

**TALMUDIC METHODOLOGY**  
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**Shiur #12: Eidut Kidush Ha-chodesh**

The mishna in Rosh Hashana (25b) describes several scenarios under which Beit Din sanctifies the new moon. Typically, they would receive testimony from witnesses who actually saw the new moon. Having verified this testimony, the Beit Din would then officially pronounce the new month. The mishna also describes a unique situation in which the members of the Beit Din PERSONALLY witnessed the occurrence of the new moon. If they witnessed this event during daylight hours (when Beit Din is in session), they may immediately issue their verdict pronouncing the new moon. As the gemara asserts, "Lo tehei shemi'a gedola mei-re'iya" - hearing the testimony from others should not be deemed superior to actually seeing it themselves. If they may sanctify the month based upon testified reports, they may certainly do so based upon personal encounter.

It would appear that this rule applies universally – to all areas of halakha and to all forms of eidut. In fact, three other gemarot seem to indicate that the rule would extend to all forms of eidut. The Gemara in Bava Kama (90) discusses a situation of dinei nefashot, Bava Batra (113) and Ketubot (21b) describe contexts of dinei mammanot, and each appears to apply the principle of "lo tehei shemi'a" to various different areas of halakha.

Rashi, though, in his commentary to the gemara in Rosh Hashana, limits the halakha to kidush ha-chodesh. When describing the process necessary to sanctify a new moon, the Torah never employs the term "eid" or the word "hagada" (testifying). Instead, the Torah records God's command, "Ha-chodesh ha-zeh lakhem," which suggests (as Chazal infer) that He instructed Moshe "ka-zeh ra'eh ve-kadesh" (You should see the moon in a similar state and sanctify the month). Ha-kadosh Barukh Hu implied to Moshe that sanctifying the moon requires simply the collection of information. The Torah never explicitly demanded formal eidut for kidush ha-chodesh. Therefore, a Beit Din that personally witnessed the new moon may pronounce kidush ha-chodesh without listening to actual eidut. In a classic situation,

though, in which the Torah directly mandated eidut, actual testimony is needed and the rule of 'lo tehei shemi'a' does not apply.

Indeed, the aforementioned gemarot (which broadly apply lo tehei shemi'a) appear to contradict Rashi's position, and several Rishonim attempt to reconcile Rashi's opinion to these cases. Conceptually, however, Rashi distinguishes kidush ha-chodesh as an area which does not require formal eidut. If Beit Din acquires the information through independent means, the new moon may be sanctified.

Similar sentiments about the nature of kidush ha-chodesh might be expressed in an actual mishna (24a), within the position of Rabbi Shimon. Whereas the Tana Kama disqualified relatives from testifying together about the new moon, Rabbi Shimon allowed a father and his son to form a 'kat' [group] of two eidim and testify about kidush ha-chodesh. By allowing kerovim [relatives] to testify, isn't Rabbi Shimon echoing Rashi's view, that kidush ha-chodesh does not actually require halakhically legitimate eidut, but merely demands information – even if that information is delivered through an apparatus which is normally invalid!!? Conceivably, however, we might disagree with Rashi's stance but still accept Rabbi Shimon's view. Even if kidush ha-chodesh requires actual eidut, the disqualification of 'karov' might not apply. HaRav Lichtenstein shlit"a once explained that the disqualification of two relatives jointly testifying might be an extension of the disqualification of a relative from testifying on behalf of the related litigant. In cases where the latter condition does not apply, the previous law – a logical extension - might also be irrelevant. When testifying about a new moon, neither eid is considered a karov of the ba'al davar since there is no ba'al davar per se. Therefore, two relatives may jointly testify – even if the strict standards of eidut do indeed apply to kidush ha-chodesh.

Further support for Rashi's position may be gleaned from an interesting ruling of the Rambam (Hilkhos Kidush Ha-chodesh 2:2). Based on the Yerushalmi (Rosh Hashana 3:1), the Rambam rules that if eidim testified to the new moon and subsequently became eidim zommimim, we still proceed to pronounce the new moon based on their defamed testimony. The halakha itself, though arresting, does not necessarily indicate that kidush ha-chodesh does not demand legal eidut. Instead, the halakha could reflect the rule that once the month has been pronounced by Beit Din, this ruling becomes irrevocable. After all, the gemara in Rosh Hashana (25a) infers from a pasuk in Parashat Emor that even if the month were incorrectly pronounced and even if the mistake were a conscious one, the process cannot be rescinded. Perhaps the Rambam refers to this concept when he rules that the

subversion of the eidim through the process of hazama does not cancel the sanctification which their eidut produced.

More compelling, though, is the language employed by the Rambam to introduce his halakha: 'Ein medakdekin be-eidut ha-chodesh' – we do not scrutinize the testimony of kidush ha-chodesh. By prefacing these comments, the Rambam appears to be subscribing to Rashi's position that eidut ha-chodesh does not require fully valid and legal testimony. Even if the testimony is subsequently disproved (because the eidim become zommemim), the new moon can be sanctified.

Rabbi Akiva Eiger (teshuva 176) raises the possibility that eidim who falsely testify about kidush ha-chodesh will not receive malkot for violating the issur of "lo ta'aneh be-rei'akha eid shaker." Rabbi Akiva Eiger suggests that since there is no human victim of this lie, it is considered a harmless lie and thus not liable to penalty. We might suggest that according to Rashi and perhaps the Rambam, this prohibition would not apply to kidush ha-chodesh testimony for a different reason. Since the witnesses are not considered formal eidim, they cannot be included in the prohibition of 'lo ta'aneh be-rei'akha EID shaker," which, presumably, refers only to the formal category of "eidut."