

Confirming *Piskei Din* In Secular Court

Rabbi Yaacov Feit and Dr. Michael A. Helfand

Introduction

It is difficult to imagine a contemporary legal environment more hospitable to *battei din* (Jewish courts) than the current United States legal system.¹ Under both state and federal law in the United States, *piskei din* (decisions of Jewish courts) issued pursuant to binding arbitration agreements are

1. To be sure, recent legislative initiatives in some states may threaten this long-standing hospitality by prohibiting state judges from “consider[ing] . . . Sharia Law.” H.J.R. 1056, 52nd Leg., 2nd Reg. Sess. (Okla. 2010); see also H.B. 2379, 49th Leg., 2nd Reg. Sess. (Ariz. 2010) (prohibiting state court judges from “rely[ing] on any body of religious sectarian law” including “Halacha”); S. 1387, J. Res., 118th Sess. (S.C. 2010). Whether or not such legislation is held to be constitutional is yet another matter.

By contrast, for example, faith-based family arbitration is no longer enforceable in Ontario. See Press Release, Ministry of the Att’y Gen., Ontario Passes Family Statute Law Amendment Act (Feb. 15, 2006), available at <http://www.attorneygeneral.jus.gov.on.ca/english/news/2006/20060215-famend.asp>. In pursuing this legislation, the premier of Ontario – Dalton McGuinty – proclaimed “there will be no religious arbitration in Ontario. There will be one law for all Ontarians.” AP, “Ontario Will Ban Shariah Arbitrations,” Sept. 12, 2005, *The New York Times*, Late Edition, Section A, Page 6, Column 6.

Rabbi Feit: Yadin Yadin Kollel Fellow, Rabbi Isaac Elchonon Theological Seminary; Intern, Beth Din of America; Judaic Studies Faculty, Joseph Kushner Hebrew Academy.

Dr. Helfand: Associate Professor, Pepperdine University School of Law; Associate Director, Diane and Guilford Glazer Institute for Jewish Studies.

enforceable in court as arbitration awards. This process – typically referred to as confirming an arbitration award – allows parties to transform a *psak din* into a legally binding judgment. Accordingly, parties victorious in *beit din* can enlist the U.S. legal system’s enforcement power to ensure that non-compliance with a *beit din*’s *psak din* will have legal consequences.

However, the availability of this option is not without halachic complications. Most notably, seeking the confirmation of a *psak din* in a U.S. court would appear, at first glance, to violate the biblical prohibition against submitting claims to a secular court for adjudication. Accordingly, the aim of the present inquiry is to evaluate the applicability of this prohibition – most frequently referred to as the *issur arkaot* – to the process of confirming arbitration awards.

Importantly, considering the halachic permissibility of submitting *piskei din* for confirmation in secular court has significant ramifications. As discussed below, the window to confirm a *psak din* – thereby making the *psak din* legally enforceable – is often time bound. As a result, in some circumstances, a party will have to decide whether or not to confirm a *psak din* long before it learns whether or not the opposing party will, in fact, comply with the decision of the *beit din*. Thus parties will, at times, have to decide whether or not to enlist the enforcement power of the U.S. legal system prior to learning whether or not the opposing party will follow the halachic decision of the *beit din*.

I. The Contours of the *Issur Arkaot*

The prohibition against submitting disputes for adjudication in secular court is as explicit as it is severe. In the opening verse of *Parshat Mishpatim*, the Torah states: ואלה המשפטים אשר תשים לפניהם, which translates as “And these are the statutes which you shall place before them.”² The Talmud, sensitive to

2. *Shemot* 21:1.

the word לפנייהם, before *them*, deduces that disputes can be submitted only before “them” – that is, before a *beit din* – and not before עכו”ם – that is, idol worshippers.³ This prohibition, called the *issur arkaot*, is uniformly interpreted as applicable to any non-Jewish adjudicatory forum even if the non-Jews in question are technically not idol worshippers.⁴ Accordingly, there exists a biblical prohibition against submitting disputes to non-Jews for adjudication,⁵ and this prohibition applies even where both parties agree to submit the dispute to non-Jews for adjudication.⁶ As a result of this unequivocal prohibition, one who wishes to adjudicate a private law dispute with a Jewish adversary generally must do so in the confines of a *beit din*.⁷

Importantly, the *issur arkaot* stands out in halachic literature for the severity associated with its violation. For example, Rashi writes that one who submits a dispute to a secular court “profanes the name of God and gives honor to the name of

3. *Gittin* 88b.

4. See *Tashbetz* 2:290 and *Shu”t Yachin U’Boaz* 2:9 who state this explicitly as well as Rif quoted in *Beit Yosef* 26:3, who refers specifically to adjudicating before Muslims. This is accepted by all halachic authorities. See *Knesset Hagedolah* 26:glosses to *Tur*:1, R. Shmuel Wosner, *Shu”t Shevet Halevi* 10:263:1, R. Yitzchak Yaakov Weiss, *Shu”t Minchat Yizchak* 4:52:1, R. Ezra Batzri, *Dinei Mamonot* 5:5, R. Shmuel Y. L. Landesman, *Yeshurun*, vol. 11 pg. 708.

5. See *Tashbetz* 2:290 who understands this prohibition to be biblical in nature. This is also the implication of *Shu”t Radvaz* 1:172, *Chidushei HaRan*, *Sanhedrin* 2b, *Chidushei HaRamban*, *Sanhedrin* 23a, *Shu”t Ba’i Chayei*, *Choshen Mishpat* 158, *Birkei Yosef*, *Choshen Mishpat* 26:3 and *Kli Chemda*, beginning of *Mishpatim*. However, see *Shu”t Mekor Baruch*, 32 who concludes, based on Rambam and Rasag’s omission of this prohibition from their list of mitzvot, that this prohibition is in fact rabbinic in nature. See R. Y.F. Perlow’s commentary on *Rasag* 2:pg. 319, who attempts to explain the omission.

6. See, e.g., *Shulchan Aruch* 26:1.

7. See generally R. Simcha Krauss, “Litigation in Secular Courts”, 3 *Journal of Halacha and Contemporary Society* 35 (1982); Rabbi J. David Bleich, “Litigation and Arbitration Before Non-Jews”, *Contemporary Halachik Problems*, Vol. 5.

idols.”⁸ Rambam writes that one who submits a dispute to secular courts is considered to have “blasphemed and raised a hand against the Torah of Moshe.”⁹ The *Shulchan Aruch* uses nearly identical language, emphasizing that an individual who violates the *issur arkaot* is considered “an evildoer, as if he has blasphemed, and as if he has raised a hand against the Torah of Moses.”¹⁰ On the one hand, such analysis highlights the centrality of the *issur arkaot* to the maintenance of a robust system of Jewish civil law.

However, some *poskim* see such formulations as also providing the rationale driving the *issur arkaot*. That is, individuals who submit disputes to secular courts violate the *issur arkaot* to the extent that their submission of such cases, to use the words of Rashi, “gives honor to idols” and, to use the words of Rambam, “raise a hand against the Torah of Moshe.” Put differently, a party submitting a dispute to secular courts demonstrates his preference for secular law over Jewish law, thereby denigrating halacha.¹¹ For those who adopt such an approach to the *issur arkaot*, the rationale also provides a basis for finding exceptions to the rule. Thus, in cases where submitting a matter to secular courts would not demonstrate a preference for secular over Jewish law, it would follow that the *issur arkaot* would not apply.¹² Similarly, in situations where a *beit din* is unable to adjudicate a particular case, it may make sense to provide some leeway in allowing parties to submit a claim in secular court.

Other authorities define the contours of the *issur arkaot* by parsing out the source of the prohibition. As noted above, the Talmud derives the *issur arkaot* from the phrase in *Mishpatim*:

8. *Shemot* 21:1.

9. *Hilchot Sanhedrin*, 26:7.

10. *Choshen Mishpat* 26:1.

11. See Rabbi J. David Bleich, *Contemporary Halachic Problems*, Vol. 5, pg. 26.

12. *Id.*

ואלה המשפטים אשר תשים לפניהם. While משפטים can be translated as “statutes,” it is more appropriately defined in context as “judgments.” Emphasizing the Torah’s reference to “judgments,” some *poskim* conclude that the *issur arkaot* prohibits looking to secular courts for judgment on pending matters of dispute; actions that do not involve judgment would thereby not be prohibited.¹³

The two perspectives on the *issur arkaot* – indicating preference for secular law or requesting judgment from secular authorities – serve as recurring themes in the halachic literature in which *poskim* have articulated various exceptions to the blanket prohibition against submitting disputes for adjudication in secular court. While a complete examination of these exceptions is beyond the scope of this article, highlighting a number of examples will help sketch a picture of how the origin of and rationale behind the *issur arkaot* frequently impact its application. In turn, we will then be able to consider whether or not confirmation of *piskei din* in contemporary U.S. courts violates the *issur arkaot*.

a. A Defendant Who Refuses to Appear Before a *Beit Din*

Halachic authorities are in universal agreement that where a party refuses to participate in proceedings before a legitimate *beit din*, the opposing party may – with the permission of a *beit din* – submit the case to a secular court for adjudication of the merits.¹⁴ Typically, a plaintiff opens a file in a *beit din*, which then issues a *hazmana* (summons) to the defendant. If a proper response is not received, the summoning *beit din* sends additional *hazmanot* and, if the defendant fails to properly

13. See *Kesef HaKodshim, Choshen Mishpat* 26:2 who explicitly offers this rationale while discussing the topic of enforcing a *psak din* in secular court. He writes that the Torah only forbade “*mishpatim*” or judgments, but not actions in secular court that do not require judgment.

14. *Shulchan Aruch, Choshen Mishpat* 26:2.

respond to the *beit din*, a *heter arkaot* (permission to litigate in secular court) is issued to the plaintiff.¹⁵ If appropriate, the *beit din* may also issue a *seruv* (document of contempt) against the recalcitrant defendant.

As the *Kli Chemdah* notes, this exception is somewhat peculiar. Generally, the mere fact that an individual will lose money as a result of complying with a biblical prohibition does not constitute an excuse for such compliance. While some *Acharonim* justify this exception by arguing that the secular court is merely acting as an agent of *beit din*,¹⁶ the *Kli Chemdah* rejects this approach and suggests that the prohibition only applies in a case where one has the option of adjudicating a claim before *beit din*. However, in a case where one has attempted to go to *beit din* but the adversary refuses, appearing before secular court does not imply a rejection of Torah law and as such there is no prohibition.¹⁷ Indeed, the process pursued – first submitting the claim to a *beit din* and only then reluctantly submitting the claim to a secular court – demonstrates that no preference is being given to secular law.

b. Appearance Before a Secular Court for Actions of Non-Judgment

As noted above, some of the exceptions to the *issur arkaot* flow from the particular procedural evolution of a case. By contrast, a number of other proposed exceptions are based on the substantive matter being submitted to secular court.

15. *Sema*, *Choshen Mishpat* 26:8 writes that the custom of *battei din* is to only give permission after the adversary has refused to respond to three summonses by *beit din*. See also *Pitchei Teshuvah* 11:1 and *Netivot Hamishpat*, *Chidushim* 11:4 (referring to the custom of issuing three summonses). Nevertheless, some *battei din* may give permission earlier if it is clear that the adversary will not appear in a *beit din*. See R. Yitzchak Yaakov Weiss, *Minchat Yitzchak* 9:155.

16. See *Shu"t Chatam Sofer*, *Choshen Mishpat* 3 and *Beur HaGra*, *Choshen Mishpat* 26:2 as explained by *Be'er Eliyahu* and R. Moshe Feinstein, *Iggerot Moshe*, *Choshen Mishpat* 2:15.

17. *Kli Chemdah*, *Mishpatim*.

For example, Rabbi Moshe Sofer permits registering the statement of a witness in secular court where there is concern that the witness may not be available when needed at a later date to testify before a *beit din*.¹⁸ His position follows other *poskim* who assume that the “המשפטים” which must be “placed before” *beit din* refers to judgments. As such, the nature of the prohibition of litigating in secular court is limited; actions in secular court which do not require judgments were excluded from the prohibition. Accordingly, Rabbi Sofer’s conclusion permitting the registration of a witness’s testimony in secular court is largely based upon his interpretation of the word “המשפטים.”

Poskim, focusing on המשפטים, have suggested other structurally similar exceptions to the *issur arkaot*. For example, many contemporary authorities permit a party to file for injunctive relief in secular court. Since an injunction to prevent imminent loss is not dispositive of the underlying claims – and as such could be viewed as not submitting a case for “judgment” – obtaining such an injunction does not violate the prohibition.¹⁹

18. *Shu”t Chatam Sofer, Choshen Mishpat 3.*

19. For example, R. Moshe Feinstein, *Iggerot Moshe, Choshen Mishpat 2:11*, writes that a defendant may not refuse to appear before *beit din* on the grounds that the plaintiff already filed for an injunction in secular court. By implication, this is because filing for an injunction does not violate the *issur arkaot* and therefore does not constitute grounds to refuse appearance before a *beit din*.

This is also the opinion of Ramah Mi’Panu 51 quoted by *Knesset Hagedolah 73 (Beit Yosef 47)* and R. Ezra Batzri, *Dinei Mammonot 1:5:11*. Ramah Mi’Panu writes that a plaintiff is permitted to file for a preliminary injunction in order to freeze assets – and thereby avoid imminent monetary loss – so that the case may be taken to *beit din*. Similarly, Rabbi Moshe Shternbuch, *Teshuvot Vehanhagot 3:440*, adds that no permission is required to file for a preliminary injunction in court, but that contemporaneously with emergency court filings the litigants must make it clear that they intend to bring the case before *beit din*. Rabbi Shternbuch reiterates this view in 3:445, where he writes that it is the prevailing custom to be lenient in not requiring permission to file for a preliminary injunction. In 5:362:2, he notes that if it is

Similarly, a plaintiff with an undisputed claim – such as where the defendant has signed a confession of judgment for the full amount being claimed by the plaintiff – may resort to secular court without attempting to litigate the matter in a *beit din*. Since the courts are not being asked to adjudicate competing claims, such an action could be characterized merely as a collection action; in turn, there may be no resulting violation of the prohibition against litigating in secular court.²⁰

Likewise, non-adversarial proceedings – such as naturalization proceedings, probate of an undisputed will, and applications for name changes – are also permitted in secular court; such “ministerial” tasks simply do not fall within the ambit of the *issur arkaot* because the parties are not asking the secular court to exercise judgment – just exercise their authority.²¹

* * *

possible to get permission from a *beit din* one should do so; and that if that is not possible, it is appropriate to ask permission from the rabbi of the area.

20. *Shu"t Maharsham* 1:89 quotes the position of the *Av Beit Din* of Butchatch who permits going to secular court in the case of a defendant who admits his debt. He argues that with the admission of liability, the case is viewed as if a decision was already rendered, and enforcement in secular court is akin to enforcing a decision of *beit din*, which does not violate the prohibition of appearing before secular courts (see section 3). Requesting permission prior to going to court to enforce such an obligation is merely a “*middat chassidut*.” See 2:252, 3:195 where he reiterates this position. Similarly, R. Shmuel Wosner, *Shevet Halevi* 2:263:3 permits use of secular courts to collect a “*chov barrur*”, or clear debt, provided basic halachic laws of debt collection (such as certain debtor protection laws enumerated in *Shulchan Aruch, Choshen Mishpat* 97:23) are not violated. See R. Yaakov Kamenetsky, *Emmet LeYaakov, Choshen Mishpat* 26, who suggests that secular courts may be utilized when one is merely coming to take what is clearly his and requires no decision from *beit din*. Similarly, R. Mordechai Eliyahu, *Techumin* 3: pg. 244, permits appearance before a secular court to collect a clear debt.

21. See, e.g. Rabbi J. David Bleich, *Contemporary Halachic Problems*, Vol. 5, pg. 26.

Thus far, we have outlined how the source of and rationale behind the *issur arkaot* limits the *issur's* application. Accordingly, there are some claims or issues that can be submitted to secular courts without violating the *issur arkaot*; this is true in cases where the submitting party is not seeking a judgment from secular authorities and therefore is not demonstrating a preference for secular adjudication over halachic adjudication.

With this background, we turn next to the process for confirming *piskei din* in contemporary U.S. courts.

II. A Primer on Confirming *Piskei Din* in State and Federal Courts

In a nutshell, U.S. courts treat *piskei din* as arbitration awards, rendering them legally enforceable under both state and federal law. Arbitration is an adjudication of a dispute by a person or persons selected by the parties.²²

Arbitrators' adjudication of a dispute includes ordering discovery, conducting hearings, and receiving evidence and testimony.²³ At the close of arbitration proceedings, arbitrators issue an award which details their determination regarding

22. See generally Soia Mentschikoff, "Commercial Arbitration," *Columbia Law Review*, 61: 846-69 (1961); Lon Fuller, "The Forms and Limits of Adjudication," *Harvard Law Review* 92: 353-409 (1978).

23. It is true that "by agreeing to arbitrate a statutory claim, a party . . . trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 628 (1985). However, the statutory framework of each jurisdiction does demand adherence to certain basic procedures if the award is to be enforced. See, e.g., 9 U.S.C. §10 (allowing a court to vacate an award where the arbitrators "refused to hear pertinent evidence"); CPLR §7506 (requiring arbitrators to provide adequate notice to the parties in advance of a hearing, to allow parties to present evidence and cross-examine witnesses, and to allow each party to be represented by an attorney).

liability and damages.²⁴ Arbitrators are not required to provide any explanation for their award.²⁵

The mechanism to have a claim arbitrated by a *beit din* is the same as it is for standard arbitration; the parties must either sign an arbitration agreement to have a religious arbitral panel resolve the relevant dispute or include such an arbitration clause in a signed contract.²⁶ In so doing, parties consent to exit the realm of standard legal adjudication and enter into binding arbitration.²⁷

For a *psak din* to become legally enforceable, the victorious party must petition a court to “confirm” the award.²⁸ In some jurisdictions – including New York and under federal law – a party has only one year to confirm an arbitration award.²⁹

24. See 9 U.S.C. §9; CPLR §7507.

25. See, e.g., *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 598 (1960) (“Arbitrators have no obligation to the court to give their reasons for an award”); *Halligan v. Piper Jaffray, Inc.*, 148 F.3d 197, 204 (2d Cir. 1998); *Salco Constr. Co. v. Lasberg Constr. Assocs.*, 249 A.D.2d 309, 309-310, 671 N.Y.S.2d 289, 289 (2d Dep’t 1998).

26. *Tal Tours v. Goldstein*, 808 N.Y.S.2d 920, 920 (2005) (“An agreement to proceed before a *bet din* is treated as an agreement to arbitrate”); see also Ginnine Fried, Comment, “The Collision of Church and State: A Primer to *Beth Din* Arbitration and the New York Secular Courts,” *Fordham Urban Law Journal*, 31: 633-655 (2004).

27. *Kingsbridge Center v. Turk*, 469 N.Y.S.2d 732 (1983) (confirming the *beth din* decision because the parties consented, through a written agreement, to have the *beth din* panel adjudicate the matter); *Kovacs v. Kovacs*, 633 A.2d 425 (Md. Ct. Spec. App. 1993) (confirming *beth din* award because parties “knowingly chose” to participate in the arbitration).

28. See, e.g., 9 U.S.C. § 9; CPLR §7510.

29. CPLR §7510; 9 U.S.C. §10. Other jurisdictions that have a one year statute of limitations include Ohio – one year, or even a reasonable amount of time after one year on a showing of good cause if no prejudice results, see Ohio Rev. Code Ann. § 2711.09; Georgia – one year, see Ga. Code Ann. § 9-9-12; Connecticut – one year, see Conn. Gen. Stat. Ann. § 52-417. Some jurisdictions, however, have no statute of limitations for confirming an arbitration award. Florida – no statute of limitations, see, e.g., *Moya v. Bd. of Regents, State Univ. Sys. of Florida*, 629 So. 2d 282, 284 (Fla. Dist. Ct. App. 1993); Illinois – no statute of limitations, see *United Steelworkers of Am.*,

Upon receiving such a motion, a court must confirm the award – thereby making it legally enforceable – unless there exists some reason to vacate – that is, reject – the arbitration award. A court can only vacate a *psak din* under very limited circumstances. As a general matter, such circumstances typically include, among others, “corruption, fraud or misconduct in procuring the award” or “partiality of an arbitrator appointed as a neutral”³⁰ Accordingly, courts will refuse to confirm an arbitration award where the award fails to represent the decision of a neutral arbitrator freely chosen by the parties.

Importantly, such grounds for vacating a *psak din* do not allow a court to revisit the merits of the underlying dispute when considering whether or not to confirm an award.³¹

AFL-CIO-CLC v. Danly Mach. Corp., 658 F. Supp. 736, 737 (N.D. Ill. 1987); Massachusetts – no statute of limitations, see Mass. Gen. Laws Ann. ch. 251, § 11; Tennessee – no statute of limitations, see Mass. Gen. Laws Ann. ch. 251, § 11; Texas – no statute of limitations, see Tex. Civ. Prac. & Rem. Code Ann. § 171.087. In addition, examples of other states that have adopted different statute of limitations include: California – four years, see Cal. Civ. Proc. Code § 1288; New Jersey – three months, see N.J. Stat. Ann. § 2A:24-7; Pennsylvania – 30 days, see 42 Pa. Cons. Stat. Ann. § 7342.

30. CPLR §7511(1) (listing the statutory grounds for vacatur in New York); see generally Amina Dammann, *Note: Vacating Arbitration Awards for Mistakes of Fact*, 27 Rev. Litig. 441, 470-75 (2008) (collecting state grounds for vacatur).

31. See, e.g., Hines v. Anchor Motor Freight, Inc., 424 U.S. 554, 563 (1976) (“[Courts] should not undertake to review the merits of arbitration awards but should defer to the tribunal chosen by the parties finally to settle their disputes.”); United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 596 (1960) (“The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements.”). In fact, arbitrators are empowered to resolve disputes equitably, fashioning results to address the fact-bound circumstances before them. See, e.g., Reliastar Life Ins. Co. v. EMC Nat’l Life Co., 564 F.3d 81, 86 (2d Cir. 2009) (“Where an arbitration clause is broad, arbitrators have the discretion to order such remedies as they deem appropriate.”); Konkar Maritime Enterprises, S.A. v. Compagnie Belge D’Affretement, 668 F. Supp. 267, 271 (S.D.N.Y. 1987) (“Arbitrators have broad discretion in fashioning remedies and may grant equitable relief that a

Indeed, “[a] court cannot examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one.”³² Furthermore, “[c]ourts are bound by an arbitrator’s factual findings, interpretation of the contract and judgment concerning remedies.”³³ In fact, “even in circumstances where an arbitrator makes errors of law or fact, courts will not assume the role of overseers to conform the award to their sense of justice.”³⁴ Moreover – and of central importance to this article’s conclusion – a court cannot vacate an arbitration award unless the losing party makes a motion to vacate the award.³⁵

There are some limited exceptions to the general principle that a court may not vacate an arbitration award – and, in turn, a *psak din* – based upon the substance of the award itself. For some time under federal law, courts could vacate an award if they found the award to be made in “manifest disregard of the law,”³⁶ which is typically understood to cover

Court could not.” (internal quotation marks and citation omitted)).

32. TC Contr., Inc. v. 72-02 N. Blvd. Realty Corp., 39 A.D.3d 762, 763 (2d Dep’t 2007).

33. N.Y. State Corr. Officers & Police Benevolent Ass’n v. State, 94 N.Y.2d 321, 326 (1999).

34. Id.

35. See, e.g., 9 U.S.C. §10 (empowering a federal court to vacate an award “upon the application of any party to the arbitration”); CPLR 7511(b); *Boggin v. Wilson*, 14 A.D.3d 523, 524 (2d Dep’t 2005) (“Generally, an arbitration award may only be vacated upon a motion by a party seeking this relief. Indeed, the burden of proof that an award has been imperfectly rendered or is the result of fraud, or is subject to vacatur on any other ground enumerated within CPLR 7511 (b), rests upon the party moving to vacate.”). But see *Matley v. Matley*, 234 Mich. App. 535, 537 (1999) (noting that “MCR 3.602(J)(1) provides that the court may vacate an arbitration award on application of a party” but allowing a court to *sua sponte* vacate an award in the limited circumstances “when the court becomes aware that the award was procured by fraud”).

36. The manifest disregard of the law standard finds its origin in the dicta of *Wilko v. Swan*, 346 U.S. 427, 436-437 (1953). It has subsequently been

cases where “the arbitrators appreciated the existence and applicability of a controlling legal rule but intentionally decided not to apply it.”³⁷ However, in 2008, the Supreme Court insinuated that this should not be considered a legitimate ground for vacating awards.³⁸ Since that time, a number of courts have expressed serious reluctance to apply the “manifest disregard of the law” doctrine.³⁹

In some jurisdictions, courts can also vacate arbitration awards if they are deemed “wholly irrational.” However, such an inquiry does not give a court free reign to reinvestigate the merits of a dispute; instead, it simply allows a court to confirm that the award is not, for example, based upon a factual predicate that both parties rejected during the arbitration.⁴⁰

referenced on a number of occasions by the Supreme Court. See *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 656 (1985) (Stevens, J., dissenting); *Shearson/American Express v. McMahon*, 482 U.S. 220, 259 (1987); *First Options v. Kaplan*, 514 U.S. 938, 942 (1995).

37. *Cytec Corp. v. Deka Prods. Ltd.*, 439 F.3d 27, 35 (1st Cir. 2006).

38. *Hall Street Associates v. Mattel, Inc.*, 552 U.S. 576 (2008).

39. Whether or not *Hall Street Associates* is read as a complete repudiation of the manifest disregard of the law standard is a matter of disagreement between the courts. Compare *Ramos-Santiago v. UPS*, 524 F.3d 120, 124 n.3 (1st Cir. 2008) (“acknowledge[ing] the Supreme Court’s recent holding in *Hall Street Assocs.* . . . that manifest disregard of the law is not a valid ground for vacating or modifying an arbitral award in cases brought under the Federal Arbitration Act.”); *Prime Therapeutics LLC v. Omnicare, Inc.*, 2008 U.S. Dist. LEXIS 41306, at *15 (D. Minn. May 21, 2008) with *Comedy Club, Inc. v. Improv West Assocs.*, 553 F.3d 1277 (9th Cir. 2009) (concluding the manifest disregard of the law remains a valid ground for vacatur even after *Hall Street Associates*); *Stolt-Nielsen SA v. AnimalFeeds Int’l Corp.*, 548 F.3d 85, 95 (2d Cir. 2008).

40. See, e.g., *Loiacono v. Nassau Cmty. Coll.*, 262 A.D.2d 485, 692 N.Y.S.2d 113 (2d Dep’t 1999) (vacating an award as irrational where an arbitrator made findings contrary to facts agreed upon by all parties); see also *Spear, Leeds & Kellogg v. Bullseye Sees., Inc.*, 291 A.D.2d 255, 738 N.Y.S.2d 27 (1st Dep’t 2002) (vacating an arbitration award as irrational where the arbitrator awarded damages for an already dismissed claim).

In addition, it would appear, notwithstanding the Supreme Court’s decision in *Hall Street Associates*, courts may still vacate an award if it is

Below we address two questions: (1) is it halachically permissible to confirm a *psak din* in secular court, and (2) under what circumstances should parties be particularly vigilant in confirming a *psak din* in secular court.

III. Halachic Permissibility of Confirming *Piskei Din* in Secular Courts

Based on the foregoing, it would seem that confirmation of a *psak din* in secular court should not be considered a violation of the *issur arkaot*. The *issur arkaot* is limited to litigation of the underlying merits of a dispute before a secular court when such litigation requires the court to render judgment, thereby demonstrating a preference for secular adjudication over halachic adjudication. By contrast, courts considering a petition to confirm a *psak din* are barred – as a matter of secular

contrary to public policy. See *Chase Bank USA, N.A. v. Hale*, 859 N.Y.S.2d 342, 351 (N.Y. Sup. Ct. 2008) (“Assuming that [the public policy exception] may be viewed merely as [a] judicial interpretation[] of section 10(a)(4) of the FAA . . . and not as establishing any additional common law grounds for vacation of arbitral awards, they would retain vitality for analysis post-*Hall Street*.”); Alan Scott Rau, “Fear of Freedom,” *American Review of International Arbitration*, 17: 469-511 (2006). This would especially appear to be the case according to courts that have already concluded that *Hall Street Associates* did not, in fact, reject the “manifest disregard of the law” ground for vacating arbitration awards. See *supra* note 39.

However, vacating an award on such grounds does not require a court to relitigate the merits of the dispute; the court continues to take the arbitration award as decided. Instead, the court simply must determine whether the award runs contrary to well-defined and dominant public policy, which has been “ascertained ‘by reference to the laws and legal precedents and not from general considerations of supposed public interests.’” *W. R. Grace & Co. v. Rubber Workers*, 461 U.S. 757, 766 (1983) (quoting *Muschany v. United States*, 324 U.S. 49, 66 (1945)); see also *United Paperworkers v. Misco*, 484 U.S. 29, 43 (1987). Accordingly, “generalized and ill-defined” incantations of public policy are insufficient to support vacatur of an arbitration award. See, e.g., *Matter of North Country Cmty. Coil. Ass’n of Professionals* (North Country Cmty. Coll.), 29 A.D.3d 1060, 1062, 814 N.Y.S.2d 770, 772 (3d Dep’t 2006); *County of Nassau v. Sheriff’s Officers Ass’n*, 294 A.D.2d 31, 37, 743 N.Y.S.2d 503, 509 (2d Dep’t 2002).

arbitration law – from revisiting the merits of the underlying dispute; moreover, seeking confirmation of a *psak din* in secular court is merely a method to enforce a *beit din's* judgment under Jewish law and does not demonstrate any preference for secular adjudication.

Given that Jewish communities have long contended with their minority status in the Diaspora, *poskim* have addressed a number of cases where Jews looked to non-Jews to help collect monies won in *beit din* proceedings. Indeed, *poskim* have frequently grappled with the permissibility of enlisting secular authorities' aid in the enforcement of *piskei din* in a wide range of circumstances – some of which were not as judicial as the contemporary process of confirming *piskei din* in U.S. court. Importantly, in addressing the larger category of enlisting the aid of non-Jews to “enforce” *piskei din*, *poskim* have provided useful parameters for considering the contemporary analog of confirming *piskei din* in secular court.

Indeed, much of this halachic literature revolves around an implicit tension between an individual enlisting the help of non-Jews to enforce a *psak din* and a comment of Ramo, in the context of the laws of *avid inish dina lenafshei*, “taking the law into one’s own hands.”⁴¹ Ramo writes that although under certain circumstances an individual may seize property that he rightfully believes to be his own, he may not enlist the help of non-Jews when doing so.⁴² In light of this view of Ramo, the *Urim* questions whether allowing parties to look to secular authorities to enforce a *psak din* violates this prohibition against parties deploying non-Jewish assistance when “taking the law into their own hands.”⁴³

In addressing the *Urim's* concerns, *poskim* have frequently focused on the source behind and rationale justifying the *issur*

41. *Choshen Mishpat* 4:1.

42. *Id.*

43. *Choshen Mishpat*, 26:5

arkaot. For example, the *Imrei Binah* responds to the *Urim's* question by pointing out that enlisting the aid of non-Jews to enforce a *psak din* is no different than the principle in *Gittin*⁴⁴ that permits a non-Jew to coerce a Jew to "do as the Jews tell you" with respect to delivery of a *Get* (Jewish divorce paper).⁴⁵ Similarly, he suggests that since the secular authorities are merely telling the defendant to do as the Jewish courts have ruled, there is no "*mishpat*" or judgment implicated by enlisting non-Jews to aid in the enforcement of a *psak din*.

Imrei Binah focuses on the source of the *issur arkaot* and thereby limits its application to circumstances where secular authorities are being requested to render an independent judgment. When asking secular authorities to enforce a preexisting *psak din* on its own terms, the party is merely petitioning the secular authorities to enforce a decision of *beit din*, rather than adjudicate a dispute between parties.

Similarly, Rabbi Bentzion Yaakov Wosner⁴⁶ offers an answer to the *Urim's* question, which emphasizes that the reason behind the *issur arkaot* is, as articulated by Rashi and Rambam, to prevent "giving honor to the name of idols" and "raising a hand against the Torah of Moshe." In the case of a plaintiff who does all he can to resolve the case in *beit din*, enforcement via a secular court is not an insult to the Torah; on the contrary, enforcement by the secular authorities of a *beit din* decision honors the name of the Torah.⁴⁷

44. 88b.

45. *Imrei Binah*, *Hilchot Dayanim*, *Choshen Mishpat* 27.

46. *Divrei Mishpat* 3:197-200.

47. See R. Asher Weiss, *Minchat Asher*, *Devarim* 3:1 who makes a similar point.

Rabbi Wosner also provides two alternative methods of resolving the *Urim's* question. First, Ramo was concerned with non-Jewish involvement before a *beit din* decision was rendered, out of fear that the result would be incorrect or too harsh. Enforcement of a *beit din's* decision already rendered does not present a similar concern. Second, even the *Urim*, who questioned the employment of non-Jews to enforce a *beit din* decision, permitted doing

Most halachic authorities agree with the opinion of Maharshach that a party who has been found liable by a *beit din*, but refuses to adhere to its decision, may be brought immediately to secular court to enforce the decision without permission of *beit din*.⁴⁸ A minority of authorities permit enlisting the assistance of non-Jewish authorities to enforce a *psak din*, but only after receiving permission from a *beit din*.⁴⁹ Generally, seeking permission from a *beit din* provides additional indication that the recourse to secular authorities is not in any way intended to “give honor to the name of idols.”⁵⁰

The halachic literature addressing the larger issue of enlisting secular authorities to enforce *piskei din* provides a clear blueprint for analyzing the contemporary process of confirming *piskei din* in U.S. courts. According to those who do not require permission from *beit din* to enforce a *psak din*, confirmation of a *psak din* in secular court would seemingly be permitted without permission of *beit din* as well. U.S. courts, when asked to consider a motion to confirm a *psak din* as an arbitration award, do not render a judgment regarding the merits of the dispute, nor does mere submission of an already decided *psak din* demonstrate any preference for secular

so in the case of an “*alam*” or strong non-compliant individual. In the case of one who refuses to adhere to a *beit din* decision “there is no *alam* greater than this.” See *Divrei Mishpat* 3:197-200.

48. *Shu”t Maharshach* 1:152, quoted in *Knesset Hagedolah* 26:14; see also Rabbi Shalom Shwadron, *Shu”t Maharsham* (1:89, 4:105) who concurs with the opinion of Maharshach. This is also the conclusion of Rabbi Shlomo Kluger, *Ha’eleph Lecha Shlomo*, *Choshen Mishpat* 3, *Kesef Hakodshim*, *Choshen Mishpat* 26:2, and Rabbi Shmuel Wosner, *Shevet Halevi* 10:263:2.

49. *Imrei Binah* cited above quotes Maharikash who requires permission; however, *Imrei Binah* writes that such an argument is not compelling. *Shulchan Aruch Harav*, *Hilchot Nizkei Mamon* 9, rules that permission from *beit din* is required to employ secular authorities to enforce a *psak din*. Rabbi Moshe Shternbuch, *Teshuvot Vehanhagot* 3:439 writes that it is not customary to follow the opinion of Maharshach who does not require permission.

50. See *Kesef Hakodshim*, *Choshen Mishpat*, 26:2, R. Moshe Shternbuch, *Teshuvot Vehanhagot* 3:441 and 3:445, R. J. David Bleich, *ibid*, pg. 27, and R. Chaim Kohn, *Divrei Mishpat*, 3: pg. 193.

adjudication over halachic adjudication. Thus, as in the case of enlisting secular authorities to enforce a *psak din*, making a motion to confirm a *psak din* in secular court would not run afoul of the *issur arkaot*. Along such lines, Rabbi J. D. Bleich writes that confirmation of a *psak din* in no way violates Jewish law, since “confirming the award of a *beit din* in civil court simply reserves the option of utilizing the power of the court to enforce the judgment of the *bet din* should that become necessary.”⁵¹

According to those who require permission from *beit din* to enforce a *psak din*, the most natural conclusion is that confirmation of a *psak din* in secular court would be permitted only with permission of *beit din* as well. Such permission serves the additional function of demonstrating that it is the *beit din*'s judgment the party is seeking and that recourse to the courts is not the result of preferring secular adjudication, but is merely an attempt to confirm an already determined *psak din*.

However, even following the analysis that a party requires permission prior to confirming a *psak din* in secular court, such permission is typically granted in the *beit din* arbitration agreement between the parties. For example, the Beth Din of America, as part of its arbitration agreement, requires the parties to agree that the *dayanim*'s “judgment may be entered on the award in any court of competent jurisdiction”⁵² Accordingly, the Beth Din of America's permission to confirm the *psak din* in secular court is built into the arbitration agreement between the parties.

Although confirmation of a *psak din* in secular court would appear halachically preferable – or at least equivalent – to enlisting secular authorities in the enforcement of a *psak din*, at least one *posek* has raised the possibility that the opposite may

51. *Contemporary Halachic Problems*, *ibid*, pg. 28.

52. See Beth Din of America Agreement to Arbitrate, available at http://www.bethdin.org/docs/PDF3-Binding_Arbitration_Agreement.pdf.

in fact be true. In considering the confirmation process, Rabbi Chaim Kohn queries whether confirmation presents halachic concerns above and beyond a general request for enforcement because, pursuant to a petition to confirm, a judge will allow the other party to contest the decision of the *beit din*.⁵³ In turn, confirmation could be viewed as requiring the exercise of judgment by the court as to the underlying merits of the dispute – or at least it opens up the possibility for such judgment.

To be sure, after his own thorough analysis, Rabbi Chaim Kohn permits confirmation in secular court primarily because the process – that is, first going to *beit din* and only then seeking recourse in secular court – indicates that the party is not attempting to “raise a hand against Moshe.”

However, this emphasis on process neglects a more fundamental ground for permitting confirmation of *piskei din* in contemporary U.S. courts. Specifically, it is not merely the process that provides a basis for permitting confirmation, but the actual confirmation proceedings themselves do not entail the type of “judgment” prohibited by the *issur arkaot*. This is for two reasons. First of all, as a general matter, courts cannot reinvestigate the underlying merits of a dispute when addressing a motion to confirm a *psak din*. Thus, “[a] court cannot examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one.”⁵⁴

Second, a court cannot, on its own, render a judgment as to a *psak din* and thereby decide to vacate the *beit din*'s determination. Instead, a court can only engage in the limited

53. *Divrei Mishpat* 3:188-189. To be sure, Rabbi Kohn analyzes this issue in the context of confirming an award issued by a dispute resolution forum in the diamond district.

54. *TC Contr., Inc. v. 72-02 N. Blvd. Realty Corp.*, 39 A.D.3d 762, 763 (2d Dep't 2007).

substantive evaluation of a *psak din* allowed by law once the opposing party counters the motion to confirm the award with a motion to vacate the award.⁵⁵ Accordingly, the only motion before a state or federal court that would allow the court to render a judgment would be a motion to vacate a *psak din* – not a motion to confirm a *psak din*.

It would therefore appear – based on both the process of confirming a *psak din* and the substance of the court's inquiry in addressing the motion for confirmation – that making a motion to confirm a *psak din* before a secular court in no way violates the *issur arkaot*.

However, there is an important flipside to this analysis: making a motion to vacate a *psak din* would typically appear to violate the *issur arkaot*. Indeed, making such a motion to vacate a *psak din* would invariably “give honor to idols” and constitute “raising a hand against the Law of Moshe.” Indeed, to understand how severe a violation of the *issur arkaot* filing a motion to vacate a *psak din* is, consider that a number of *poskim* have held that mere appearance before a secular court to request adjudication – even where the secular court has not made a decision – can violate the *issur arkaot*.⁵⁶ When making a motion to vacate a *psak din* on grounds of irrationality or the like, a party does not merely appear in court to request secular adjudication, but it argues to the secular court that the *beit din* was inadequate in its attempt to resolve the dispute.⁵⁷

55. See supra note 35.

56. See R. Bentzion Yaakov Wosner, *Divrei Mishpat* 3: pg. 195-197; R. Asher Weiss, *Minchat Asher, Devarim* 3:1. As noted by R. Wosner and R. Weiss, this conclusion is supported by Ramban, Rambam, and *Shulchan Aruch*, all of whom focus on *appearance* before secular court as triggering the *issur arkaot*. See Ramban, *Sanhedrin* 26:7; Ramban, *Shemot* 21:1; *Shulchan Aruch, Choshen Mishpat* 26:1.

57. See R. Y. E. Henkin, *Kol Kitvei Rav Henkin*, vol. 2, page 179 (including in his version of an arbitration agreement that the parties are prohibited from contesting the *beit din's psak* even in secular court). However, our analysis is not intended to foreclose the possibility that there may be some exceptional

IV. Importance of Confirming a *Psak Din*

In practice, the key issue in confirming a *psak din* is timing. In instances where a *beit din's psak din* simply calls for a one-time payment, the victorious party may likely be able to avoid making a motion to confirm in secular court. If the losing party simply complies with the *psak din* – and makes the one-time payment in a timely fashion – resort to the secular legal system will typically be unnecessary.

By contrast, many *piskei din* require the losing party to make payments over an extended period of time. Examples of such *piskei din* include alimony payments by an ex-husband and salary payments to a reinstated employee. The concern in such cases stems from the possibility that the losing party will comply with the *psak din* only until the statute of limitations for confirming the *psak din* has not yet run.⁵⁸ Thus, for example, consider a case in New York where an ex-husband is required to make family support payments of \$2000 per month. As an initial matter, the ex-husband may very well comply with the award for the first year, making his regularly scheduled payment of \$2000. Under such circumstances, there may be an instinct not to bother confirming the *psak din*.

However, failing to confirm the *psak din* in New York Supreme Court under such circumstances could have very serious consequences. The statute of limitations for confirming

grounds for filing a motion to vacate a *psak din* – such as alleged fraud – that would not constitute a violation of the *issur arkaot* because the *beit din* proceedings themselves do not represent valid halachic adjudication. In such circumstances, a party that believes they are the victim of fraudulent adjudication before a *beit din* may need permission from another *beit din* before filing a motion to vacate the *psak din*. Especially given the extraordinary considerations of *chillul hashem* in this context, an individual faced with such an issue should consult with appropriate legal and halachic counsel to determine the most prudent course of action.

58. See *supra* note 29 (listing the statute of limitations for various jurisdictions).

an arbitration award in New York is one year.⁵⁹ Accordingly, where after one year the ex-husband ceases making his required payments, if the ex-wife has failed to confirm the award, she may very well no longer be able to because the statute of limitation will have run.⁶⁰ Of course, in each jurisdiction the statute of limitations may be different. Therefore, the timing issues will largely depend both on the timing of the payments required by a *psak din* and the statute of limitations for confirming an award in the relevant jurisdiction.

Conclusion

The purpose of this article has been to consider the

59. CPLR §7510. Moreover, the *beit din* cannot simply issue another *psak din* with a new date because “once an arbitrator has made and published a final award his authority is exhausted and he is *functus officio* and can do nothing more in regard to the subject matter of the arbitration.” *McClatchy Newspapers v. Central Valley Typographical Union No. 46*, 686 F.2d 731, 734 (9th Cir. Cal. 1982); see also *La Vale Plaza, Inc. v. R. S. Noonan, Inc.*, 378 F.2d 569, 572 (3d Cir. 1967); *Mercury Oil Refining Co. v. Oil Workers Int’l Union*, 187 F.2d 980, 983 n.1 (10th Cir. 1951).

60. There may be a possibility of raising equitable grounds for tolling the statute of limitations. For example, “a party may be equitably stopped from pleading the Statute of Limitations defense where he induced the petitioner by fraud, misrepresentation or deception to refrain from commencing the proceeding [to confirm an arbitration award] in timely fashion.” *Kilstein v. Agudath Council of Greater New York, Inc.*, 133 A.D.2d 809 (2d Dep’t 1987). In addition, a party may still be able to use an arbitration award as part of a defense even after the statute of limitations on confirming an award has run. *Allstate Ins. Co. v. Hartford Acci. & Indem. Co.*, 90 A.D.2d 781, 783 (2d Dep’t 1982). Unfortunately, such arguments are far from dependable, and reliance on such arguments should be avoided. See Weinstein, Korn & Miller, *New York Civil Practice: CPLR*, 13: § 7510.01 (“After the award is made, the parties may voluntarily comply with it, thus rendering any court proceeding to confirm the award moot. However, if the award is left to stand alone, it is not directly enforceable against a recalcitrant party. Moreover, its efficacy in the context of *res judicata* or collateral estoppel is at best questionable. Accordingly, the arbitration winner has good cause to convert the arbitration award into a judgment”) (footnote omitted). However, if someone does find themselves in such circumstances, they ought to immediately consult with an attorney.

applicability of the *issur arkaot* to the confirmation of *piskei din* in contemporary U.S. courts. As part of the analysis, we have outlined how both the source of and rationale behind the *issur arkaot* are frequently deployed by *poskim* in order to limit the scope of the *issur*. Accordingly, where submitting a dispute to secular court neither requires the court to exercise judgment nor does it demonstrate a preference for secular adjudication over halachic adjudication, in the view of many *poskim* the *issur arkaot* does not apply. As a result, submitting a *psak din* for confirmation in secular court may not violate the *issur arkaot*.

We have also argued against a common misconception: that there is no value in confirming an award once the losing party begins complying with a *psak din*. This is not the case, especially where the losing party is required to make payments over an extended period of time and the jurisdiction's statute of limitations for confirming *piskei din* is limited in duration. Indeed, parties who wait until after the statute of limitations has run to confirm an award on the presumption that the losing party will continue to make payments may find themselves without a legal enforcement mechanism in the event that the payments stop.