

**YESHIVAT HAR ETZION  
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**TALMUDIC METHODOLOGY**

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**MEISIACH LEFI TUMO**

In the halakhic legal system the highest form of evidence is the testimony of two witnesses. The Torah establishes eidim as the pinnacle of evidence when it writes 'al pi shnayim yakum davar,' designating two witnesses as those who can categorically provide the information on what had occurred. There are several individuals who, for various reasons, are disqualified from producing testimony as eidim. This group known as "pesulei eidut" includes minors, servants, women, relatives and those who have an interest in the outcome of this case. The gemara does, however, provide one exception to this invalidation: the halakha known as "meisiach lefi tumo" determines that though these individuals may not offer formal testimony, they may 'relate' past events in the form of a story (literally, an 'innocent recollection') and beit din may in turn utilize this as evidence. This article will explore the essence of this fascinating halakha.

The gemara in Ketubot (27b) discusses the tragic circumstances of a shevuya - Jewish history is saturated with hostage taking episodes. In many instances, the hostages were women, who might have been compromised during their captivity. This woman, though still permitted to wed (since whatever happened was against her will), is prohibited to marry (or remain married to) a kohen. Since, however, the circumstances of these events are speculative, Chazal allowed a single witness to testify that her 'integrity' was maintained. The gemara asserts that even a minor may testify in the framework of meisiach lefi tumo - simply recounting a story rather than issuing formal testimony. Yet, despite these leniencies, the mishna does not allow a woman to testify about herself - even in the form of meisiach lefi tumo. This same ban applies to her husband as well (since ishto ke-gufo - halakhically, in many instances, we view the man and woman as the same entity). This ruling poses an interesting question: why can a minor be meisiach lefi tumo and not the subject herself?

Several positions offer a practical concern: regarding the person herself (or her husband who has a vested interest) the veracity of the story being told may be called into question. The Ra'a, however, offers a more fundamental distinction. Meisiach lefi tumo, he claims, is a FORM OF TESTIMONY - indeed a type of testimony that deviates from the paradigm of eidut - but nonetheless must be structured as testimony. A minor, though disqualified from the classic form of testimony, can present this pseudo-testimony. The WOMAN HERSELF, however, is disqualified from any and every form of testimony. A minor can be considered an "eid;" most times, however, his eidut is invalid. The subject himself (or herself) can in NO WAY and in no context be considered an "eid" - even in the guise of meisiach lefi tumo. It becomes clear from the Ra'a's analysis that meisi'ach lefi tumo is a secondary form of testimony and an individual who cannot in any way be defined as an eid is thereby disqualified.

The exact opposite impression emerges from the comments of the Ritva to Yevamot (121b) - an interesting phenomenon since he was the former's talmid. The gemara in Yevamot certifies a Gentile to testify that a woman's husband died and that she can now remarry. Though his formal testimony is invalid, he may relate the husband's death through meisiach lefi tumo. The Ritva argues that meisiach lefi tumo has nothing in common with classic eidut, given the validation of a Gentile. A Gentile is another individual who stands antithetical to eidut. If he is validated for meisiach lefi tumo it must reflect this category's utter divergence from, and discrepancy with conventional eidut.

#### SUMMARY:

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We have presented two distinct models for understanding the halakha of meisiach lefi tumo. These models differ in the degree in which this halakha is patterned at some level upon classic eidut. Evidently, the question of scope - who can participate in this testimony is, in part, a function of the essence of this halakha.

A second issue which would stem directly from this question would be the potency and effectiveness of meisiach lefi tumo. In many exceptional cases the Torah empowered one witness to testify (sota, eglarufah, the death of a married woman's husband). In these instances, the power of this one eid

extends far beyond classic parameters. His eidut is accepted even if it contradicted by a second witness. This deviates from the conventional model; if two eidim are contradicted by a second team, the testimony itself is canceled. In this case, however, even if the testimony of one witness is contradicted by a second witness, his original testimony stands. Part of the Torah's "chiddush" is that one eid is not only believed but that his testimony cannot be subverted by one contradictory eid. Would this same halakha apply to one eid who has testified "lefi tumo?"

If we consider meisiach lefi tumo as a form of pseudo-eidut, we might apply this special eidut regulation. If, however, meisiach lefi tumo were a completely new halakha, unrelated to the formal category of eidut, this exceptional rule would in no way be relevant, as it is a principle which applies only to the formal category of eidut. The Rashba in his responsa (the volume entitled Teshuvat Ha-rashba Ha-meyuchasot La-Ramban (# 128) - responsa of the Rashba which were mistakenly attributed to the Ramban) discusses this issue and asserts that this special power does indeed apply to meisiach lefi tumo, indicating a high degree of symmetry between classical eidut and meisiach lefi tumo.

A third issue which might revolve around this thematic question is the actual definition of meisiach lefi tumo. Obviously, a difference between meisiach and standard eidut must be maintained. Eidut consists of entering beit din with intent to testify to assist in arriving at a legal verdict. Meisi'ach lefi tumo is simply story telling. The phrase lefi tumo means literally "innocently." How naive, however, must he be to be considered meisiach (in which he is capable of participating) and not eidut (for which he is invalid)?

The Ran in one of his responsa (# 47) addresses this issue. He relates to a situation in which a person does not initiate the accounting, but answers questions which are posed to him. Can this be reasonably considered meisiach, or does the cross-examination type atmosphere immediately mark this evidence as TESTIMONY rather than a third-person account or report. A similar debate arises out of the discussion in the Shulchan Arukh Yoreh De'a (69:10) regarding the salting of meat to remove the blood. Would we trust a Gentile who is meisiach lefi tumo that the meat was properly salted? Would his knowledge that this is a halakhic question with important ramifications, in any way disqualify him from offering an ingenuous account? The Beit Yosef and the Taz each deliberate this very

issue. In a similar vein, the Shev Shmaitta in the seventh section chapters 8-12 addresses a situation in which word had already spread that beit din was requesting information regarding the death of the husband. In this scenario, when a Gentile volunteers information can we accept it based on meisiach lefi tumo?

Essentially, each of these cases addresses an instance in which the person's story can no longer be viewed as an innocent accounting. By retelling his story he is well aware that he is influencing a situation of great importance.

The hesitations expressed by these Acharonim might be based upon purely technical and practical concerns. His awareness of the legal ramifications of his testimony might make him less innocent and more likely to fabricate. Part of meisiach lefi tumo's appeal is that we are fairly certain that the speaker, ignorant of the consequences of his evidence, has little reason to lie. Once he is conscious of these ramifications, the specter of falsification becomes that much stronger.

However, the concerns raised might be based upon a fundamental question as to WHO is categorized as a meisiach. If, indeed, we were to view the category of meisiach as a complete break with the entire world of eidut, and maintain that a Gentile or a minor can participate SPECIFICALLY because it is independent of eidut, we might claim that only one who knows nothing and comes for no LEGAL purpose can be considered a STORY-TELLER rather than a witness. Prior interrogation or even the very knowledge that salted meat is not merely an event but a situation which has legal consequences might disqualify him from being a mere story-teller. If, however, we viewed meisiach as a form of eidut, such a scenario would pose no fundamental problems.

#### SUMMARY:

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We have demonstrated that the essential question as to the nature of meisiach might influence who is capable of being a meisiach, under what circumstances, and finally, how powerful his evidence is.

## METHODOLOGICAL POINTS:

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1. The theme of a halakha has great influence over its particular application (the who, what, when and how strong). Also, it might influence the definitional scope of the particular category - the nature of meisiach lefi tumo might influence just who is considered a meisiach (the last issue discussed in the article).

2. Any new halakha can either be a derivative of a conventional one (with the necessary adjustments and modifications) or an entirely new category. The question as to whether meisiach was based upon the model of classic eidut (an old halakha) or represented an entirely new law is an example of the recurring talmudic phenomenon. It is generally very helpful in the early stages of analysis to pose this question: Is the following a "new" or entirely "old" halakha?