

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY
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**SHIUR #03: THE RELIABILITY OF ONE *EID* IN SITUATIONS OF
*BE-YADO***

Unlike monetary situations, *issur*-based halakhic uncertainties may be determined or decided on the basis of one witness, an *eid echad*. The testimony of one witness regarding the status of meat or any other halakhic question is accepted. However, the *gemara* limits this capacity to situations of halakhic vacuums (see, for example, *Gittin* 2b). If there is NO prior knowledge, or *chazaka* one witness is believed. (Of course, if he SUPPORTS our prior knowledge by confirming a status or *chazaka*, he is also believed.) However, one witness is not believed to contradict a previously held status or a *chazaka*. For example, one witness would not be believed to testify that *tevel* produce had been remedied through the designation of the requisite *teruma* and *ma'aser*. Since his testimony alters a previously held *chazaka* that the crops are *tevel*, his solitary statement is insufficient.

However, the *gemara* introduces one scenario in which a lone *eid* CAN reverse previously held assumptions based on *chazaka*. If the state to which he testifies is "*be-yado*," -within his ability to personally induce- he is BELIEVED to claim that the state exists, even if he admits he did not personally generate it. For example, if he testifies that *tevel* produce under his guardianship has been resolved through *teruma* designation, he is believed. Even though he is altering the previous status of *tevel*, since he possesses the ABILITY to actually resolve *tevel* through personal intervention, he is believed in his claim that the *tevel* has been otherwise resolved. The principle of "*be-yado*" is invoked throughout *Shas*, but most directly in the *gemara* in *Gittin* (54b, 2b) and *Yevamot* (88a).

Presumably, the *be-yado* solution is based on AUGMENTING the strength of the *eid echad*'s statement. Typically, his statement is believed in a vacuum – "*eid echad ne'eman be-issurin*" – but when opposing a prior condition of *chazaka*, his unsupported statement is not RELIABLE enough to overcome our working assumption of *chazaka*. However, if the *eid* possess

the ability to personally induce the state to which he testifies, his statement is overwhelmingly reliable. According to this perspective, "*be-yado*" is cast as a form of *migu*. Since he possesses the ability to induce the state, he has little reason to lie; if he truly wanted to create a resolved *tevel* state, he could easily have separated the *teruma* himself. The knowledge that he is not a liar provides the legal confidence to accept his statement even when opposed by *chazaka*.

To be sure, and as many note (see, for example, the Rosh, *Gittin* 54b), this may not be a classic "*migu*," since the *eid* often testifies about an event that, if performed by the *eid*, may have entailed financial liability. For example, an *eid* is believed to testify that *teruma* has become *tamei* if he possesses the ability to personally confer this impurity. However, had he conferred the impurity himself, he would have been liable to pay. Hence, he possesses incentive to lie and claim that OTHERS have caused the impurity; he isn't automatically believed based on his NOT claiming that he personally impurified the produce. If *be-yado* were a type of *migu*, the *eid* should not be trusted in this case.

However, even though classic *migu* may not be operative, *be-yado* may be a derivative or parallel to *migu* that would apply even in this case. *Be-yado* may operate in a manner similar to *migu* in conferring augmented reliability to the *eid*.

The Maharik (15th century French/Italian author of responsa) introduced an entirely different view, arguing that the ability to create a change in the status of an item does not arm the *eid* with greater reliability. In fact, an *eid* CANNOT have his reliability reinforced, since an *eid* is an all or nothing proposition; either he is entirely believed inherently or he fails as an *eid* (see [shiur #04migu.htm](#)). Hence, if his testimony fails to overturn a *chazaka*, his testimony "strengthened by *be-yado*" would not be MORE successful in overturning a *chazaka*. Instead, the Maharik argues, the state of *be-yado* WEAKENS the opposing *chazaka*. A *chazaka* is based upon assuming "stasis:" if the halakhic state existed, we must assume it continues to exist until proven otherwise. If an individual has the ability to unilaterally alter the state, the *chazaka* is either non-existent or significantly weakened into an inferior *chazaka* against which a lone *eid* is believed.

This question regarding how *be-yado* works may have inspired a fundamental *machloket* about the DURATION of the *be-yado* concept. The *gemara* in *Gittin* (54b) cites Abaye, who limits *be-yado* to a scenario in which the person STILL enjoys the *be-yado* capacity when he testifies. If the ability has already concluded, even though he ONCE POSSESSED that ability, the lone *eid* is no longer believed to overturn a *chazaka*. Rava disagrees, arguing that if a lone *eid* ONCE possessed capacity to induce a status, he is always believed to testify toward that status.

Perhaps Abaye's limitation of the rule is rooted in viewing the *be-yado* concept as based upon "strengthened reliability." If the person CURRENTLY has the ability to install a status, he has little incentive to lie about that status, and he is therefore believed. If he ONCE possessed that ability but no longer does, he MAY possess incentive to testify falsely, and he is therefore no longer believed. Rava may have countered that *be-yado* does not confer augmented reliability to the *eid*, but rather weakens or disables the *chazaka*. If the item in question was "vulnerable" to change and could easily have been altered, its reigning status is not "sealed" and the *chazaka* does not bar the testimony of the *eid*. Thus, Abaye and Rava may have been debating whether *be-yado* ADDS to the reliability of the *eid* or merely weakens the *chazaka*. The expression of this debate impacts the duration of the *be-yado* ability.

Interestingly, Rava introduces a different limitation to the *be-yado* concept. If the *eid* did not supply the testimony when first asked but subsequently offered his testimony, he is not believed, even though he possesses the *be-yado* capacity to alter the item. Apparently, his initial silence raises suspicion, thereby disqualifying his subsequent statements. If *be-yado* – the capacity to have personally affected the testified status – confers augmented reliability upon the *eid*, the suspicions aroused by initial silence should not affect his ability to testify. Just as the *be-yado* ability confers strengthened reliability to overturn a *chazaka*, it should assuage suspicions raised by his initial silence. Perhaps Rava consistently viewed the *be-yado* principle in the same manner as the Maharik – it weakens the *chazaka* and allows one *eid* to testify as if there were no *chazaka*. However, if the conduct of the *eid* has aroused suspicion, his position is suspect and his testimony unacceptable. *Be-yado* does not provide an overarching augmented reliability that allays fears of false testimony. Furthermore by viewing *be-yado* as a *chazaka* diminisher, Rava stretched the application even in instances in which the ability has expired.

An additional question that may be influenced by the nature of *be-yado* is the scope of *be-yado*. Would it enable an *eid echad* to testify regarding areas that typically require two *eidim*? As stated above, the allowance for one *eid* was stated primarily in areas of *issur*. Areas concerning *erva*, such as marriage and divorce, require two *eidim* – "*ein davar she-bi-erva pachot mi-shnayim*." Would one lone *eid* be believed to testify about an *erva* situation if it were a *be-yado* situation?

The *gemara* in *Gittin* (2b) raises this as a possibility, but subsequently rejects it. However, the *gemara* in *Kiddushin* (64a) implies that it might work. The *gemara* cites a *machloket* regarding a dying person who testifies that he has children, thereby exempting his wife from *yibum* by his living brothers. Abaye claims that at least according to Rebbi, the dying person is believed; since he has the ABILITY, or *be-yado*, to exempt her from *yibum* by currently delivering a *get*, he is believed to exempt her from *yibum* even though he is testifying about an *erva* condition. This is consistent with Abaye's aforementioned view in *Gittin* (54) that *be-yado* confers augmented reliability. The augmentation would only last as long as the option still remains, but it MAY augment the *eid* sufficiently so that he can impact *erva* situations. Presumably, if *be-yado* merely weakens the *chazaka* but does not augment the status of the *eid*, it would not enable one *eid* to testify about *erva* situations, but it would be operative even after the *be-yado* ability terminated.

An interesting comment of Tosafot in *Kiddushin* establishes an association that may reflect the Maharik's view of *be-yado*. The *gemara* (54a) claims that a father is believed to testify that his child has reached the age of *mitzvot*. One way of understanding this *gemara* is to attribute this ability to the special status enjoyed by a father to testify about his child. Explained in this manner, the *gemara* yields little information about the nature of general *eid echad* and the allowance of *be-yado*. Tosafot, however, wonder why the lone *eid* is believed even against a *chazaka*. Evidently, they understood this instance as a CLASSIC situation of *eid echad* and were therefore troubled by the capacity to overturn *chazaka* even though the father does not have the *be-yado* ability to advance his child's age. Tosafot claim that since a child NATURALLY AGES, it is CONSIDERED a case of *be-yado* in which one *eid* – in this case the father- is believed even against a *chazaka*. Even though the father cannot personally affect the aging process, the very fact that the process is dynamic and irreversible renders this situation comparable to *be-*

yado, in which a lone *eid* (and presumably everyone, not just a father) would be believed.

If the ability of *be-yado* confers augmented reliability, this association is not logical. The father has no ability to personally advance his child's age and therefore should enjoy no augmented reliability. If the Maharik is correct, however, and the ability to change a status weakens the assumed stasis of *chazaka*, Tosfaot's extrapolation is logical. If ABILITY to affect change ruins stasis, certainly NATURALLY OCCURRING CHANGE should weaken the *chazaka*. Once the *chazaka* is weakened, a state similar to *be-yado* has emerged and a lone *eid* is believed.

A final issue which may reflect the nature of *be-yado* concerns the SOURCE of the *be-yado* phenomenon. Rashi in *Gittin* (2b) implies that the *be-yado* idea does not require a source, but is instead a logical principle. Since the Torah believes people about day-to-day activities (such as food preparation), evidently, this reliability extends to situations of *be-yado* and grants reliability even to overturn a *chazaka*. Tosafot cite the example of a *nidda* who is believed to testify that she immersed in a *mikve* because she has the ability to CURRENTLY immerse in a *mikve*. This reliability serves as the paradigm for all situations in which an *eid* is believed to overturn a *chazaka* because of the *be-yado* condition.

Perhaps this debate about the need for a source for *be-yado* reflects the different manners of understanding this principle. If *be-yado* augments the *eid*'s reliability to overturn *chazaka*, it is effectively extending his status beyond NATURAL scales. This extension would likely require an explicit source. Of course, the structural similarity to *migu* must then be analyzed, and we may question why the source for *migu* is insufficient.

Alternatively, the *be-yado* dynamic (as stipulated by the Maharik) merely weakens the *chazaka*, thereby rendering the context as one in which no prior status exists, and the *eid* is believed just as he is “naturally” in a situation in which there is a vacuum. This “neutralizing” ability of *be-yado* would not require a *pasuk* and could be intuited naturally, as Rashi's comments suggest.