

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

TALMUDIC METHODOLOGY

By: Rav Moshe Taragin

SHIUR 05: *EIDEI KIYUM*

Typically, witnesses (*eidim*) are necessary in a litigious context to provide supreme evidence to assist the *beit din* in adjudicating a suit. However, oftentimes, a halakhic process requires the presence of attending *eidim* known as *eidei kiyum*. For example, if a marriage is conducted without attending *eidim*, it is halakhically invalid, even if all parties concede to its occurrence. *Eidim* are similarly required to attend a divorce and, according to some opinions, must also witness certain forms of *kinyan*. This shiur will assess the function of such attending *eidim*.

Presumably, these *eidim*, through their presence, create a formal and ceremonious environment to serve as the backdrop for the divorce or marriage. As these events possess gravitas, they must be performed in a formal and official setting. Without attending witnesses, the very act of *kiddushin* or *gittin* is 'empty.' Inasmuch as the meaning of these ceremonious acts is abstract, rather than tangible, it must be lent greater weight by the presence of attending witnesses.

An intriguing gemara in *Kiddushin* (65b) suggests an alternative view of *eidei kiyum*. Searching for a source for the requirement of two *eidim*, the gemara derives the rule from monetary situations. Just as monetary legal decisions are only rendered through the testimony of two witnesses, similarly divorces and marriages require the presence of two attending witnesses. This association is perplexing, as monetary transactions do not, by and large, require attending witnesses. It would seem odd that the gemara derives the need for two attending witnesses from an area of halakha which does not require them at all!

The gemara itself responds to this oddity, but in a manner which only adds confusion. The gemara claims that, essentially, monetary cases are suitable templates from which to derive the need for two attending witnesses, even

though monetary cases themselves require no attending witnesses. In monetary situations, the mutual admission of the two parties to the transaction would be acceptable in court, and therefore these cases are exempted from attending witnesses. Similar admissions would be unacceptable in marriage and divorce cases since such admissions would damage the interests of others: by establishing a woman as Reuven's wife, one forbids her to others; analogously, by pronouncing her divorced, one renders her forbidden to marry a *kohein*. As admissions ruin the interests of others, they are not acceptable in marital cases and therefore attending *eidim* are required. Though the gemara attempts to resolve the riddle of deriving the need for attending witnesses from monetary cases which do not themselves require these *eidim*, the solution is not entirely clear. If attending witnesses are universally required, why should the potential for acceptable admissions substitute for their presence?

In his comments to Choshen Mishpat (241:1), the Ketzot Ha-choshen elaborates on this gemara and revolutionizes the concept of *eidei kiyum*. He contends that the attending witnesses are not part of the actual ceremony and do not function, through their actual presence, in lending gravitas to the event; instead, the Torah often requires verifiability for a particular process. If the process can be denied without legal recourse, it is void of meaning. However, if a process is verifiable, it is more compelling and taken more seriously by the participants. Typically, verifiability can only be achieved by the presence of attending *eidim* who witness the event and can testify to its occurrence. However, in the financial sector, where mutual admission is accepted by the *beit din*, the very POSSIBILITY of verifiability through admission cancels the requirement of attending witnesses. Since the parties to the *kinyan* may, in fact, concede to its having transpired, we are able to realize the potential for verifiability even without attending witnesses. However, as admissions are unacceptable testimony for marital matters, in these instances verifiability can only be achieved through the presence of attending witnesses. The Ketzot effectively redefines the function of *eidei kiyum*: their presence is not necessary to lend ceremony to the event, but rather to enable verifiability. Fundamentally, monetary transactions require *eidei kiyum* or verifiability but enjoy a 'built-in' potential for verification since the parties' admission would be acceptable. This benefit excuses them from actual *eidei kiyum*. Marital situations, which do not recognize admission as legitimate testimony, require actual attending witnesses to allow future verifiability.

Though the principle of the Ketzot sounds revolutionary, it is already inherent within a very famous position regarding *shtarot*- halakhic contract or bills employed to marry, divorce or effect land transfer. Rabbi Elazar (Gittin 9b) demands that *eidei mesira* witness the actual delivery of the document, whereas Rabbi Mei'ir opts instead for signatories, *eidei chatima*. This seminal debate strikes at the very heart of how Halakha defines contracts and at which stage it requires witnesses. However, independent of the connotations for *shtarot*, Rabbi Mei'ir's position appears problematic. How can a woman become divorced without attending witnesses? According to Rabbi Elazar, the *eidei mesira* who witness the issue and delivery of the *shtar* fulfill the function of *eidei kiyum*. Which *eidim* play this function according to Rabbi Mei'ir? How can a divorce be executed with only *eidei chatima*? In fact, Rabbeinu Tam (Tosafot ibid. 4a s.v. De-kaima) is so troubled by this question that he claims that even Rabbi Mei'ir requires *eidei kiyum* to actually witness the implementation of the divorce. Thus, when Rabbi Mei'ir claims that signatories would be sufficient, he means that they would be sufficient to manufacture a *shtar*; however, to actually UTILIZE the *shtar* and divorce a woman, attending witnesses are still necessary. Though this concession within Rabbi Mei'ir's position seems eminently logical, most opinions disagree and assert that a divorce can be successfully consummated without attending witnesses according to Rabbi Mei'ir.

In fact, the question becomes even more acute according to the position of the Rif. In his comments to *Gittin* (47b-48a in the *dafei ha-rif*), he claims that EVEN Rabbi Elazar would allow a divorce to be processed without *eidei mesira*. According to the Rif, Rabbi Elazar ALLOWS *eidei mesira* in the absence of *eidei chatima*, but does not require them. Consequently, the same question may be posed according to Rabbi Elazar: though a DOCUMENT may be valid without attending witnesses, how can the PROCESS of divorce succeed without *eidei kiyum*?

Presumably, the explanation of the Ketzot would solve the issue. If attending witnesses are necessary merely to enable verifiability we may dispense without actual witnesses. If a get is signed with *eidei chatimah* and is located in the hands of the woman we may assume that such a document was actually delivered. As most individuals do not forge documents it is highly likely that this

signed document was actually delivered to the woman. This assumption is so compelling that it would actually be accepted as evidence in a court of law. Able to draw legally valid and compelling conclusions about the delivery of document we are excused of the need for actual attending witnesses since the process is legally verifiable.