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TALMUDIC METHODOLOGY

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SHIUR #13: THE ROLE OF *EIDIM* IN CONSTRUCTING A *SHETAR*

Typically, *eidim* deliver their testimony in front of a *beit din*, which then proceeds to cross examine them and verify that testimony. Halakha also allows for testimony to be delivered through a written document, which in many ways circumvents the standard interrogative procedures of *beit din*.

Rav Chaim Brisker (and others) posed an interesting question about the relationship between signatories on a *shetar* (*eidim*) and the actual *shetar*. Is the *shetar* merely the VEHICLE for recording the written affidavit and conveying it with the standard interrogative procedures governing verbal testimony? From this perspective, the *shetar* is a “testimony-carrier;” by affixing their names to the *shetar*, the *eidim* are merely submitting their *eidut* to be loyally presented by the *shetar*.

A very different view suggests that signatures of *eidim* do not (merely) constitute the actual TESTIMONY of a *shetar*. Rather, a document's STRUCTURE requires signatories. Without witnesses' names on the document, the document cannot be halakhically considered a *shetar*. As Rav Chaim coined it, the *eidim* are “*ashvuyei shetara*” (manufacturers of the *shetar*), and not simply witnesses who enter their testimony to the *shetar* as a carrier.

Keep in mind that even if the *eidim* are necessary to fashion a *shetar*, they may ALSO constitute the actual testimony of a *shetar*.

The role of the *eidim* of the *shetar* may impact a related question: Is the *shetar* merely the voice of the recorded *eidim* or does it entail a separate halakhic. Unquestionably, if the *shetar* possesses an independent voice, the *eidim* are not entering their testimony, but merely affixing their signatures to

constitute the necessary structure of a *shetar*. Alternatively, if the *shetar* is merely the recorded voice of the *eidim*, they are entering their *eidut* to be conveyed by the *shetar* as carrier, and they are not merely serving as building blocks for a *shetar* but as the voice of testimony within the *shetar*. This *shiur* will discuss the relationship between the *eidim* and a *shetar* and not probe the related question of whose voice is emitted from a *shetar*.

The role of *eidim* vis-à-vis a *shetar* may certainly have influenced the *machloket* between R. Meir and R. Eliezer regarding whether *eidei chatima* or *eidei mesira* are primary. If *eidim* form the substructure of a *shetar*, we would certainly require them to PHYSICALLY affix their names to the actual *shetar*. If, however, a *shetar* is formed without *eidim* and the *eidim* merely supply their testimony for the *shetar* to convey, we would not demand physical appending. In fact, their presence at the POINT OF ISSUING the *shetar* may be more significant.

Perhaps the clearest indication that *eidim* are structural elements of a *shetar* and not merely depositing their testimony to the *shetar* is the fact that there are scenarios in which more than TWO signatures upon a *shetar* are required. From a legal standpoint, the testimony of 3 *eidim* is no more powerful than the testimony of 2. As the *gemara* constantly reminds, us “*trei ke-mei'ah*” – two *eidim* are equivalent to 100. If *eidim* who sign a *shetar* are merely submitting their testimony, it would be impossible to require more than 2 signatures; once two *eidim* sign, the maximal testimony has been recorded. Yet the *mishna* in *Bava Batra* (160a) describes a “*get mekushar*,” which requires a minimum of 3 *eidim*. The *gemara* cites several opinions that view this requirement as fundamental, based on various *pesukim* describing the format of a *shetar*. How could there be a fundamental requirement to supply more than two *eidim* when these extra signatures have no halakhic import? Evidently, by affixing their names to a document, the *eidim* are actually FASHIONING the document, and there may be a type of *shetar* that must be built upon more than two *eidim*.

Ultimately, the *gemara* asserts that NO *shetar* fundamentally requires more than two *eidim* and the multiple *eidim* requirement is only a rabbinic decree for procedural concerns. Yet the initial reasoning, which assumed that multiple

eidim were fundamentally necessary, may indicate that *eidim* do not merely deposit testimony, but help craft a legal *shetar*.

A similar notion emerges from an interesting *machloket* between Reish Lakish and R. Yochanan (*Gittin* 18b) concerning someone who instructed ten people to author and sign his document, even though two signatures would have sufficed. R. Yochanan claims that in this instance, since the *shetar* authorizer requested "*kulchem*" ("you should all sign"), they all must sign to fulfill his condition (*tenai*). As a pure *shetar*, only two signatures are necessary, but because of the extrinsic conditions stipulated by the *shetar* authorizer, all must sign (just as other stipulated but extrinsic conditions must be met). However, as the extra *eidim* are not signing as formal witnesses but merely to fulfill the external wishes of the *shetar* authorizer, they do not have to adhere to all the *halakhot* which govern the signing of a *shetar*.

Reish Lakish, in contrast, claims that ALL 10 witnesses are essential to the *shetar*, without all the signatures, the *shetar* is deficient of the requisite number of halakhic witnesses. Again, we encounter a situation of a *shetar* that fundamentally requires *eidim* whose signatures add NOTHING to the actual testimony. Undoubtedly, these *eidim* aren't depositing testimony but helping to craft the *shetar*.

Rav Chaim derived a contrary proof from an interesting Tosafot in the beginning of *Gittin*. The *gemara* (2b) debates how many witnesses are required to verify a *shetar*. Is the notarization of a *shetar* similar to standard *erva*-based situations, which require testimony of two witnesses? Or since its only preliminary, can we treat it like regular *issurim*, which only require one *eid*? Tosafot (2b) (s.v. *eid echad*) assert that the fact that a *get* must be signed by two witnesses should indicate that all *get* related matters require two *eidim* as classic *erva* cases. Tosafot attempt to prove the level of verbal testimony that a *get* requires from the sum of *eidim* within a *get*. If the *eidim* in a *shetar* or *get* were necessary not to deposit their proof, but rather to craft a *shetar*, we could not deduce testimony requirements from the requisite number of *eidim* necessary to fashion a *shetar*. Evidently, *eidim* do not fashion the *shetar*, but rather use a *shetar* as a vehicle to convey their testimony. Thus, if written testimony of a *get*

requires two *eidim*, verbal testimony about a *get* (verifying the *get*) should similarly require two *eidim*.

An extremely radical statement by the gemara may indeed prove that *eidim* are not testifying through the *shetar*, but merely affixing their names to the *get* as part of its manufacture. The *gemara* in *Gittin* (19b) discusses illiterate *eidim* who cannot read the content of the *get*. The gemara allows others to read the *get* to them so that they can sign. Presumably, this same allowance would apply to standard monetary *shetarot*. The *Rishonim* question this scenario. Information about which verbal *eidim* testify must be gathered firsthand; *eidim* must witness an event themselves in order to testify about it. If they receive second-hand information through the report of another person, they cannot testify, as such information, “*eid mi-pi eid*,” is not valid evidence. How can signatories of a *shetar* discover the content of a *shetar* second hand without violating *eid mipi eid*!!

Some *Rishonim* (see *Tosafot Ha-Rosh*) claim that the *eidim* in this case were not truly illiterate, but rather needed minor assistance to decode or understand a text that they were personally reading. Others (see *Ramban*) suggest that certain minor information about the testimony CAN be acquired through second-hand information. *Tosafot* (9b), however, seems to suggest a very different and radical idea – that the signatories of a *shetar* can sign even without truly knowing the content of *shetar*. They must identify the *shetar* they are signing on – otherwise they may be accomplices in fraud – but they need not know the CONTENT of the *shetar* in order to testify through it. They are merely affixing their names to the *shetar* so that the *shetar* ITSELF can testify. (Even if *Tosafot* do not intend this approach, the *Even Ha-Azel*, *Ishut* 3:15, states this approach clearly.)

If *eidim* can sign a *shetar* without knowing the content of a *shetar*, they are evidently not depositing their testimony by signing a *shetar*. They are merely affixing their names to the *shetar* to provide the substructure of the *shetar*. As long as they know WHAT they are signing (even through the instruction of another), they may participate in the construction of this *shetar*.