

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

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**CONTRACTS PREPARED IN GENTILE COURTS**

Sources and questions:

Gittin (19b) Tanya kavasei... ka mashma lan  
Gittin (10b) mishna, gemara... karti  
Rashba (10b) s.v. v'i ba'it eimah  
Rambam Malveh ve-Loveh(27:1)  
Bava Batra 54 vehadar... b'igrata, Rashbam s.v. ve-ha'amar  
Bava Kama (113b) Amar Shmuel... aliehu  
Rashba Nedarim (28a) s.v. b'moches... acher  
Kiryat Sefer - [click here to see source](#)  
Rav Chayim al Ha-Rambam (Geirushin (6:9) "dugmat zeh... shetarah"  
Sefer HaTerumot - [click here to see source](#)

Mordechai Gittin siman 325

1. Do the two responses in the gemara argue the applicability of dina de-malkhuta dina to shetarot?
2. How do the different sources of dina de-malkhuta reflect different conceptual patterns for this halakha?
3. What assumptions does Rabenu take in equating Gentile documents to situmta?
4. Is a Gentile document afforded full legal status through the institution of dina de-malkhuta dina?

The Mishna in Gittin (10b) validates documents which were written, processed and presumably signed in Gentile courts. The Mishna employs the term "Shetarot ha-olot b'erka'aot shel Acum" to describe these documents. Our shiur will attempt to provide the backdrop for this provocative law.

The Mishna cites two positions regarding the scope of this allowance. According to Rabbi Shimon ALL documents - including gittin which were issued through civil courts can be considered halakhically viable. The thought of a 'get' with Gentile signatures troubles the gemara when it asks "ve-ha lav bnei kritut." Somehow the gemara recognizes the inability of Gentile witnesses to participate in the signature of a 'get.' Rashi claims that the gemara makes specific reference to the disqualification known as 'eino be-

torat Gittin ve-kiddushin.' Basing himself upon a gemara in Gittin (23b), (which will be addressed in a later shiur) Rashi rules that an individual who doesn't enjoy or participate in the halakhic process of Gittin, cannot perform the role of witness on a 'get.' Rashi intuitively has an actual derasha to supply this rule: kol she-yeshno be-netina yeshno be-khetiva - only one who can execute a delivery of a 'get' can participate in its composition. As a Gentile has no relevance to the halakhic process of Gittin, his signature is meaningless. According to Rashi the gemara's challenge is based upon a parochial and unique concern about the viability of an outsider to the world of Gittin to serve as a witness.

The Ramban argues with Rashi and claims that the gemara's question was of a broader nature. Not only does a Gentile exhibit a specific disqualification as an outsider to the world of gittin, but he also may not adhere to the necessary halakhic requirements. Possibly the 'get' was written while the paper was still mechubar (attached to the ground, which the gemara invalidates on (21b)), or possibly the 'get' wasn't signed lishma. We cannot embrace this document because we suspect that the complicated laws governing the manufacture of a 'get' were not followed.

Whether the gemara was posing the narrow challenge of Rashi or the more general concern of the Ramban, the gemara's response is unequivocal: Rabbi Shimon supports Rabbi Elazar's view that eidei mesira karti. Though the witnesses who view the delivery are crucial, there is no necessity to actually sign the document. Even though Gentiles signed, as long as the 'get' will be delivered in the presence of Jewish witnesses no problems will entail. Presumably, these Jewish witnesses at the point of delivery will also inquire as to the terms of the 'get's composition. In sum, Rabbi Shimon's liberal position to validate ALL documents processed by Gentile courts is given support by his adoption of Rabbi Elazar's view regarding the insignificance of signatories and the indispensability of witnesses at the point of issue.

A more nuanced discussion surrounds the more limiting approach of the Tanna Kamma. He is much more conservative regarding which documents can be accepted. He appears to validate general documents of this kind while excluding a 'get' written in a Gentile court. The gemara ponders this distinction - with the assumption that the Tanna Kamma might side with Rabbi Meir. The gemara is not prepared to surrender the Tanna Kamma's position to Rabbi Elazar and hence questions the viability of these documents. It asks, how can we allow such a document to effect halakhic realities (such as the transfer of land). The gemara is comfortable allowing these documents to serve as evidence (shetar ra'ayah) since they merely indicate that an independent halakhic process was executed allowing for the legitimate transfer. Gentile courts maintain enough integrity to earn our trust as to the veracity of the events which their documents affirm. However, could we actually grant these documents the halakhic authority to actually EFFECT a halakhic process.

The gemara supplies two responses. The latter response concedes the issue; indeed, the Tanna Kamma never intended a broad validation of these

documents. Such shetarot can only be utilized as evidence and not in a proactive manner to instigate a halakhic process. When the Tanna Kamma wrote that "all Gentile documents are valid except for gittin," he really meant "except for documents which initiate halakhic changes in the manner that a 'get' does." A shetar kinyan written in a Gentile court has no validity. We can however accept as evidence the events which the document chronicles.

The gemara's first response attempts to justify the use of these documents even as shetarei kinyan. The gemara cites Shemuel's rule known as dina de-malkhuta dina (local Gentiles laws are halakhically binding to Jews) to justify the employment of Gentile documents. This appears to be a novel application of the dina de-malkhuta dina rule.

There is some debate within the Rishonim as to whether the gemara is unanimous in applying dina de-malkhuta dina to validate Gentile documents. The Rashba claims that in effect both answers of the gemara theoretically endorsed the dina de-malkhuta dina rule in validating Gentile documents. The second response of the gemara merely sought an alternative method of translating the Tanna Kamma's position. The Rambam, however, believes that the applicability of dina de-malkhuta dina with regard to Gentile documents was itself the subject of disagreement between the two responses of the gemara. In Hilkhhot Malveh Ve-loveh (27:1), the Rambam only validates shetarei ra'ayah (documents as evidence). This stance reveals that the Rambam viewed the two responses as debating the viability of Gentile shetarei kinyan and their validity through applying the dina de-malkhuta dina rule. By siding with the second approach, the Rambam denies the validity of Gentile shetarei kinyan.

Why should we question or even reject Shmuel's position? Why might the second response of the gemara disagree with applying dina de-malkhuta dina to documents written in Gentile courts? Possibly the debate surrounded the nature of the rule of dina de-malkhuta dina and its relevance to Gentile documents.

To study the nature of the dina de-malkhuta dina halakha we will attempt to trace its root. The gemara in Bava Kamma (113) acknowledges that a king can collect taxes in order to build roads and bridges which we benefit from. Theoretically, using this infrastructure may pose a problem, for we might be using other people's money (collected in the taxes) without their permission. If we accept the king's authority (and pay our own taxes) we can utilize these public works without 'taking' other people's assets. We recognize his authority to collect taxes and channel these funds to public projects. The Rashba in Nedarim stretches this concept even further. As the king is the landowner of the country in which we live, he can - in theory - evict us from our houses. By acceding to his laws and paying his taxes we earn the right and secure his approval to continue living in our residences. Both the gemara and the Rashba provide a very distinct socio-economic situation which empowers the king to collect our moneys.

Several commentators suggest a broader legal definition to *dina de-malkhuta dina*. For example, the Mabit in his Kiryat Sefer (Hilkhos Gezeila perek 5) asserts that from a formal standpoint any king has sweeping authority. He bases this shita upon the section dealing with monarchal rights in sefer Shmuel. Each license which Shmuel iterated actually reflects a formal halakhic authority with which every king - Jew and Gentile alike is invested. The Chatama Sofer in a similar vein (in responsa 208) attempts to derive this notion from a pasuk in Shir Hashirim "Ha-elef lekha shlomo." A king is not merely empowered to collect funds and facilitate public welfare through these funds, but he is also given political power which enjoys halakhic authority.

It would appear that these two stances provide very different pictures of *dina de-malkhuta dina* and provide different scopes for the application of the rule. According to the former view, the king's authority doesn't extend beyond the collection of moneys or possibly broader rules affecting civil cases. As the king is the architect of our municipal surroundings he dictates the flow of money and we - in order to benefit from his spending projects - must submit to that policy. Not only can he collect taxes but he can enforce laws which govern commerce, trade and civil matters. However, beyond these issues a king doesn't enjoy any formal halakhic status. There is no reason to validate a document which happened to be written in his courts. We pay his taxes but do not impute any halakhic substance to his processing of shetarot.

According to the Mabit and Chatam Sofer, however, a king is invested with broad halakhic authority which he expresses through taxation and general economic laws. Halakha recognizes his edicts and would presumably validate contracts written in his courts. It is quite possible that the debate between the two responses of the gemara as to the applicability of *dina de-malkhuta dina* to documents issued in Gentile courts surround this fundamental issue of how to understand the nature of *dina de-malkhuta dina*.

In his discussion of our sugya, the Rashba cites an intriguing claim by Rabenu Yona which provides a slightly different strategy for validating these documents. Aside from the legal status of *dina de-malkhuta dina*, these shetarot should be valid based upon the *situmta* phenomenon. The gemara in Bava Metzia develops the concept of *situmta* - symbolic acts which society develops to demonstrate the finality of a sale. Wine sellers would regularly carve some symbol on the barrel of wine to indicate the closure of a particular deal. Even though these subjective acts are not mentioned in the Torah, they can be employed to effect a halakhic transfer because of their widespread acceptance. Rabenu Yonah claims that even without a formal acceptance of *dina de-malkhuta dina* for shetarot, we might validate these documents because it has become so commonplace to operate with Gentile supervised documents.

The Rabenu Yonah's claim can be debated along many fronts. For one, we might consider the level of validity which commonplace conventions enjoy within Halakha. Do they operate based upon some Biblical license which preprograms a recognition of future practices which were apt to emerge? Or do we grant these systems Rabbinic validity which might suffice

for the purposes of transactions but not necessary to help compose a shetar. The Devar Avraham in the first chapter of the first volume of his sefer addresses this question.

We might also ponder a different issue which Rabenu Yonah takes for granted. Just because social convention and acceptance can grant ceremonial meaning to an accepted practice, doesn't necessarily mean the same is true of customs legislated by Gentile judicial systems. In theory, we might grant validity to that which Jewish society at large has embraced without necessarily ratifying the decisions of a foreign court.

A second question surrounding the status of documents prepared in foreign courts pertains to its consequent status. Even if we license these documents how closely do they resemble classic halakhic documents. The most acute expression of this question surrounds the degree of halakhic fidelity which must be maintained when drafting these documents. Several sections in shas detail the techniques and textual protocols of halakhic shetarot. Various syntactical and structural guidelines govern the form and substance of the actual text. Must these guidelines be adhered to when composing a document in a Gentile court?

The Sefer Ha-terumot in Sha'ar 67 cites in the name of the Ramban that all the technical governances of classic shetarot appertain to these documents as well. By contrast, the Rivash cites a dissenting opinion and the Maharik in shoresh 187 discusses the matter as well.

Even if we validate Gentile documents through the broad and sweeping authority of dina de-malkhuta dina, do we render these contracts as classic halakhic documents or do we reserve a separate status since they were not composed or signed by Jews? Rav Chayim in his commentary to the Rambam in Geirushin (6:9) elaborates this point.

Two additional practical ramifications of this question might be posed. In general, a creditor can only appropriate lands which his debtor sold if the loan was enacted through a contract - milveh be-shetar goveh mi-nechasim meshubadim. Would a Gentile contract allow collection of these assets? The simple reading of Gittin (19b) suggests a full-blown halakhic status to these documents even to the point of allowing this form of collection. By contrast, the gemara in Gittin (11a) curtailed collection and limited it only to assets still retained by the actual debtor. Reconciling these disparate views lies beyond the context of this shiur. Clearly though part of this debate surrounds the status of a Gentile document 'cleared' through the principal of dinah d'malchuta.

A final question might influence the determination of which types of 'bodies' in the Gentile system are capable of issuing a document with halakhic validity. The gemara (Gittin 11a) relates the episode of Ravinah who wanted to utilize a document processed in Gentile institutions. Radrum corrected him that the mishna's dispensation only applies to formal courts (as opposed to alternate legal settings). Whether this insistence is based upon practical

concerns that non-judicial settings might allow fraudulence or whether the gemara adopts a formal insistence upon actual counts is the subject of much debate amongst the Rishonim. See specially the Mordechai to Gittin siman 325 who cites several opinions.

If dina de-malkhuta dina actually renders a formal shetar it would be reasonable to limit the potential sources of that shetar to a king or his representatives. If however dina de-malkhuta creates a sub-shetar form of evidence we might recognize and grant this status to documents which emanate from alternate responsible and honest sources.

Mekorot for Shiur #7:

Reading a Get to Illiterate Witnesses

1) Gittin 19b, "Tanya kavatei ... shalchuha"

Ramban s.v. Ha de-ka'aru

Rashba s.v. Ve-she'ein

Tosafot Ha-Rosh s.v. Ve-im

2) Gittin 9b, "De-tanya ... lahem"

Tosafot s.v. Korin

Ramban 29b s.v. Ha de-amar, "Ve-im tishal ... ve-chotmin"

3) Rambam Malveh Ve-loveh 24:5-7; Gerushin 1:23 with Maggid Mishneh

Questions:

1) How do the Chakhmei Sefarad solve the problem of "eid mi-pi eid?"

2) How might Tosafot Ha-Rosh offer a different solution?

3) What is the relationship between Tosafot on 9b and the Ramban on 29b?

4) How might we explain the Rambam's condition that we can only read the document to witnesses who "understand the language of the document?"