

**YESHIVAT HAR ETZION  
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

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**TALMUDIC METHODOLOGY**

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**SHIUR #02: THE DISPUTE CONCERNING *EIDEI CHATIMA* AND  
*EIDEI MESIRA***

One of the most seminal disputes in *Shas* concerns the production and issuance of a *shetar*. Of particular importance is the *makhloket* regarding which witnesses are “primary” and which are secondary (and probably optional/unnecessary). R. Meir claims that the actual signatories of the document are critical (*eidei chatima karti*), whereas R. Eliezer claims that the witnesses who attend the delivery of the *shetar* are more significant (*eidei mesira karti*). This series of several *shiurim* will suggest three very different approaches to understanding this *machloket*.

Intuitively, R. Meir's position seems to make sense. To produce a *shetar*, *eidim* must append their names to the document – *eidei chatima karti*. How can we logically explain R. Eliezer's position?

Rashi (*Gittin* 23b) claims that the *eidei mesira* are necessary according to R. Eliezer to validate the *geirushin* or *kiddushin* process – in other words, as *eidei kiyum*. Monetary interactions may be performed in private, but divorce and marriage must be performed in the presence of two witnesses. As the *gemara* asserts "*ein davar she-be-erva pachot mi-shnayim*" – changes to a woman's marital status require two attending witnesses. Even if there is no disagreement about the *gittin* or *kiddushin*, the PROCEDURE is halakhically invalid in the absence of attending witnesses. Based on this formal requirement, R. Eliezer demanded *eidei mesira* to witness the actual delivery of a *get* or *shetar kiddushin*.

This approach raises two questions:

- 1) Why would R. Eliezer require *eidei mesira* for monetary contracts? A *shetar kiddushin* or *get* requires attending witnesses because of the change in *erva* status; monetary contracts do not require *eidei kiyum*, and should accordingly not demand *eidei mesira*!
- 2) If R. Eliezer's *eidei mesira* demand is based on something so basic as the *eidei kiyum* requirement of *gittin* and *kiddushin*, how could R. Meir NOT demand *eidei mesira*? Doesn't R. Meir concede the *eidei kiyum* condition regarding a *shetar kiddushin* or *get*?

In order to answer the first question, we must locate a logic that would mandate *eidei kiyum* for monetary *shetarot* even though MOST ORDINARY monetary transactions do not demand *eidei kiyum*. Perhaps a precedent for this deviance lies in an interesting position of the Ra'avad regarding the *kinyan* of *chalipin*.

The *gemara* in *Bava Batra* (40a) states that "*chalipin bifnei shnayim*" – a *kinyan chalipin* requires two witnesses. Despite the simple meaning of this *gemara*, most *Rishonim* (most prominently Rabbenu Tam in his comments to this *gemara* and to *Kiddushin* 65b) claim that *chalipin* operates as typical monetary transactions do, and therefore does not require *eidei kiyum*. The Ra'avad (cited by the *Shita Mekubezet* to *Bava Batra*), however, claims that *kinyan chalipin* is unlike other *kinyanim* and DOES require *eidei kiyum* to be viable. The Ra'avad explains the need for *eidei kiyum* due to the arbitrary nature of *kinyan chalipin*. Most acts of *kinyan* physically demonstrate the new ownership (pulling an animal, repairing land). In contrast, delivering a handkerchief to the seller does not demonstrate changed *ba'alut* per se; it is an arbitrary act that consummates the *kinyan*. In R. Chaim's terminology, it is a pure *kinyan da'at* – a *kinyan* primarily driven by common agreement that is conveyed by a physical action. Since the primary force of the *kinyan* is the mutual agreement, it must be bolstered by *eidei kiyum*. (How exactly *eidei kiyum* bolster the *kinyan da'at* is itself an interesting question, but beyond the scope of this *shiur*).

The Ra'avad's position about *chalipin* may serve as precedent for a monetary transaction that nevertheless requires *eidei kiyum*. Perhaps R. Eliezer suggests a similar logic about *kinyan shetar*. There are many models of

understanding the mechanism of a *shetar*, HOW a contract effectively transfers ownership. Perhaps R. Eliezer conceived of a *shetar* in the same manner that the Ra'avad and R. Chayim conceived of a *kinyan chalipin* – the action per se has no significance or symbolism; the transfer is accomplished purely through the agreed *da'at* or *gemirut da'at* of the two parties. The purpose of the *shetar* is merely to capture and demonstrate the common agreement, but the AGREEMENT ITSELF is what facilitates the actual transfer. Accordingly, perhaps this *kinyan* of pure *gemirut da'at* may require *eidei kiyum* in the same fashion that *chalipin* requires *eidei kiyum* according to the Ra'avad.

To summarize: The first manner to explain Rabbi Eliezer's insistence upon *eidei kiyum* would be to associate *eidei mesira* with *eidei kiyum*. All *ishut*-based transformations require two attending witnesses and therefore Rabbi Eliezer required two *eidei mesira*.

Of course this perspective raises the second aforementioned question: how did Rabbi Meir respond and why didn't he similarly require *eidei mesira* as *eidei kiyum*. Does he not concede that *erva* "events" require *eidei kiyum*? This question will be addressed *ly"H* in the ensuing *shiur*.