Admission of Civil Liability in Jewish Law

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Many of the Beth Din's cases involve disputes over outstanding debts. Some of these cases turn on the force of an admission made by one of the parties over the course of their dealings—either by the defendant that he still owes money or by the plaintiff that the debt has been extinguished. This post discusses the basic principles of admission of civil liability in Jewish law.

Jewish law recognizes a litigant's admission of civil liability as legally binding. Whereas in criminal law halakhah maintains *ein adam meisim atsmo rasha* (a defendant has no power to self-incriminate),[1] the prevailing rule in civil law is *hoda'at ba'al din ke-me'ah 'eidim damei* (a defendant's admission counts as a hundred witnesses).[2]

Not every statement of admission, however, generates liability. A statement of admission uttered in the course of ordinary and casual conversation is generally not binding; it can be retracted by the defendant if he claims that it was made in jest or in error.[3] For an admission to bind, it must have been either (a) stated in front of a *beit din*,[4](b) stated in front of two witnesses who were specifically designated to witness the admission,[5] or (c) stated in a manner that reflects the defendant's intent to generate liability.[6]

Underlying the rules of a litigant's admission (*hoda'at ba'al din*) is the fact that people speak flippantly or imprecisely in the course of ordinary conversation.[7] Barring a clear indication that the statement was made with solemnity, admissions in the context of casual conversation do not bind.[8]

There are two important exceptions to this general principle. The first exception is a

plaintiff's admission of no-liability. *Poskim* distinguish between the standard for a defendant's admission of liability (e.g. that a debt remains outstanding) and the standard for a plaintiff's admission that an outstanding debt obligation has been satisfied. Whereas the defendant's admission requires witnesses specifically designated to secure the admission, the plaintiff's admission of no-liability does not.[9] One reason for this discrepancy is that it takes less to extinguish a claim than it does to generate a new one. (For example, a verbal waiver—*mechilah*—suffices to extinguish a claim, but undertaking a new obligation—*hitchayvut*—requires a *kinyan*).[10]

The second exception is a written admission. The above described power of a defendant to retract his admission by claiming that it was made in jest or in error applies to a verbal admission. Shulchan Arukh rules that a defendant's written admission, when it is in the plaintiff's possession, is generally considered to be binding and cannot be retracted.[11]

To summarize, Jewish law is skeptical of verbal admissions of liability made in the context of casual conversation, and a defendant can retract such an admission by arguing that it was made in jest or in error. A verbal admission of liability is binding, however, if it was made in front of specifically designated witnesses, or if it was made in such a manner as to reflect the defendant's clear intent to generate liability. Also, a plaintiff's verbal admission that a debt has been satisfied would be binding, because halakhah sets a lower threshold for extinguishing a claim than it does for generating one. Finally, a defendant's written admission found in the possession of the plaintiff is generally considered binding.

1. See for example Sanhedrin 9b and 25a, Shulchan Arukh Choshen Mishpat 34:25 and Shulchan Arukh Even Ha-Ezer 17:7.
2. See for example Kiddushin 65b, Bava Metsi'a 3b. Commentators debate the conceptual basis for recognizing a defendant's admission of civil liability as binding. Mahari ben Lev conceptualizes *hoda'at ba'al din* as a voluntary undertaking of a new debt obligation (*hitchayvut*). Ketsot Hachoshen conceives of *hoda'at ba'al din* as form of testimony evidencing an outstanding debt. See Ketsot Hachoshen 34:4.
3. Shulchan Arukh Choshen Mishpat 81:1, Shakh Choshen Mishpat 81:1.
4. Shulchan Arukh Choshen Mishpat 81:6, 81:22.
5. Shulchan Arukh Choshen Mishpat 81:6.
6. See Pitchei Choshen To'en Ve-Nit'an chapter 11 note 122 (holding that whether an admission binds depends on "*im nikarim ha-devarim she-be-'emet hodeh*"). See the discussion below, note 8.
7. See Arukh Hashulchan Choshen Mishpat 81:1 ("*yadu'a darkei benei adam she-lif'amim medabrim shelo be-lev shalem u-fihem ve-libam einam shavim…she-midabrim derekh sechok ve-hitul*"). See also Shulchan Arukh Choshen Mishpat 81:1, Sema 81:1 Ketsot 81:1, and Rashi Sanhedrin 29b s.v. kol milei.

8. *Poskim* debate what constitutes a clear indication that the statement was made solemnly. For example, Shulchan Arukh Choshen Mishpat 81:8 writes that a statement made in front of non-designated witnesses can be binding if it was made "*derekh hoda'ah gemurah velo derekh sichah*" (in the manner of a genuine admission and not in the manner of ordinary conversation). In Choshen Mishpat 81:5, Shulchan Arukh holds that an admission of liability volunteered by the defendant—as opposed to an admission that was procured by the plaintiff confronting the defendant with a claim of money being owed—is binding and cannot be retracted, on the theory that no one "volunteers" a disingenuous admission. But Shakh 81:12 disagrees with Shulchan Arukh's ruling on empirical grounds. Shakh argues that a response to a claim of liability is more likely to be genuine and serious than an unprompted admission. See also Arukh Hashulchan 81:3 and Pitchei Choshen To'en chapter 11 note 132.
9. Shulchan Arukh Choshen Mishpat 81:29.
10. *Poskim* compare this rule to *mechilah einah tserikhah kinyan* (waiving a debt obligation does not require a kinyan, whereas generating a debt does). See Sema Choshen Mishpat 81:60.
11. Shulchan Arukh Choshen Mishpat 81:17. Shakh 81:43 suggests that in certain cases the defendant can still retract the written admission if he argues that it was made in *error*. Today, *dinei torah* often involve admissions through email and text messages. While these presumably would constitute written admissions, the *dayanim* might determine the weight of the admission based on the context of the conversation in which it was made.