is able to give such an excuse. Failure to heed a summons demonstrates rebelliousness that fully justifies imposing the *nidui*.

The Contents of a Summons

The **Shach** (*Seif Katan 1*) notes that according to some authorities, the information written in the summons must include the precise nature of the claim. Others maintain that the summons should not detail the claim, and all that is necessary is the name of the claimant, and where and when the litigation will take place.

This question is discussed in the *sefer* “Beer Sheva” (111a):

Imagine that Person X has the *Beis Din* issue a summons against Person Y, and Person Y responds by telling Person X, “I will not enter litigation with you until you let me know the precise nature of your claim.” Person X replies, “You will hear my claim against you only when you come to *Beis Din*.”

- A) According to the second opinion above, that of the **Beer Sheva**, Person X, the claimant, has every right to say such a thing. A summons not only *need* not describe the claim; it *should* not describe it, as a precaution to guard against evil doing. If the defendant knows the nature of the claim before he comes to *Beis Din*, it gives him time to concoct false counter claims. The charges against him might be fully justified, but if they are explained in the summons, the summons itself provides him an opening to search and find a dishonest way of defending himself. before coming to *Beis Din*.
- B) The **Shach**, on the other hand, supports the first opinion cited above. He maintains that the summons must spell out the claim. Quite possibly, he writes, when the defendant sees the charges against him, he will recognize that they are justified and pay the claimant the entire sum demanded. It is better to write the claim in the summons, for thereby, it is possible that the whole matter will be resolved “peaceably” outside of *Beis Din*.

Stating the Claim

The **Pischei Teshuva** (*Seif Katan. 4*) cites a number of authorities who side with the **Shach** on this matter, but he also lists a number of authorities who side with the **Beer Sheva**. The **Shvus Yaakov**, for example, sides with the **Beer Sheva**. He grants that if

the defendant knows the details of the claim against him, he might admit to the charge and make good on the claim, outside of *Beis Din*. Still, since including the claim presents the aforementioned risk, it is best not to include the claim in the summons. True, if the defendant reads the claim in the summons, he might admit to it, obviating the need for *Beis Din*, but even if the claim is not included in the summons, once the defendant hears the complaint in *Beis Din*, he can admit to it there.

By contrast, the Chacham Tzvi agrees with the Shach on the matter, for two reasons:

- 1) The **Shach** lived after the **Beer Sheva**. As a rule, the *Halacha* follows the latter authority, for we say that having knowledge of the other opinion, the latter authority thought the question over very carefully and decided against the earlier authority. By contrast, the earlier authority might have been unaware that others disputed his opinion, so he might have failed to think the matter through as carefully as required.
- 2) Even if the **Beer Sheva** and the **Shach** are weighed equally, our hands are tied. Having a doubt about the matter, we cannot require the defendant to come to *Beis Din* uninformed about the complaint against him. Since the defendant must be forced to come, and the summons is the means for forcing him, the summons must reveal the nature of the complaint.

Three Chances

The **Shulchan Aruch** rules like the **Rambam**, that a defendant summoned to *Beis Din* is given three “chances” to comply only if he lives in a faraway, small village. His situation is that although he sometimes come to town, when he goes home he is again far away from the *Beis Din*.

One Chance

By contrast, if a litigant is usually in town: “only one day is set for his litigation. If he does not answer the summons and fails to come the entire day, they immediately place him in *nidui*, effective the next day.”

The **Pischei Teshuva** (*Seif Katan 1*) cites the ruling of the **Urim V’Tumim** that in our times, according to custom, a defendant always gets three chances to comply with a summons. Men and women alike, even if the defendant is a resident of the town where the *Beis Din* is located and he normally stays in town, he is not immediately placed into *nidui* for failing to comply with a summons. Rather, he is summoned to come on a later date, and if he doesn’t come then, a third date is set for the litigation. Only if he fails to come on the third date is action taken against

him (or her), but he is not placed into *nidui*.

The Custom Today

A document is written that records his three-time refusal to come to *Beis Din*. The document is awarded to the claimant, who may then request permission to file his claim in secular courts, which do not try cases on the basis of Torah law. Normally, a Jew is forbidden to take his litigation to such courts. Here, however, where the defendant has repeatedly ignored calls to appear before a Torah court, the prohibition is generally waived.

Must the Litigant Always Go to Where the Dayan Is

The **Rama** adds **Ameimar's** understanding of the law, as we cited it above from the *Gemara* (*Rosh HaShana* 31b). That is, if a *Dayan* who sends a messenger to deliver a summons is not in the *Beis Din* on the day that was fixed for the litigation, the litigant, having complied with the summons, is obligated to seek out the *Dayan*. He must search him out in order to have his litigation handled where the *Dayan* is now. If he fails to do so, he is put into *nidui* because of “rebelliousness.”

The **Pischei Teshuva** cites the *sefer* “**Shaimos B’Aretz**,” however, who writes that not all authorities agree with the ruling of the **Rama**, for the **Rambam** and the **Tur** do not mention **Ameimar's** ruling. The **Shaimos B’Aretz** explains that the **Rambam** and the **Tur** side with **Rav Ashi**, who, citing the *Mishna* about sanctifying the new month, questioned **Ameimar's** ruling, and did not accept **Ameimar's** defense of his ruling.

Birkei Yosef

The **Birkei Yosef**, however, disputes the ruling of the **Shaimos B’Aretz**.

First, from the sound of the *Gemara*, writes the **Birkei Yosef**, it does not appear that **Rav Ashi** disputed **Ameimar's** retort.

Second, the **Birkei Yosef** distinguishes between **Ameimar's** case and a case discussed by the **Rama**. **Rav Ashi** originally felt that when **Ameimar**, a lone *Dayan*, heard a complaint and on that basis sent out a summons, afterwards, when **Ameimar** was elsewhere on the appointed day, the

defendant was not obligated to follow him. After all, the *Mishna* about witnesses who see the new moon calls into question **Ameimar's** ruling.

The **Rama**, however, is speaking of a summons from an entire *Beis Din*, and the entire *Beis Din* is elsewhere on the appointed day. According to the **Birkei Yosef**, **Rav Ashi** would agree that in that case, if, on the appointed day, the *Dayanim* have gone elsewhere, the defendant must follow them.

The Powers of a Messenger of Beis Din

The **Shulchan Aruch** also quotes the *Gemara* in *Bava Kamma* (112b).

If the messenger who delivers a summons reports back to the *Beis Din*, “So and so cursed me,” or “He cursed the *Dayan*,” or “He refused to come to court,” he is believed. Just on the strength of the messenger’s word, the *Beis Din* puts the person into *nidui*.

The **Shulchan Aruch** rules that this is so only regarding *shamta* (imposing the *nidui* – excommunication), but not with respect to *peticha* – writing the writ of *nidui*. The *Dayanim* need two witnesses in order to “cast their hand” into the offender’s “pocket” and make him pay money for the writ.

It's Not Lashon Hara

The **Shulchan Aruch** also notes that when the court’s messenger relays his report, it is not considered *Lashon Hara* (slander). So rules the *Gemara* in *Moed Katan* (16a) in our discussion of *Siman* 8, *Se'if* 5, where the ruling of *Moed Katan* is mentioned by the **Rama**.

R' Akiva Eiger rules that when the messenger relays his report, his intention does not have to be that the offender gain atonement from the *nidui*. Generally, one is forbidden to speak derogatory words about one’s fellow Jew unless one has a constructive purpose in mind. A messenger of *Beis Din*, however, is an exception to this rule. He cannot be limited in this way. When he tries to deliver a summons and the defendant, refusing to comply with the summons, abuses him or insults the *Beis Din*, the messenger has a free hand to report the incident no matter what his intent might be. He is permitted to give his report without a constructive purpose *in mind*, because his job *by nature* serves a constructive purpose.

Additional Rulings of the Rama

THE RAMA ADDS:

If someone (faced with a summons) says that directives of Beis Din or a chacham do not faze him or concern him, then even if he comes to Beis Din after receiving a summons, he is placed into nidui. Because he stated that his arrival was not due to the directive, he is considered to have behaved in a lawless fashion.

THE RAMA ALSO CITES THE MAHARIK (SHORESH 11), WHO WRITES:

If someone is unable to comply with a summons, for he needs to travel afar, he is obligated to notify the Beis Din, provide his excuse and request an alternative date for his hearing. If he fails to do so he is placed in nidui, despite his inability to comply with the summons.

The **Rama** concludes with a ruling from a *Teshuva* of the **Rashba**, about someone who accepts that two will judge him and makes a *kinyan* – a formal act of commitment -- to that effect. Having made the formal *kinyan*, which usually is done by lifting a handkerchief, the person is forbidden to change his mind and demand that three judge his case. Afterwards, the two summon him but he does not come on the appointed day. The **Rama** writes, “*minadin oto b’Beis Din shel shelosha* – they put him into *nidui* in a *Beis Din* of (at least) three.”

It would appear that the **Rama** means that the *nidui* cannot be imposed by the two *Dayanim* that the litigant designated at the time of his commitment. Rather, a different three impose the *nidui*, or a third *Dayan* is called in and the original two plus him impose the *nidui*. All this is so because *nidui* cannot be imposed by less than three.

The **Sma**, however (*Seif Katan 8*), writes otherwise, for the **Rashba’s** *Teshuva* (*responsa*), the source of the **Rama’s** ruling, says explicitly that the two who were designated earlier impose the *nidui*, “as if they were a *Beis Din* of three.” Thus, the words of the **Rama** should read, “*minadin oto k’Beis Din shel shelosha* -- they place him into *nidui* **like** a *Beis Din* of three.”

Review Questions and Answers:

1. How is a summons issued, according to the *Gemara*?

When someone comes to *Beis Din* and files a monetary claim against his fellow Jew, the court sends a summons, inviting the defendant to come to *Beis Din* on a certain Monday. If the defendant does not come to *Beis Din* on that Monday, the *Beis Din* sends another summons telling him to come that Thursday. If he does not answer that summons, they summon him to come on the following Monday. If he does not come then, they wait the entire day, hoping that he will come. If he does not, they place him in *nidui* on the following day, when they order that a document be written to record and explain the action.

2. In our times, does a summons require the person to come to *Beis Din* specifically on a Monday or Thursday?

In modern times, a *Beis Din* is likely to meet on every weekday, so the date on a summons does not have to be specifically Monday or Thursday. Still, the *Dayanim* of *Beis Din* are allowed to summon people to come before them only on days when the *Beis Din* hears litigation on a regular basis.

3. Does the above ruling about three “chances” apply to women as well as men?

The *Gemara* would seem to say no, at least in olden times. Rav Chisda, who rules that the litigant is to be given three “chances,” was speaking only of men, who due to circumstances beyond their control are often not in town. That is, they have to support their families, which often takes them far away from the place of the local *Beis Din*. Circumstances beyond their control often make it impossible for them to heed a summons, so they are given a second and third chance. By contrast, at least in the old days, women generally would remain in town, to fulfill their responsibilities in the home. Therefore, when a woman would be summoned to come before *Beis Din*, if she did not come on the designated day, she would be deemed “rebellious” and would be placed into *nidui* immediately.

4. What if a man who is always found in town is issued a summons? Is he, too, given three chances to heed it?

No, if such a man does not come to *Beis Din* on the day specified in the summons, he is placed into *nidui* immediately. He is not given any additional chance, just as a woman in the olden days. The law of “three chances” applies only to individuals who often leave town, so they might well be unaware of the summons, or they know of it but are unable to comply. If someone is always in town, however, he knows of the summons and is able to comply with it. So if he does not comply, unless extenuating circumstances prevent his appearance in *Beis Din*, he has rebelled and deserves *nidui*. Of course, if he has a legitimate excuse and notifies *Beis Din* ahead of it ahead of time, he is not placed into *nidui*.

5. **To what extent is a messenger of Beis Din believed when he reports to the *Beis Din* that when he tried to issue someone a summons, the person abused him, or insulted the Beis Din?**

A messenger of *Beis Din* is sent to summon someone to come to court. It could happen that the messenger comes back and reports, “He cursed me,” or “He cursed the *Dayan*,” or “He refused to come to court.” The one that the messenger accuses of such behavior is put into *shamta* (i.e. *nidui*), on the strength of the messenger’s word (alone).” **Rava** says (*Bava Kama 112b*), “A messenger of *Beis Din* is believed like a pair of witnesses (i.e. as if someone has backed up his words), but only regarding *shamta* (*nidui* – excommunication), but not with respect to *peticha*.” As to *peticha* -- writing down the writ of *nidui* – the word of the messenger does not suffice, for this matter carries financial loss for the accused.

6. **As to the days when the *Beis Din*’s messenger is sent carrying a summons, must this, too, be on specific days of the week?**

No, regarding this aspect of the procedure, every day is alike. It is up to the claimant on what day the messenger is sent. Today, the normal procedure is to send the summons by mail. On the other hand, the summons must call the defendant to *Beis Din* on a day that the *Beis Din* normally meets.

7. **In the summons, does the claimant have to explain his claim?**

The **Shach** and the **Beer Sheva** argue about this question. According to the **Beer Sheva**, the claim should not be spelled out in the summons (See above, his reason). The **Shach** says the claim should be spelled out, for perhaps the defendant, seeing the charge against him will admit to it and pay the claimant, so that *Beis Din* is saved the trouble of having to hear the case.

8. What is the custom today about giving three chances?

In our times, according to custom, a defendant always gets three chances to comply with a summons. Men and women alike, even if the defendant is a resident of the town where the *Beis Din* is located and he normally stays in town, he is not immediately placed into *nidui* for failing to comply with a summons. Rather, he is summoned to come on a later date, and if he doesn't come then, a third date is set for the litigation. Only if he fails to come on the third date is action taken against him (or her), but he is not placed into *nidui*. The custom is that a document is written that records his three-time refusal to come to *Beis Din*. The document is awarded to the claimant, who thereby gains permission to file his claim in secular courts, courts that do not try cases on the basis of Torah law.

9. If a *Dayan* who summons someone to *Beis Din* for litigation is not in the *Beis Din* on the day that was fixed for the case, when the litigant comes and finds that the *Dayan* has gone elsewhere, is he obligated to seek out the *Dayan*? Must he search him out in order to have his litigation handled where the *Dayan* is now?

According to the **Rama**, as explained by the **Birkei Yosef**, there is no question that he is obligated if an entire *Beis Din* sent the summons and all three *Dayanim* have gone elsewhere. The one who was summoned is obligated to go where the *Dayanim* are now, and if he fails to do so when going to them was possible for him, the *Dayanim* must put him in *nidui*. Possibly, he is obligated even if his summons came from only one *Dayan*, and that *Dayan* has gone elsewhere, but the *Achronim* differ about this case.

10. If someone receives a summons but knows that he cannot heed it, what should he do?

Let's say he is planning to be out of town that day. He is obligated to notify the *Beis Din* ahead of time and request that an alternative date be set for the litigation.

11. If someone accepts that he be judged by just two *Dayanim*, and he formally commits himself by means of a *kinyan*, what happens if he fails to heed the summons?

The two *Dayanim* are considered as three, and they have the power to place him in *nidui*.