

**YESHIVAT HAR ETZION**  
**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**  
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**TALMUDIC METHODOLOGY**  
By: Rav Moshe Taragin

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This week's *shiurim* are dedicated by Abe Mezrich  
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**SHIUR #04: DIFFERENCE IN *KIYUM* BETWEEN *GITTIN* AND  
MONETARY CONTRACTS  
PART 3 OF A 5 PART SERIES**

In the previous two *shiurim*, we analyzed the *machloket* between R. Eliezer and R. Meir as a debate about the nature of *eidei kiyum*. R. Eliezer requires *eidei mesira* so that actual witnesses attend the delivery of the *get* and provide the necessary *kiyum*. R. Meir, in contrast, does not require actual witnesses for the *kiyum*, accepting a signed document (*eidei chatima*) in place of *kiyum*; either a signed document indicates delivery (*anan sahad*) or it actually testifies to the delivery (R. Chaim's claim). According to the Rif's view, even R. Eilezer allowed an *eidei chatima*-only option, presumably concurring that *kiyum* can be supplied even without actual witnesses attending.

This logic, explaining R. Eliezer's requirement of *eidei mesira* as functioning as *eidei kiyum*, may have led to an interesting compromise. Most *Amoraim* (based on Rav's position stated in *Gittin* 66b) accepted R. Eliezer's requirement of *eidei mesira* for a *get* but allowed monetary contracts to be processed without *eidei mesira*. The simplest way to understand this "compromise" is to view the ENTIRE REQUIREMENT of *eidei mesira* as based upon the need for *kiyum*. If this is true, Rav claimed that *gittin*, as an example of a "*davar she-be-erva*," require *eidei kiyum* or *eidei mesira*, while monetary contracts, which do not typically require *eidei kiyum*, do not require *eidei mesira*. Rav effectively rejected Rabbi Meir's allowance of a signed document in place of *eidei kiyum*. However, *kiyum* is only necessary for a *get* and not for monetary activities. Hence *eidei mesira* are only necessary for a *get*!

In fact, Rav's compromise is so self-evident that it challenges us to better understand R. Eliezer's position. Rav's distinction is so compelling that it raises a pressing question: If the entire *eidei mesira* requirement stems from the need for *kiyum*, why did R. Eliezer require *eidei mesira* for monetary *shetarot*, which don't typically require *kiyum*? Two different approaches may solve this riddle and explain R. Eliezer's demand for *kiyum* or *eidei mesira* EVEN for monetary contracts.

First, he may have minimized the gap between monetary transactions and *erva* transformations. We typically assume that these are fundamentally different; the former may be performed in private and witnesses are only necessary if and when contentious litigation emerges. As the *gemara* in *Kiddushin* (65b) asserts dismissively, in monetary transactions, "*lo ivrei sahadi ela le-shakrei*," witnesses are only necessary for liars (and not for the actual execution of the transaction). *Erva* transformations, in contrast, are more FORMAL and more CEREMONIOUS and require the presence of *eidei kiyum* to lend them credibility and, ultimately, effectiveness. If this is true, R. Eliezer's requirement of *eidei mesira* for *kiyum* purposes in *monetary shetarot* is indeed difficult to understand.

However, the *gemara* in *Kiddushin* (at least according to the simple reading and the one repeatedly endorsed by the *Ketzot Ha-choshen*) presents a very different picture about the difference between *erva* and monetary transactions. Firstly, the entire NEED for two *eidei kiyum* in cases of *kiddushin* and *gittin* is derived from a *gezeira shava* based upon the word "*davar*" appearing in the discussion of monetary transactions AS WELL AS within the discussion of *erva*. Second, the *gemara* itself questions why monetary transactions do not require *eidei kiyum* and provides what appears to be a technical answer – every monetary transaction contains an INHERENT form of *kiyum* known as *hoda'at ba'al din*. In monetary affairs, a self-incriminating confession is treated as actual testimony. Logically then, any monetary transaction affected without argument includes the confession of the two participants. Since this confession would be acceptable in court, no ACTUAL *eidim* are necessary. Confessions are only halakhically acceptable, however, if they self-incriminate WITHOUT negatively affecting others (*chav le-achrin*). In *erva* situations, these confessions are unacceptable, since they negatively affect others; the outcome of *kiddushin* prevents others from marrying this woman and the outcome of *geirushin* prevents

a *kohen* form marrying this newly developed *gerusha*. Thus, the inherent *hoda'at ba'al din* is unacceptable and actual *eidim* are required for *eidei kiyum* purposes. In monetary situations the inherent assumed confession plays the role of *eidei kiyum*.

This *gemara* effectively portrays monetary and *erva* events in very similar terms. They each REQUIRE *kiyum*, but monetary transactions enjoy built-in *kiyum* in the form of *hoda'at ba'al din*. Since *erva* does not, we must demand actual *eidim*. If this reading is accurate, it is entirely conceivable to require *eidei kiyum* for monetary transactions in which the built-in confession is not admissible.

Perhaps this is how R. Eliezer views the case of *shetar*. Unlike typical monetary transactions, the issuance of a *shetar* is a PUBLIC event with very PUBLIC ramifications. For example, the issue of a *shetar* for a loan may ultimately lead to appropriation of lands from those who purchased from the debtor. The very presence of a *shetar* TRANSFORMS the monetary event into a PUBLIC or SHARED event. Perhaps R. Eliezer argues that even though a *shetar* does not always NEGATIVELY IMPACT third parties, it DOES create a public nature to the transaction, rendering the *hoda'at ba'al din* of the two litigants unacceptable. At this stage, the confession is not admissible, and ACTUAL *eidei kiyum* – in the form of *eidei mesira* – are necessary. Though this is an unconventional reading of the *eidei kiyum* requirement, it is certainly the more literal reading of *Kiddushin*, and one which R. Eliezer may have adopted, in requiring *eidei mesira* as *eidei kiyum* for a *shetar*.

Alternatively, R. Eliezer's opinion may have been premised upon a different notion. Perhaps he required *eidei kiyum* for monetary contracts as an EXCEPTIONAL situation. In fact, there may be precedent for exceptions in which a monetary case requires *eidei kiyum*, as in a case of *erva*. The *gemara* in *Bava Batra* (40a) asserts that *kinyan chalipin* must be performed in the presence of two *eidim*. Rabbenu Tam (both in his comments to that *gemara* and to the *gemara* in *Kiddushin*) flatly rejects this notion, since monetary transactions cannot possibly require *kiyum*. However, the Ra'avad (in his comments to *Bava Batra* quoted by the *Shitta Mekubetzet*) takes the *gemara* at face value. *Chalipin* is unique in that it effects both land and *metaltilin* transactions; typically, acts of *kinyan* that affect one cannot affect the other, since the terms of ownership are so different. Pulling

an animal displays new ownership but is obviously irrelevant to land; building a fence displays ownership of land but has no impact upon an animal. *Chalipin* is a *kinyan* without any meaningful act. Transferring a handkerchief (and then retrieving it) hardly demonstrates ownership!

R. Chaim famously elaborated upon *chalipin* (based largely upon this *gemara* and the Ra'avad's position), claiming that it merely signifies COMMON AGREEMENT (*gemirat da'at*) and is an arbitrary method of signifying that agreement. Ultimately the AGREEMENT itself transfers the item. Ironically, it is the lack of demonstrative nature of *chalipin* that grants it such versatility. It is precisely for this reason that *chalipin* is so versatile. Land-actions are irrelevant to portable items. A *kinyan* based on common agreement can work on any item.

However, since *chalipin* is a *kinyan da'at* (an act merely demonstrating agreement), presumably a HIGHER level of *da'at* is necessary. Regular *kinyanim*, which do demonstrate new ownership, require a base level of *da'at*, since the *kinyan* is primarily affected through the demonstrative action, but the pure *kinyan da'at* of *chalipin* requires a more halakhically significant level of *da'at*.

One consequence of this required higher level might be the need for *eidei kiyum*. Perhaps the function of *eidei kiyum* is to ensure the seriousness of the parties. Monetary transactions generally do not require this attendance, while *erva* transformations do. *Chalipin* is unique in requiring *eidei kiyum* because although it is a monetary process, it requires levels of *da'at* equivalent to *erva* events.

Using *chalipin* as a precedent may help explain R. Eliezer's demand for *eidei mesira* EVEN in the context of monetary *shetarot*. As we noted above, logically, Rav makes a compelling point: if the entire *eidei mesira* requirement is meant to provide *eidei kiyum*, why should monetary *shetarot* require *eidei mesira*, which are only required for *erva* contracts? Perhaps R. Eliezer likened the process of a *shetar* to *chalipin*. Why should the delivery of a *shetar* successfully transfer a parcel of land? Perhaps it merely demonstrates common agreement, which affects the land transfer. If *shetar* is viewed this way, that it works by signifying common agreement, it may indeed require the higher level of *da'at* required by some for *chalipin* and it may thus require attending *eidei kiyum* to

ensure that *da'at*. Therefore, Rabbi Eliezer required *eidei kiyum* or *eidei mesira* even for monetary *shetarot*.