

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

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**TALMUDIC METHODOLOGY**

By: Rav Moshe Taragin

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In memory of our grandparents, whose yahrzeits fall this week:  
Shmuel Nachamu ben Shlomo Moshe HaKohen Fredman (10 Tevet)  
Chaya bat Yitzchak David Fredman (15 Tevet)  
Shimon ben Moshe Rosenthal (16 Tevet)  
By their grandchildren and great-grandchildren,  
Aaron and Tzipora Ross and family

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**SHIUR #05: DIFFERENCE IN *KIYUM* BETWEEN *GITTIN* AND  
MONETARY CONTRACTS  
(PART 4 OF A 5 PART SERIES)**

In the first three *shiurim* in this series, we analyzed the *machloket* between R. Meir and R. Elazar as an issue of *eidei kiyum*. R. Elazar requires *eidei mesira* so that two *eidim* will be physically stationed at the delivery of the *get* and will thus serve as “affirming witnesses” - *eidei kiyum* - for the act of *geirushin*. R. Meir, in contrast, accepts even *eidei chatima* as *eidei kiyum*, even though they do not actually ATTEND or witness the delivery of the *get*. Based on this analysis, in terms of the *SHETAR* or CONTRACT itself, *eidei mesira* are not superior to *eidei chatima*; the real advantage of *eidei mesira* lies in their ability to provide more classic *eidei kiyum*. This may very well have been Rav's logic in demanding *eidei mesira* for a *get*, which requires *eidei kiyum*, but allowing “only” *eidei chatima* for monetary contracts, which may not require *eidei kiyum* at all.

There is an entirely different manner of analyzing the dispute between R. Meir and R. Elazar. According to this approach, even R. Elazar would agree that the *eidei kiyum* requirement does not necessarily mandate the presence of *eidei mesira*; he would agree that the *kiyum* can be accomplished even through *eidei chatima* (as discussed in [shiur #02](#) of this series). What really drove the debate was the nature of a halakhic *shetar* and which type of *eidim* can enable it.

There is a certain appeal to this second approach, as R. Elazar stated his position requiring *eidei mesira* in the context of ALL *shetarot*, INCLUDING monetary ones, which do not require *eidei kiyum*. If his position were based upon the *kiyum* requirement, he should logically limit his position to *gittin* and *kiddushin*. There are ways to explain why R. Elazar may have stretched the *eidei mesira/eidei kiyum* requirement to monetary documents, but this certainly does not represent the intuitive approach. It seems preferable to explain R. Elazar's insistence upon *eidei mesira* based upon his view of *SHETAROT*, which would clearly include monetary *shetarot* as well.

Intuitively, we view a *shetar* as a recorded testimony of the witnesses. Since those witnesses may die or move elsewhere, we record their testimony for posterity. If so, R. Meir's position seems more attractive. By affixing the signatures to the document, the *eidei chatima* become the "voice" of the document. This testimony would never occur if the only *eidim* associated with the document were *eidei mesira*.

Evidently, R. Elazar adopts a very different approach to *shetar*. In his commentary to the Rambam's *Hilkhot Eidut (perek 3)*, R. Chayim suggests a bold idea, which he reiterates in several different contexts and in different variations. Essentially, R. Chayim establishes the autonomy of a *shetar*; a *shetar* is not merely the written or recorded testimony of the signatories. In fact, the signatories did not even witness the event that the *shetar* testifies about! The signatories sign their names and do not witness the delivery of the *shetar* nor the transfer of land or act of *geirushin*! Instead, the *shetar* should be viewed as an independent halakhic item that delivers *eidim*-independent testimony that is equivalent to spoken testimony.

There are differences between a *shetar* and standard testimony, however. One of the defining differences relates to "agenda." Witnesses come to *Beit Din* and narrate their account of events, and based upon their narrative, the *Beit Din* decides the course of litigation and the verdict. *Eidim* have no judicial agenda *per se*; they are merely storytellers. In contrast, a *shetar* is written to deliberately have an EFFECT on one of the two parties. A *shetar* may transfer land out of one side's possession, finalize a loan that will obligate the borrower to pay, or determine a woman's marital status and thereby force the husband to provide his

marital obligations or in the case of "*get*" terminate the marriage. Every *shetar* negatively impacts one party from a financial standpoint – and it is precisely THAT party who must authorize the composition of a *shetar*. As the *Rishonim* put it, without "*da'at mitchayev*," a *shetar* is invalid. A *shetar* is written by the "affected party" and is empowered to fulfill a particular halakhic task.

The UTILITY inherent in the identity of a *shetar* is only realized when the *shetar* is ISSUED to the party who will utilize it. For example, until the *shetar* is issued to the lender, it cannot be utilized for its intended task. Since it cannot provide the utility for which it is intended, it cannot yet be deemed a *shetar*. The Rif, in his comments to *Yevamot* 31, claims that until the *shetar* has been issued to the *ba'al ha-shetar*, it lacks any identity as a *shetar* and is considered merely "written testimony" (*eidut bi-khtav*), which is halakhically invalid. Only by issuing the document to the possession of the "utilize" (*ba'al he-shtar*) is a *shetar* activated.

R. Elazar may have adopted R. Chayim's view of *shetar*, which assumes that a *shetar* is distinct from verbal testimony; its voice is not merely the recorded voice of the signatories, but an independent halakhic voice, which is only activated at the point of issuance when a *shetar* achieves utility. Since the GENESIS of a *shetar* occurs at its point of issue, the more significant *eidim* are the ones who witness THAT issuance – namely, the *eidei mesira*. In contrast, R. Meir may have viewed a *shetar* as nothing more than recorded testimony, and he therefore preferred *eidim* who actually affix their names to the document – namely, the *eidei chatima*. As nothing more than recorded testimony, the *shetar* possesses halakhic meaning even before it has been issued and before it has achieved its utility. According to this reading, R. Meir and R. Elazar were debating the very identity of a *shetar* and its correspondence to verbal testimony.

Viewing Rabbi Elazar in this manner is supported by a fascinating statement in the *gemara* in *Gittin* (86b). One of the distinguishing features of a *get* is that it must be composed with very deliberate and specific intent, known as "*kavana lishma*." Unlike typical *shetarot*, which can be written generically, a *get* must be composed for the specific husband who will use it for a specific wife. R. Yirmiya addresses a complex case two *gittin* written for two different husbands with identical names and whose wives possess identical names. These two *gittin*

were then dispatched through two different messengers, who lost track of which *get* was intended for which woman. To ensure that each woman receives the *get* that was intended for her, the obvious solution would be for each *shaliach* to deliver EACH *get* to each woman. Not knowing which particular *get* is divorcing which woman should not detract from the fact that ultimately, each woman did – at some point – receive THE *GET* intended for her (even though she ALSO received a "get" not intended for her).

This is indeed the ruling of the *mishna* in *Gittin* 86, but R. Yirmiya claims that R. Elazar would differ. By requiring *eidei mesira*, R. Elazar would also demand that a *get* be DELIVERED *lishma*, with specific intent to divorce a specific woman. R. Elazar would demand *netina lishma* – specific intent in the delivery of the *get*. In this particular instance of confused *gets*, it has become impossible to determine which *get* is divorcing which woman; if *netina lishma* is required, neither woman can be divorced, even though each eventually received her intended *get*.

R. Yirmiya's association between the TYPE of *eidim* necessary to validate a *get* and the type of *NETINA* demanded is not immediately clear. Why should R. Elazar's demand for *eidei masira* affect the TYPE of DELIVERY necessary for valid *geirushin*?

Evidently, R. Yirmiya sensed in Rebbi Elazar's *shita* a statement about the point of origin of a *shetar*. R. Elazar required *eidei mesira* because the *shetar* is only activated when it is issued into the hands of the person who will utilize it. If indeed this marks the halakhic evolution of the *shetar*, in the case of a *get*, the action must be *lishma*, as all acts of "*shetar* creation" for *gittin* must be. R. Yirmiya's extrapolation from R. Elazar's opinion indicates that he viewed the delivery of a *shetar* as part of a *shetar's* creation, and therefore preferred *eidei mesira* who witness this genesis of *shetar*.

Viewing the debate as centered around the nature of *shetar* – and more specifically, WHEN a *shetar* BECOMES a *shetar* – may also help explain an interesting compromise of Rav. The *gemara* in *Gittin* cites Rav, who adopted R. Elazar's opinion for *gittin* but rejected it in situation of other *shetarot*. Most interpret this *gemara* literally "for *gittin* (and *kiddushin*), Rav required *eidei*

*mesira*, but for monetary contracts, he required *eidei chatima*," thereby establishing a compromise position between those of R. Meir and R. Elazar.

The Ra'avad, in his commentary to the Rif (*Gittin* 86b), claims that Rav's REAL compromise was between a *shetar kinyan*, a *shetar* that changes a status, and a *shetar ra'aya*, a *shetar* that only serves as future evidence. A *shetar kinyan*, such as a *get* (and for that matter, any *shetar kinyan* that affects a change, such as a *shetar* issued to transfer ownership of land), requires *eidei mesira*, whereas a *shetar ra'aya* does not require *eidei mesira*. Although the Ra'avad supports his position by citing three *gemarot*, his underlying logic is unclear. Why should *shetarot* serving different functions require different types of *eidim*? If *eidei mesira* are crucial, they should be necessary across the board; if *eidei chatima* are sufficient, they should validate any and every type of *shetar*.

Perhaps the Ra'avad understood R. Elazar and R. Meir precisely as stated above. R. Elazar defined *shetar* as independent of its signatories. It is a distinct halakhic device initiated by the impacted party (*da'at mitchayev*) and delivered to the person who will utilize it (*ba'al ha-shetar*). The *shetar* is born at the point of issue, and *eidei mesira* who witness that issue are therefore critical. Rav reasoned that this autonomous definition of *shetar* concerns only a *shetar KINYAN*, which has UTILITY in creating halakhic change. That type of *shetar* is different from oral testimony, and therefore requires *eidei mesira* to witness its development. A *shetar ra'aya*, on the other hand, creates no halakhic change; it merely serves to verify and offer evidence that a halakhic event has already occurred. Since it has no IMPACT, it cannot be initiated by a party who will be inconvenienced or negatively impacted by the *shetar* – there cannot be *da'at mitchayev*. Without impact and without *da'at mitchayev*, a *shetar ra'aya* cannot be considered a *shetar*, but merely recorded testimony, inherently similar to verbal testimony. This “recorded testimony” develops the moment that the *shetar* is written and signed, not at the moment at which it is delivered (like a classic *shetar*). Hence, according to the Ra'avad, Rav claimed that *eidei chatima* are necessary in the case of a *shetar ra'aya* so that their testimony can be recorded.