THE MODERN BET DIN

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SEVERAL months ago, the Jewish Community Council of Detroit established a Jewish Arbitration and Conciliation Court. This represents the renaissance in the Jewish community of an institution whose origin dates back many, many years. Both arbitration and conciliation have been common practices with the Jewish people since the *Bet Din,* (Court of Justice) consisting of twenty-three members, functioned in the first century. During the Middle Ages, a scholar of standing needed no assistant for holding court and the local rabbi was empowered to represent the *Bet Din* and settle disputes by himself. This still holds true today in many European countries. In larger communities, however, the *Bet Din* is composed of at least three members who daily hear controversies, with the local rabbi generally presiding. In this country several Jewish communities, including New York City, Baltimore, Cincinnati, and Cleveland, have created arbitration machinery. In setting up a similar communal service, Detroit was guided partly by all of these previous experiences.

Need for the Jewish Court

Perhaps never was the need greater for eliminating from the regular courts such controversies as tend to bring discredit upon the Jewish people as a whole. For, with the rising tide of anti-Semitism, our defamers seize readily upon incidents which support their stereotypes of the Jew as an undesirable citizen. Recently, in a picture magazine which sold 400,000 copies, the non-Jewish editors listed a series of objectionable traits commonly ascribed to Jews. Unfortunately, many Jewish quarrels which end in the courts accentuate these unfavorable impressions of Jews. Two typical examples occurred in Detroit during the past year and might have been avoided had a Jewish Court then been in existence. In one instance, the orthodox rabbis prosecuted a Jewish butcher accused of misrepresenting *trefah* meat to be *kosher*. The case was dragged into the criminal court where it was heard by a non-Jewish judge. The entire proceedings provided a source of much amusement and were described by the local newspapers in such a manner as to make a laughing stock of *kashruth,* Jewish religion, and Jewish people in general. Again, a Jewish *shochet* was being picketed by his employees for what they claimed to be unfair labor practices. This also made a good newspaper story. The daily spectacle of workers picketing a religious functionary did not have a salutary effect upon non-Jewish observers. Similar happenings could be cited in other Jewish communities.

Furthermore, a Jewish court meets other definite needs in the community. Often the problems presented should not come into the regular courts because they concern Jewish tradition, religious observances, etc., which cannot be understood easily by a non-Jewish judge or jury. In such situations, the Jewish litigant can express himself more readily and with a greater likelihood that he will be understood in the familiar atmosphere of a Jewish court. The non-Jewish judge cannot comprehend the situation fully because he and the Jew do not live at

all times in the same universe of discourse. Sometimes, too, the courts offer no relief for the aggrieved individual because the offense against him is not punishable under the law; whereas in the Jewish court, which is not limited in its scope by the statutes, he may find a ready remedy.

Many domestic relations cases are of so delicate a nature that they cannot be aired in the legal courts. Jewish people seem to have a special dread of being stigmatized through the formal court procedure and decree, with the publicity often attendant upon cases of this kind. But they have a feeling of privacy in the arbitration court, where no one, except those immediately concerned; need know the identity of the parties or the details of the proceedings.

The value of the Jewish Court in providing an emotional outlet for individuals who feel themselves wronged should not be overlooked. The award actually entered in a case is sometimes not nearly so important to the client as the opportunity for expressing his feelings, for having himself declared to be in the right and thus vindicated before an impartial body. In the Jewish Court of Detroit a woman recently preferred charges against her sister, claiming that the latter, for whom she had provided a dowry, now refused to repay her. After the hearing, during which the plaintiff discussed many irrelevant details, she turned to the sole arbitrator and said in a tone of relief, "Now, whether I get any money from her or not, I have talked myself out. For two years this has been eating my heart out. I thought I would go crazy and I had no one to whom I could explain things."

Because of the expense involved, many individuals with rightful claims cannot file suit in the established courts. A poor man with a claim of $150.00 (and such small claims are frequent) can hardly afford to engage a competent lawyer who will institute proceedings in court. The cost of the litigation in such a case would be prohibitive. Many clients cannot even advance the necessary attorney's fees. These claims, however, may be heard in the Jewish Court without charge.

Source of Referral

Just how do cases reach the Jewish Court in Detroit? When the applicant first appears, he is questioned regarding the source of his referral. This is carefully noted; an analysis of these records proves quite interesting. Upon the establishment of the court, it became necessary to notify the community that this new agency existed. The situation was peculiar. A court had to advertise for business!

Various media were employed. The local Jewish radio hour assisted with a number of broadcasts. A printed leaflet, outlining the method of procedure in both English and Yiddish, was distributed among the Jewish organizations in the city. The Jewish Community Council, under whose supervision the court functions, has an affiliated membership of 175 groups, each of which receives a news letter periodically. References have appeared here from time to time. The local editions of the English and Yiddish papers have published case histories and this has been helpful.

In addition, the Jewish family welfare society has several times sent clients to the court with problems which do not fall within the province of case work. These could not be handled by any other agency. One or two referrals have come from the law courts, where a judge has felt that the dispute should not be aired

in his jurisdiction. One such case had been dismissed by the presiding judge with the caustic comment that "we haven't time for this sort of thing. Go settle your family squabbles elsewhere." Lawyers who did not wish to appear in court with a dispute involving distinctly Jewish phases also have pleaded their cases before the Jewish Court.

Scope of the Jewish Court

A committee of fifteen people, appointed by the president of the Jewish Community Council, has general responsibility for the supervision of the court. A sub-committee of three passes upon each case in which arbitration is being sought. When a litigant presents himself at the office of the Jewish Community Council, he is interviewed by the director, who also serves as secretary of the court. He tells his story briefly, giving only the salient facts, so that the committee can decide upon acceptance.

Which cases fall within the scope or jurisdiction of the court? Acceptance or rejection depends upon certain rules governing eligibility and the conduct of the court. These are definite; usually no difference of opinion exists regarding their interpretation. To be eligible for arbitration, two conditions must be met: 1. The dispute must be a proper subject for arbitration within the meaning of the statutes of the State of Michigan. 2. At least one of the parties involved in the dispute must be a Jew, or an organization consisting of Jews.

These general rules have one exception. In a dispute involving the relationship of employer and employee, the court can take no cognizance of the dispute unless "all of the parties thereto shall jointly agree to submit such request." The reasoning back of this requires explanation. When the court was still in the process of formation, the question of the role that it might play in the settlement of labor disputes evoked lengthy discussion. Labor elements felt very strongly that the court might furnish to employers of striking workers an opportunity for turning public opinion against the latter unfairly. The employers could offer to arbitrate a labor difficulty which they knew the strikers could win through continued striking and picketing. They could then advertise to the community that they had appealed for arbitration by the Jewish court but that their employees had refused to participate. To avoid such a contingency, it was made mandatory that both parties apply jointly for arbitration.

Nature of Arbitration

Arbitration is essentially a voluntary process. Either one party desires it and the second party then consents, or both apply jointly for arbitration. However, there are cases in which a defendant is reluctant to appear before the court. He may feel that he can ignore the summons from a court which cannot compel his attendance. For this reason, the rules of the court state that "if less than all the parties to a dispute join or concur in such request (for arbitration) the Committee may take such steps to procure the consent or concurrence of the remaining party or parties as the Committee may deem advisable." This provision gives the Arbitration Committee much latitude in inducing an indifferent individual to arbitrate. These "steps to procure the consent" vary. Usually they consist only of a telephone call to the party who has ignored a written invitation that he join in settling the difference. Emphasis is laid upon the fact that the court is under community auspices which he cannot afford to flaunt. In more instances than not, the person responds favorably because of a fear that he may injure his standing in the community. Very few people like to incur the public censure of their fellow-men. Sometimes it is even advisable to suggest that refusal to arbitrate may be construed as an admission of guilt.

Recently, for example, a personal quarrel between two officers of a synagogue threatened to ruin the congregation. Members "took sides" and on several occasions the services were interrupted by fist fights. The man who considered himself wronged appealed to the Jewish court. The aggressor, the president of the congregation himself, did not respond to a letter and the writer thereupon communicated with the rabbi of the congregation. The latter refused to inject himself into the situation, fearing that he might jeopardize his own position. He did agree to speak to the president about the possibility of arbitration. Finally, the latter came to the office of the court, still unwilling to arbitrate and protesting vigorously his innocence of the charges against him. He was told that if he were guiltless (as he maintained) an arbitration would clear him, whereas a continued resistance to it surely would damage his reputation in the community. For this would give his accuser an opportunity to tell the congregation that a guilty conscience had kept their president from composing his differences. When the man saw the matter in this light, he signed the arbitration agreement. The entire quarrel later was adjusted satisfactorily.

The rules of the court encourage the solicitation of disputes which may become public scandals: "The Committee, on its own motion, may take cognizance of any matter or dispute which in its judgment affects the public interest and may thereupon request the parties involved to submit such matter or dispute for arbitration or conciliation." This has reference to congregational quarrels, religious controversies, organizational differences, etc., all of which are prone to find their way into court and into the newspapers. Had no one asked for arbitration in the above-mentioned synagogue fracas, the court justifiably could have forced itself into the situation.

Despite this provision, it still holds true that, on the whole, the essence of arbitration in the Jewish court is its voluntary character. Sometimes it is difficult to explain this to people who seek the aid of the court; for so eager are they to secure justice for themselves that they cannot see why the other party should not be forced to submit. "But isn't there some way you can make him come here and settle?" they ask. And one must emphasize that only he who has a deep sense of honor and feels bound by Jewish tradition will perceive the moral obligation to arbitrate.

The following case shows that Jewish tradition still wields a powerful influence in effecting arbitrations: A son preferred charges of fraud against his aged father, who was connected with a religious institution. The father, a patriarchal figure with a long, flowing beard, responded at once to a letter from the court. Although he denied that his son's claim had any merit whatsoever, he, nevertheless, signed the arbitration agreement without argument, remarking in Yiddish: "If you, who are a perfect stranger to me, were to come up to me and say that my coat is yours, and then wanted to drag me to a third party to establish the real ownership, I would have to submit to your wishes. That is what every good Jew must do. I feel that I have no choice

in this present matter."

Selection of Arbitrators

After a case has been accepted for arbitration and both parties have agreed to arbitrate, they are required to sign an arbitration agreement. This is in such a form as to make the decision of the arbitrators legally binding. It sets forth the nature of the controversy in brief objective summary without bias to either party. It states that they both agree to respect the award of the arbitrators, which makes it legally binding and upon which a judgment of the circuit court may be entered.

The litigants then choose their arbitrators. The court for each case consists of three members selected from a panel of arbitrators appointed by the Arbitration Committee, "all of whom shall have indicated their willingness to act and to serve without compensation." At the present time, this panel has eighty men, representing twenty different occupational fields and ranging from common laborer to judge. This heterogeneity provides a complete cross section of the community. In some disputes the arbitrators must have technical knowledge of a particular field of work.

Under ordinary circumstances, where there are only two litigants, each person chooses one arbitrator and the two thus selected decide upon a third man from the panel. These three, after having been properly sworn, constitute the court for that case. For the next case the court may consist of three other people. Thus, over a period of time, most of the individuals on the panel act in at least one case; no single person is overtaxed by being called to serve too often. Inasmuch as the arbitrators act without pay, it would be an imposition to utilize the same people over and over again. The rules provide that no arbitrator who has already served during the current year shall be named "unless his consent to act has previously been obtained." No litigant can justifiably say that a verdict against him was biased, since he had the same opportunity as his opponent to choose one arbitrator, and the third member of the trio has been chosen jointly. As a further precaution against bias, no arbitrator learns which party has selected him.

If both sides and the Arbitration Committee agree, a case may be heard by one arbitrator only. This works well in minor cases. On the other hand, the number of arbitrators may be increased. Where there are more than two parties to a dispute and they desire a court of more than one arbitrator, the Arbitration Committee determines the method of appointment.

The Hearing

The controversy usually is heard within a week or two after the arbitrators have been selected, at a place convenient to all parties concerned. The procedure is informal; the arbitrators in each case may make and adopt their own rules. This individualized treatment has worked very satisfactorily. Litigants and their witnesses testify under oath; it has been found that the psychological effect of taking an oath is even more important when the rest of the proceedings take place in an informal atmosphere.

During the progress of the hearing, the arbitrators may interrupt as often as they wish in order to ask questions, to clarify points, or to elicit pertinent facts from the witnesses. At the beginning of the session, the arbitrators receive a statement in which appear only the names of the two parties and the general nature of their dispute. They therefore must obtain all the details from both sides. The participants may speak either in English or in Yiddish. Where this is indispensable to a proper understanding of the case, the arbitrators are chosen in part for their knowledge of Yiddish. This language still plays an important role in a community like Detroit, where fully one-fourth of the Jewish population claim it as a mother tongue. Since the hearing is not open to the general public, an individual need have no hesitation about discussing details which he would be reluctant to relate before outsiders.

The court does not adhere to the rules of evidence. This adds to the informality. Hearsay evidence, unsupported statements, and beliefs, all of which are taboo in the law courts, may be introduced. Lawyers may represent their clients before the court, but the absence of legal "red tape" has sometimes proved annoying to them. In one hearing, an attorney coud hardly control his wrath because the arbitrator repeatedly reminded him that he could not "object" to hearsay evidence. In the establishment of the court there was no intention to dispense with the services of attorneys for certain kinds of cases. On the contrary, the hope was expressed that attorneys themselves would make more extensive use of arbitration, for they are in the most strategic position to do so.

The Award

At the conclusion of the hearing, the arbitrators may retire to deliberate upon the decision, which they may render at once. In the more involved cases, though, they may take several days in which to consider the testimony offered. The written award, which both winning and losing parties receive, states clearly and concisely the reasons for the decision. In addition, both sides may receive the following complete material on the case, if they so desire: the agreement of submission to arbitration, which has been signed and notarized; a copy of the rules governing the Court; a copy of the arbitrators' oath (in which they have sworn to make "a just award to the best of their understanding"). The winner may record the written award in the proper law court. Thereafter, if he must force collection of a monetary award, he may proceed in the same manner as though he had the decision of a judge or a jury in the legal courts.

Where a cash award has been stipulated, the secretary of the court usually follows up the case to see whether the judgment has been performed. To date, every cash award has been or is being paid. Not always does a monetary award play the important role. In some situations, a reconciliation takes place between two warring factions as the result of a decision which makes no provision for the payment of money. In other cases, the entire controversy has centered around personal conflicts and misunderstandings which are totally unrelated to money. Here the cooling of passions and the elimination of enmities may have resulted from the proceedings.

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In order that the reader may have a concrete picture of the variety of controversies brought to the Jewish Court, three typical cases are being presented here. The facts in these stories are correct, but for obvious reasons the names have been disguised.*

And Yoisher Triumphed!

* Technically speaking, the first case, "And Yoisher Triumphed," is an example of conciliation, rather than of arbitration. It might be noted, in passing, that there is a fundamental distinction between the two terms. In arbitration cases the parties bind themselves beforehand to abide by the decision of the arbitrators. In conciliation cases, however, the parties carry out the decision of the conciliators only if they afterwards desire to do so. Both forms of settlement are available through the Jewish Court.

Rabbi Mendel Ashkenasai conducted the Mt. Scopus Hebrew School, which was located in a densely populated Jewish neighborhood. Although rich in Talmudic lore, the worthy *melamed* unfortunately was extremely poor in worldly goods. With difficulty did he manage to eke out a living for his wife and three children. His few pupils came from homes in economic straits and their scant fees barely served to keep the wolf from the door. Benevolent and easy-going by nature, the teacher had no inclination to press indigent parents for payment of tuition. Rather did he prefer to wait hopefully until such time as they paid him without coercion.

The Mt. Scopus Hebrew School possessed a pretentious name, but its quarters, consisting of one large room above a store, were not equally imposing. While the grocer on the floor below him dispensed physical substance to his customers, the rabbi on the floor above filled the souls of his pupils with spiritual sustenance. One day Rabbi Ashkenasai was notified that he must vacate the schoolroom within three weeks. A Jewish society had agreed to pay a higher rental for its use as a clubroom. To the impecunious teacher this announcement represented a major tragedy, for he realized that he could neither pay higher rental nor find a new location quickly. Furthermore, it was nearing the end of the school term, and if he were forced to move to another neighborhood immediately, he would inevitably lose most of his pupils and tuition fees. His plea with the Gentile landlord for an extension of time fell upon deaf ears. What cared he for Ashkenasai? "The new tenants pay more," he said. "That is your worry, not mine." An appeal to the president of the Jewish organization proved equally of no avail. "Our stationery is already printed for the new address," he explained. "Besides, business is business."

The instructor was desperate as he saw his means of livelihood slipping from him. He did not succeed in finding quarters. And when his eviction was three days off, a new misfortune overtook him. His only brother died very suddenly and it was necessary for Ashkenasai to leave the city at once in order to attend the funeral. Again he pleaded with the landlord for a few days' grace. The former was adamant. 'If you do not remove your holy scrolls and other furnishings by the first of the month," he threatened, "you will find them in the street."

Ashkenasai brought his troubles before the Jewish Court. "Get me at least two months' extension," he asked, "so that I may pay my last respects to my brother without this added worry on my mind and the Lord will bless you with good health!" By that time the school term would be over and before autumn he felt that he could find a new location.

The Court summoned the president of the Jewish society, who militantly protested his legal rights to take possession of the premises: "If he can't pay as much rent as us that's his tough luck." The court conceded that on strictly legal grounds the teacher had no claim, but then added, "This is not a court of law but of conciliation, and we must see that *yoisher* is done. Our interpretation of *yoisher* in this instance is that you recognize this poor man's plight and grant him a time allowance." The president at first demurred. However, at length he softened and said, "Out of respect to the Court, I'll reopen the matter at our meeting this evening."

The next morning he informed the Court that an extension of two months' time had been granted, on condition that the present tenant pay his rent promptly and vacate the premises on a given date without further trouble. Ashkenasai gave way to tears of gratitude when told of the decision. Profusely thanking the Court and all parties concerned for their kindness, he exclaimed, "For this *mitzvah* a long life shall you have, and a seat in the holy place in the other world!" He was free to depart immediately on his sad mission. Upon his return he began to look for new quarters. Before the two months of grace had expired he succeeded in finding a suitable place.

Thus *yoisher* triumphed and a poor man was saved from (what represented to him) a major calamity.

The Artistic Temperament

Mr. Sam Baron, a singing teacher, appeared before the Court with the following story: Several months ago, he had been hired by the Wilno Yiddish School to conduct rehearsals and train the pupils for musical programs. At the time that he came to an agreement with the school official, it was specifically stated that he was to retain his position for the entire school year of nine months. Nevertheless, this provision had not been put into writing. At the end of five months he was dismissed summarily without explanation, other than that he had been hired only temporarily. But what touched Mr. Baron's pride particularly were stories being circulated by the president of the school. These rumors held that Baron had proved himself highly incompetent and had shown no results with the children. "When I hear these lies," he cried out in despair, "I don't know what to do. Pretty soon they'll so damage my reputation that I won't be able to earn a living."

The president of the school stated his position with great vehemence. "This *melamed* has the artistic temperament," he said. "He can't discipline anyone. Ask him if he didn't leave the children alone one day in the middle of a rehearsal because his temper got the best of him." Because of this and similar conduct, he maintained, the children had gradually quit attending rehearsals. As for Baron's claim that he had been hired for the entire school year, that was nonsense, since all the teachers in the building were working on a monthly basis. Did it seem logical that he would be employed on a yearly basis, especially since the whole project was an experiment?

Further questioning of the president, however, brought out the fact that at the time Baron was engaged, the former had intimated that the job might be permanent throughout the year.

The Court weighed both sets of arguments, taking into consideration that Baron had suffered damages because he had dismissed several of his pupils in order to take the new position. The decision, then, was rendered as follows: The school was ordered to pay Baron salary for two months, in return for which the teacher agreed to relinquish all claims against the school. In addition, the president of the school promised to forbear from making any more disparaging remarks about him.

"Above all," said the Court to the president, "Cease your talk about this man. Remember, that loose talk is a two-edged weapon which may injure you as much as this teacher."

A Grave Business

"Galician swine, trying to cheat us on the dead!"

"Roumanian *schnorrers!* We don't owe you a cent!"

This exchange of insults might have been heard one afternoon at a session of the Jewish Court, where representatives of Congregation Rodeph Sholom and of B'nai Jacob Congregation faced each other with demands for justice. Suit had already been filed against the latter in the circuit court; only through the intervention of a third party had both groups been persuaded not to air their differences publicly, where two holy institutions might provide an amusing spectacle for a Gentile audience.

Fifteen years ago, the members of Congregation Rodeph Sholom had purchased a cemetery and had sold part of it to the other congregation which buried its dead in a separate corner of the plot. Each of the two parties agreed to share equally in the care and maintenance of the cemetery and the provision for a watchman. For thirteen years all went well; the agreement was carried out faithfully. Then Rodeph Sholom made certain repairs to the cemetery and B'nai Jacob refused to share the expense. Since then, there had been bad blood between them and public scenes, similar to the one now enacted before the Court, were very frequent. Threats had been made by people who had buried relatives in the cemetery that they would remove the bodies elsewhere.

In arguing his case before the Court, the secretary of Rodeph Sholom produced an itemized bill of repairs to the cemetery, together with the original contract. Turning to his opponent, he said, "Here are the bills and here is the contract. The English is plain enough. You are to pay half." The president of the defendant group, a wrinkled old man, made answer: "We don't deny that these items are correct. But we don't feel we ought to pay. These weren't necessary repairs, but improvements. The contract says that we share only in necessary repairs. It doesn't say a thing about improvements. Anyhow, you didn't even tell us when you went to have the work done. There's no room for argument. This whole case ought to be dismissed."

But the secretary of Rodeph Sholom was not so easily put off. "All right, maybe we should have asked you. But the repairs were badly needed, and because you 'o. k.'d' repairs before, we thought you wouldn't raise a fuss about it this time. You can hardly call an outside privy, a well, or a chicken fence an improvement. They're absolutely necessary and therefore are only repairs."

As the arbitrators scanned the list of eight items, totalling $900, the spokesman for Rodeph Sholom agreed that his claim would be confined to the three major items amounting to $500. Regarding one item he said, "The old privy was so broken that we almost had an accident in it. There wasn't anything to do but build a new one." But the president protested that it was still usable and besides, "We don't need the increased facilities in the new building." As to the well, the plaintiff argued that the only water available was inconveniently located on a neighboring lot, which the defendant, on the other hand, maintained could be reached easily. The question of the chicken fence the former settled thus: "I'd hate to look at those graves if we hadn't kept the hens from scratching there by fencing in the watchman's yard." And the president could only mutter in his beard: "Who needs a watchman? Nobody will steal the dead ones. *Gott zei dank,* not many members have been dying lately and we can always get a gravedigger when there's a job to be done."

The Court considered the facts carefully. No one denied that certain work had been done. The point at issue remained whether the repairs were absolutely necessary and therefore to be shared by both parties; or whether they were in the nature of improvements and not to be shared at all. In their decision the arbitrators said:

"Congregation Rodeph Sholom is entitled to half the cost of the chicken fence. Inasmuch as the caretaker was not paid a regular salary, but secured his living from the raising of chickens, as well as from grave-digging, fencing in the chicken enclosure was a proper part of the expense of a watchman provided for in the contract. On the question of the well, the Court also finds for the plaintiff. Jewish law requires that mourners cleanse their hands when leaving the *bet olom.* Water is needed on the premises and it was not unreasonable for the plaintiff to provide a well. As to the privy, it is reasonable to assume that a small, wooden structure, after having been exposed to the elements for fifteen years, required replacement, and that, in so doing, it was not unreasonable to provide added facilities therein. We therefore rule that B'nai Jacob Congregation pay to Congregation Rodeph Sholom the sum of $250, as their share of the repairs."

Then the Court added, "For your own future happiness, we would suggest that you both agree not to make a single expenditure over $25 without consulting the other party. Consult first and there will be no quarrel afterwards."

This decision satisfied both groups: the one, because they had been vindicated in their principle that the repairs were justified and also received a substantial sum of money; the other, because they were called upon to pay only a portion of the original claim.

Thus, through this arbitration, harmony was restored in the two congregations. The loser ultimately carried out the terms of the award. And a dispute between two religious groups was not exposed to public scrutiny and possible ridicule.