

**YESHIVAT HAR ETZION**  
**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**  
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**TALMUDIC METHODOLOGY**  
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***EIDEI KIYUM (PART 2)***

In the previous shiur, we discussed the function of *eidei kiyum*, attending witnesses required for marriages, divorces and certain forms of *kinyan*. We saw the revolutionary position of the Ketzot Ha-choshen: that the actual presence of these *eidim* may not be required, but rather some degree of legal verifiability. In this shiur, we will explore the additional consequences of this question.

The Gemara in Kiddushin (43a) mentions that *eidei kiyum* do not have to be formally designated: by merely witnessing the ceremony, they accomplish their halakhic function. Based upon this liberal definition, the Ritva claims that any witness who views the ceremony is considered an attending *eid*. Potentially, people who are invalid witnesses who view the events would be incorporated into the '*eidim* set;' once the *eidim* set is infiltrated by disqualified witnesses, the entire group becomes invalid based upon the principle of *eidut she-batla miktzatah batla kulah*: if testimony is partially invalidated by the disqualification of one or more of the witnesses, it becomes invalidated totally. This view of the Ritva serves as the source for the custom to actually designate valid attending witnesses and exclude others. This measure, though not necessary to build a set of witnesses, prevents infiltration by invalid ones.

This notion, that attending witnesses join the *eid* set simply by viewing the event, is discrepant with the standard conditions for joining the 'set' of witnesses. For example, the Gemara in Makkot (6) claims that only by intending to witness the event as a formal *eid* or by actually dispensing testimony in court do individuals infiltrate the *eid* set and potentially subvert its validity if they themselves are invalid. Perhaps this inconsistency in the conditions for joining an *eid* set reflects a structural inequality between attending *eidim* and testifying *eidim*; perhaps *eidei kiyum* are not required as potential testifying witnesses to provide future evidence and verifiability; perhaps the Ritva argues with the Ketzot, views the *eidei kiyum* as integral to the actual ceremony, and therefore incorporates them as witnesses even if they do not meet the typical standards for *eidei ra'aya* (testifying witnesses).

An additional statement of the Ritva supports the idea that he disagrees with the view of the Ketzot: the Ritva claims that the *eidim* must be visible to the participants of the *kiddushin*. If they are concealed from view, even though they witness the event and can testify to its occurrence, the *kiddushin* is invalid. Presumably, this would accord with the previously described position of the Ritva which views the witnesses as part of the ceremony; as such, they must participate in a visible and unambiguous manner. Were their presence necessary solely to provide future verification, we might allow concealed *eidim*, since they can indeed verify the event which they witnessed covertly.

Yet another issue may relate to the following question: how much of the event must the *eidim* witness? If they see the essential act, but do not actually witness the details, would they qualify as legitimate *eidei kiyum*: for example, if they witness the ceremony but blink during the actual delivery of the ring, would their presence be sufficient? It appears that this question is debated by the Rashba in Responsum #780 and the Mordekhai in Kiddushin. The former demands full exposure, while the latter allows certain details to be assumed: even if they did not see the actual transfer of the ring, since they witness the overall event, they may assume the delivery. Perhaps this question as well is affected by the function of *eidei kiyum*. Assuming the Ketzot's interpretation, we would have little demand for comprehensive witnessing of every minor detail. *Eidim* in general are allowed to testify in court based upon assumptions which underlie the event they witness. By attending a chupa and recognizing the husband and wife, they can assume that standard procedure was followed and can testify based upon these assumptions. Once they have seen enough to inform future testimony, they render the event verifiable and serve as valid *eidei kiyum*. In fact, in his *Avnei Milu'im* (31:4), the Ketzot agrees with the Mordekhai. If the Ritva is correct and we require *eidim* as part of the ceremony, we may demand first-hand exposure to even minor details of the ceremony- a position asserted by the Rashbah. Though compelling assumptions may validate legal testimony, it is insufficient participation to qualify as *eidei kiyum*.

A striking position of the Ittur in his comments to Kiddushin (78) may further support the Ketzot. The Ittur claims that witnesses whose ineligibility is only rabbinical in degree are nonetheless disqualified from serving as attending witnesses even at a *de-oraita* level, as if the Written Torah had invalidated them. Thus, if professional gamblers (whose exclusion is rabbinical) would serve as *eidei kiyum* at a wedding, the ceremony would have no validity and would not require divorce. Ostensibly, this position seems peculiar: since their *de-oraita* status is valid, they

should at least confer legitimacy at a *de-oraita* level. We have numerous situations of halakhic ceremonies which fail due to rabbinical injunctions but are still regarded seriously based upon their *de-oraita* viability. In all likelihood, the Ittur as well agrees with the Ketzot that attending witnesses provide future verifiability. If a person's testimony will ultimately be rejected by a court – even if the rejection will be on rabbinical grounds — he provides no verifiability and is therefore disqualified even at a *de-oraita* level. Since, practically, his testimony is useless, he cannot serve as an *eid kiyum*!

Finally, this issue, which has been traced through the Ketzot and the Ritva, may be a dispute in the Gemara itself among the Amora'im, as seen in the question of whether a *shali'ach* may serve as an *eid kiyum*. This issue is debated by Rav and Rav Shila in Kiddushin (43a), and it may very well revolve around the status of a *shali'ach*. The Gemara's language suggests as much when it explains that Rav Shila's opposition to the dual role is due to the fact that the *shali'ach* has been rendered a party to the ceremony and can no longer serve as an objective *eid*. However, if we recall the Ketzot's definition of *eid kiyum*, we might wonder about this disqualification: as the *shali'ach* has nothing to gain or lose from this event, his future testimony should be acceptable and he should be valid as an *eid kiyum*. Perhaps, part of Rav Shila's position is based on his viewing the *eidei kiyum* as an essential element of the ceremony, as the Ritva does. As such, the *shali'ach* who performs the ACT of *kiddushin* cannot also witness the ACT of *kiddushin*, as these are two distinct functions. On the other hand, Rav, who allows a *shali'ach* to serve as an *eid kiyum*, views the role of *eidei kiyum* in a fashion similar to the Ketzot, and since the unbiased and unaffected *shali'ach* can deliver future objective testimony, there is no reason he cannot serve as an *eid kiyum*.