TALMUDIC METHODOLOGY
By: Rav Moshe Taragin

SHIUR #03: THE RABBINIC REQUIREMENT TO NOTARIZE A DOCUMENT

One of the most fascinating halakhic instruments is a *shetar* (contract). Some *shetarot* launch halakhic transformations. For example, a *kiddushin* contract (*shetar kiddushin*) can transform the status of a woman in a similar fashion to *kiddushin* money. On the other hand, many *shetarot* are merely evidentiary and are not employed to cause any halakhic result. These types of contracts are known as *shetarei re'ayah* and most often are relevant to loans. The borrower (*loveh*) deposits a *shetar* with the lender (*malveh*) thereby empowering him to collect the loan based on the testimony contained within the *shetar re'ayah*.

A well-known statement of Reish Lakish (*Gittin* 3a, *Ketuvot* 18b) asserts that every *shetar* is deemed valid testimony even without classic processing. In an ideal world, forgery is infrequent and every *shetar* is assumed to be authentic. Unlike verbal testimony, which must be interrogated by the *beit din*, testimony written in a contract is assumed to be veritable.

Although Reish Lakish describes an ideal condition, the *Chakhamim* acknowledged concern over forged *shetarot* and therefore required notarization of a *shetar* prior to its employment to collect funds. This process is known as *kiyum shetarot* and entails various options of accreditation. Thus, although at a Biblical level a *shetar* is considered genuine testimony, the *Chakhamim* required secondary verification by the *beit din*.

What is unclear is the mechanics of this notarization requirement. Is this merely a final checkup for the *shetar* before the loan is collected, an attempt to verify the signatures one final time to ensure against forgery? Or did the

Rabbanan completely **discredit** a non-verified *shetar*, essentially requiring that the *shetar* be rewritten under the supervision of *beit din*? According to this second view, even though *mi-de'orayta* a *shetar* is assumed to be valid, the *Rabbanan* declared it invalid and essentially **meaningless** until *beit din* reconsiders its validity. These two different perspectives greatly impact both the mechanics of *kiyum shetarot* as well as the status of a *shetar* prior to notarization.

The *mishna* in *Ketuvot* (18b) presents a situation in which the original signatories of the *shetar* appear in *beit din* at the time of notarization. They claim that they signed the *shetar*, but assert that they were coerced to sign about a loan that never occurred. Under certain conditions, this testimony is accepted, and the *shetar* is in fact invalidated based on their testimony. Our willingness to accept this testimony contradicts the well-known principle of "*keivan she-higgid*," which prevents witnesses from recanting their testimony ([see here](#) for an elaboration of this halakha). The original signatures of the witnesses imply that the loan occurred and that their signatures were appropriate. The constraints of *keivan she-higgid* should prevent a secondary testimony that asserts a coerced signature!

Perhaps our willingness to accept this secondary testimony despite their original contrary testimony, indicates that a pre-*kiyum shetar* has been completely nullified by the *Rabbanan*. The rabbinic requirement for *kiyum* effectively reduces a *shetar* to a meaningless piece of paper. The original signatures are irrelevant and the original *eidim* have not yet offered any halakhically meaningful testimony. Upon entering *beit din* at the moment of *kiyum*, they are essentially offering their "first" testimony about this loan, and their comments are therefore accepted.

An additional method of gauging the status of a pre-*kiyum shetar* is to probe its utility in validating other *shetarot*. One of the methods of notarization is comparing the signatures of the *shetar* in question to signatures of other documents. If the signatures of the contested *shetar* are identical to the signatures of the very same witnesses which appear on other documents, we can presume that no forgery has occurred. Can we employ a pre-*kiyum shetar* as a "baseline" to verify a different *shetar* affixed with the same signatures? Most

Rishonim deny this ability, but the Ramban's comments on *Ketuvot* (19a) suggest that even non-verified *shetarot* can be used as a baseline to notarize other *shetarot* with similar signatures. This would indicate that a pre-*kiyum shetar* has **some** residual validity, as it can be offered as evidence to verify a contested *shetar* with similar signatures.

A further indicator of the status of a pre-*kiyum shetar* may be the manner of treating a non-notarized *shetar*. If the attempts to validate the *shetar* have failed or testimony has asserted that the *shetar* was forged, is the failed *shetar* immediately disposed of? Or is the *shetar* "suspended" and collection barred, while the *shetar* is retained for possible subsequent notarization? Perhaps the *shetar* cannot enable actual collection but will, under certain circumstances, allow the claimant to seize funds. Rashi (*Ketuvot* 19a) claims that a *shetar* that has failed notarization is discarded, but the Ritva suggests that it is merely suspended. This debate may reflect the status of a pre-*kiyum shetar*. If the *Rabbanan* completely nullified a non-notarized *shetar*, a contract which lacks or has failed *kiyum* has no meaning and can be thrown away. By contrast, the Ritva may have claimed that the *Rabbanan* did not absolutely nullify a non-notarized *shetar*. After all, every *shetar* has validity on a *de'orayta* level. The *Rabbanan* merely required a final check to allow collection. If that check fails, collection is stalled, but the *shetar* still retains its original validity; it cannot simply be discarded.

Finally, an intriguing position of the Rambam may affirm that he maintained that a non-notarized *shetar* is meaningless and that the *kiyum* process entails reconstituting the entire document. In the 8th *perek* of *Hilkhot Eidut*, the Rambam claims that if the original witnesses participate in the notarization process, they must remember the original testimony. If they have no recollection of the original event – even if they can verify the authenticity of their signatures – the *shetar* is disqualified. If a pre-*kiyum shetar* were effectively a viable *shetar* that merely requires a final check, it would illogical to demand that the witnesses recall their original testimony. Evidently, then, the Rambam believed that *kiyum* essentially reformulates the *shetar*. If the original *eidim* are present, that reformulation requires a new issuing of *eidut*, mandating that the *eidim* actually remember their testimony! Of course, it is still challenging to

understand why the *shetar* can be notarized if the original *eidim* are not available even without reconstituting the original *eidut*.