

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

**TALMUDIC METHODOLOGY**  
By: Rav Moshe Taragin

## **SHIUR #04: THE PROCESS OF NOTARIZING A *SHETAR***

In the previous [\*shiur\*](#), we discussed the rabbinic requirement of *kiyum shetarot*, notarization of contracts before collection. Fundamentally, the Torah regards every *shetar* as valid, but the Rabbanan demanded validation prior to collection. Did the *Rabbanan* completely nullify the *shetar*, requiring a reconstitution of the document under the supervision of *beit din*? Or did they ACKNOWLEDGE the enduring validity of a *shetar* and merely require a final check prior to legal action? This question affects the status of a *shetar* that has not (yet) been validated.

This *shiur* will explore a related question: How rigorous must the notarization process be? Presumably, if *kiyum shetarot* requires a reworking of the *shetar*, we would require HARD evidence to validate the *shetar*. By contrast, if the Rabbanan merely required a final “check-through,” the standards for signature verification may be more relaxed.

The *gemara* presents three leniencies in notarizing a *shetar* that are unacceptable in classic litigation. Firstly, we accept testimony based on information gathered BEFORE the *eidim* were of legal age. If *eidim* recognize the signatures of the contested *shetar* based on having witnessed these signatures when they were minors, we may accept their testimony. Typically, testimony must be based on evidence witnessed AFTER reaching the halakhically legal age of 13. The *gemara* attributes this leniency to the fact that *kiyum shetarot* is merely a Rabbinic demand (*Ketuvot* 28a).

Furthermore, the *gemara* allows witnesses who have testified about the *shetar* signatories to subsequently serve as judges on the *beit din* which validates the *shetar*. Typically, Halakha demands a separation between

witnesses and judges: “*Ein eid na’aseh dayan.*” Once again, the *gemara* (*Ketuvot* 21b) attributes this leniency to the fact that *kiyum shetarot* is merely a Rabbinic requirement!

Most astonishingly, the *gemara* in *Gittin* (3a) allows ONE witness to verify the signatures of a *shetar*, even though normally a minimum of two *eidim* are required for halakhic testimony. The *gemara* presents the well-documented scenario of a *shaliach* who transports a *get* from overseas land and delivers it to a woman on behalf of her husband. Fearing the difficulty of notarizing this *shetar*, the *Chakhamim* demanded that the *shaliach* verify the signatures by claiming “*befanai nechtam,*” asserting that he personally witnessed the signatures. Although he is only a LONE *shaliach*, his testimony can validate a *shetar*, seemingly contradicting the conventional requirement of two witnesses. Once again, the *gemara* attributes this anomaly to the fact that *kiyum shetarot* is merely a Rabbinic requirement.

To be sure, in this last case, there may be an additional impetus for leniency – the concern that an *aguna* situation will ensue. If the standards are not relaxed to allow a single-witness verification, the *get* may never take effect and the woman may be trapped as an *aguna*. In fact, many suggest that this extreme allowance is driven by the *aguna* worry and not merely because *kiyum shetarot* is Rabbinic in nature.

Beyond these three leniencies, how relaxed are the standards for *kiyum shetarot*? One interesting indication is the possibility of verification through comparative analysis of signatures. As noted in a previous *shiur*, one method of notarizing a *shetar* is by comparing the signatures to signatures of these witnesses that appear on comparable documents. If the signatures appear identical, forgery is less likely and the *shetar* is verified. The *gemara* in *Chullin* (96a) dismisses this form of comparative evidence for use in conventional litigation. Is the willingness to employ it for *shetar* verification indicative of relaxed standards for *kiyum shetarot* since it is merely a final check through? Or is signature comparison a more superior and reliable form of forensics, such that its employment for *shetar* verification does not reflect a relaxation of standards?

An interesting position of R. Sherira Gaon (cited by the Shach Choshen Misphat 69:12) implies that signature comparison is a relaxation of standards based solely upon the view that *kiyum shetarot* is a mere check through. Although a previously signed *shetar* is the classic document issued for loans, a borrower can also issue a personally written confession, which is actionable even without signatories. This document, known as a “*ketav yado*,” must also be verified before enabling collection. R. Sherira Gaon claimed that this *ketav yado* CANNOT be validated by comparing the penmanship of the contested “document” to comparable texts written by the borrower. Since verification of *ketav yado* is a *de’oraita* requirement, it cannot be achieved through comparative analysis; this method was only allowed for a *shetar* whose verification is only a Rabbinically required stage. This position implies that comparative analysis is not valid in a classic context and was only advanced for *kiyum shetarot* since this process is merely a final check through.

A different method of gauging the “rigor” of *kiyum shetarot* is to probe the degree of legal initiative or creativity that can be adopted to discredit a *shetar*. Though typical cases are litigated by processed testimony, Halakha equips a *beit din* with numerous legal tools to determine the outcome of a litigation. For example, the rule of *palginan dibura* allows a *beit din* to selectively edit testimony to eliminate potentially ruinous elements and “save” the overall testimony. As the *gemara* in *Sanhedrin* (9b) determines, self-incriminating elements of testimony can be edited out so that the remainder of the testimony can be processed. If someone admits to committing adultery with a married woman, we can eliminate the incriminating element of the testimony (that HE was the adulterer) and process the remainder – that the woman committed adultery. Without this editing, the entire testimony would be inadmissible based upon the rule against self-incrimination.

Can this partial editing of testimony be employed to scuttle a *shetar*? The *mishna* (Ketuvot 18b) cites a situation in which the original *eidim* concede to signing the *shetar* but claim they were bribed and the *shetar* should be invalidated. Since their claim of bribery is self-incriminating, the entire testimony is discarded and the *shetar* can be subsequently validated. Tosafot (18b) question why the partial editing “*palginan dibura*” mechanism can’t be employed to selectively edit this testimony. The mechanism should allow their testimony

about coercion to be admitted while the information as to HOW they were coerced can be excised. In the absence of self-incriminating evidence, their partial statement that they signed under coercion can be employed to disqualify the *shetar*.

One of the responses offered by Tosafot is that the mechanism of *palginan* cannot be employed to disqualify a *shetar*. If a contract is discredited by direct testimony, the *shetar* is disqualified. However, legally problematic testimony cannot be "edited" to allow the invalidation of *shetar*. Effectively, Tosafot claims that *Beit Din* will not engineer a disqualification of a *shetar*; they will avoid employing creative tools, even the same tools which can be employed to edit testimony in capital offenses yielding a death sentence. Perhaps Tosafot viewed *kiyum shetarot* as a final "checkup" of an otherwise valid *shetar*. If direct and frontal testimony is received, the *shetar* is discarded, but in the absence of direct testimony, *Beit Din* will not endeavor to cancel the *shetar*.

Similar sentiments emerge from a Tosafot (19a) about employing a "*migu*" to discredit a *shetar*. *Migu* is one of the most broadly applied halakhic tools and, in theory, should be available to invalidate a *shetar*. Yet Tosafot suggests that at least according to one position amongst the *Amoraim*, *migu* CANNOT be employed to cancel a *shetar* during the *kiyum* process. This is even more dramatic than the non-application of *palginan*. Presumably, the entire process of *kiyum shetarot* demands a conservative approach whereby the *shetar* is only disqualified if glaring and independently compelling testimony is offered. *Beit Din* will not re-engineer testimony or employ a *migu* to bolster the testimony of the discreditors of the *shetar*. This would strongly indicate that the Rabbinically demanded *kiyum* process is merely a final check through and not a rigorous process of reconstituting the *shetar*.