

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

**SHIUR #06: MUST A SHETAR KINYAN BE A SHETAR RA'AYA**  
**(PART 5 OF 5)**

The previous *shiurim* in this series explored the *machloket* between R. Meir and R. Elazar regarding the need for *eidei mesira* or *eidei chatima* on *shetarot*. It is possible that they dispute the nature of *ediei kiyum* and whether ACTUAL witnesses are necessary to supply this element. Alternatively, their *machloket* may surround the inherent definition of a *shetar*. R. Elazar views a *shetar* as an autonomous form of testimony, unrelated to classic verbal testimony, which is activated by delivering the document to the person who will utilize it. Since the *shetar* is activated at point of DELIVERY, *eidei mesira* who actually witness that delivery are superior. Conversely, R. Meir defines a *shetar* as nothing more than recorded testimony and quite similar to actual verbal testimony. Therefore, *eidei chatima* who directly append their names and create this recorded testimony are more valuable.

It is possible to view this *machloket* in a third way as well, as pertaining to the manner in which a *shetar* OPERATES. The question of which *eidim* to demand is really a question of how a *shetar* creates halakhic change. In terms of GENERATING a *shetar*, either set of *eidim* would suffice; the specific demand for a PARTICULAR type of *eid* is based on which type assists the *shetar* in achieving its halakhic goal.

How does *shetar* change ownership over land or change the status of a woman? Intuitively, we may reason that this method is similar to the *kinyan* of *chalipin*. In the case of a *shetar*, there is no demonstrative action reflecting the status change (as there is in the case of *meshicha*, which changes ownership over an animal by physically transporting it to the *reshut* of the purchaser). In contrast, *chalipin* may be viewed as an abstract *kinyan* that LACKS demonstrative action (as we discussed in an earlier [shiur](#)). *Chalipin* may simply

symbolize the common agreement of the two parties, and agreement which ITSELF is sufficient to transfer ownership. A *shetar* may work in a similar fashion; just like a handshake, it symbolically demonstrates (and even verbally articulate) common agreement to perform the transaction. THAT AGREEMENT ALONE (*gemirat da'at*) propels the transaction! According to this reasoning, a *shetar* is a highly symbolic or abstract form of *kinyan*.

There is an alternative understanding to the mechanics of a *shetar*. Ownership of land is so abstract that it cannot be transferred through demonstrative or symbolic activities; ownership is rather DEFINED as the ability to legally protect your claim. By delivering a contract, the previous owner of land is empowering the future owner with the ability to prove his ownership in a court of law. In other words, ownership is changed by equipping the new owner with a *shetar ra'aya*, as ABILITY to PROVE ownership constitutes ACTUAL ownership.

If this conceptualization is accurate, it may explain R. Meir's insistence upon *eidei chatima*. As far as *shetar* construction is concerned, *eidei mesira* would be sufficient or even superior to *eidei chatima*, but R. Meir requires *eidei chatima* so that the contract can serve as a potential *shetar ra'aya* – as evidence in future litigation. Without signatories actually affixing their name to the document, it cannot serve as a stand-alone *ra'aya* in future litigation. Only by equipping the contract with this potential to serve a proof through witnesses' signatures can it trigger a halakhic change and act as a *shetar kinyan*.

This approach – that R. Meir requires *eidei chatima* so that the *shetar* can serve as a *shetar ra'aya*, and thereby suitable for a *shetar kinyan* – may be implicit in a well-known position of Tosafot. On several occasions, Tosafot add a requirement regarding *shetarot* that applies specifically according to R. Meir – the contract must be written in a manner that is *mukhach mitokho*, in which the declaration of the *shetar* is internally comprehensive. For example, Tosafot (*Gittin* 24b) requires that the parties' names appear in the *shetar* in a manner that allows for immediate and internal identification. If one of the parties in the *shetar* shares a name with another local resident, his name must be “uniquely” labeled in the *shetar*, even if that entails citing multiple generations. Thus, if two men named Yosef ben Shimon reside in the same city, the *shetar* must cite the grandfather of the party at hand so as to distinguish between these two

residents. The need for unique labeling is quite logical, but why does Tosafot demand it specifically according to R. Meir's approach? R. Meir's statement concerned the TYPE of *eidim* necessary for a *shetar*, not the LABELING of a *shetar*.

Evidently, Tosafot interpreted R. Meir's *eidei chatima* demand in the aforementioned manner. A *shetar kinyan* operates by equipping the recipient with *ra'aya* potential, and only *eidei chatima* can formulate a *shetar ra'aya*. Similarly, a *shetar* can only function as a *ra'aya* if the level of specificity is precise and unmistakable. For the SAME REASON that R. Meir would demand *eidei chatima*, he would mandate *mukhach mitokho*. R. Elazar, on the other hand, who does not require *eidei chatima*, would not (at least according to Tosafot) view a *shetar kinyan* as an "equipped *shetar ra'aya*," but rather as some more abstract manner of changing title. Since a *shetar kinyan* does not operate due to its potential *ra'aya*, the contract does not require *mukhach mitokho*. Even if the *shetar* itself cannot provide self-sufficient *ra'aya*, and in situations of future litigation, the *beit din* would have to search for other sources of evidence, the mechanics as a *shetar kinyan*, remain unaffected.

Interestingly, this reading of the *machloket* between R. Meir and R. Elazar may have been adopted by the Ra'avad, as evidenced by his explanation of Rav's compromise position. According to the Ra'avad's reading of the *sugya* in *Gittin* (82), Although R. Meir ALWAYS requires *eidei chatima* and R. Elazar ALWAYS requires *eidei mesira*, Rav requires *eidei mesira* for a *shetar kinyan* and *eidei chatima* for a *shetar ra'aya*.

Perhaps Rav reasons as follows: R. Elazar never requires *ra'aya* potential, which is generated by *eidei chatima*. Hence, he always allows a *shetar* to be processed through *eidei mesira*.<sup>1</sup> In contrast, R. Meir defines the mechanics of a *shetar* based upon the potential *ra'aya*. Hence, he required that BOTH a *shetar kinyan* and a *shetar ra'aya* be finalized with *eidei chatima*. Rav fundamentally agrees with R. Elazar that a *shetar kinyan* DOES NOT operate by planting a

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<sup>1</sup> This raises an interesting question – does R. Elazar recognize the concept of a *shetar ra'aya* at all? If, as the Ra'avad argues, he NEVER requires *eidei chatima*, perhaps he does not concede the existence of a *shetar ra'aya*! *Beit din* would ALWAYS be forced to cobble together evidence, independent of the contract.

potential *ra'aya* in the hands of the recipient, and a *shetar kinyan* therefore does not require *eidei chatima*. However, a *shetar ra'aya*, whose primary function is to offer future testimony, certainly must carry *eidei chatima*.

It should be noted that although this approach – viewing a *shetar kinyan* as equipping the recipient with potential *ra'aya* – is compelling regarding monetary contracts, it may be less appealing regarding *gittin* and *kiddushin*. Can it be true that a woman's marital status is altered by delivering proof of that change?