

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY
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This week's shiurim are dedicated by Mr Paul Pollack
in honor of Rabbi Reuven and Sherry Greenberg

SHIUR #03: *EIDEI KIYUM* THROUGH *EIDEI CHATIMA*
PART 2 OF A 5 PART SERIES

In the previous *shiur*, we outlined one approach to understanding R. Eliezer's insistence upon *eidei mesira*, witnesses who observe the delivery of a contract/*get*. Intuitive logics suggest that the *eidei CHATIMA* are primary, as they actually sign and thereby craft the *shetar*, but R. Eliezer may have demanded *eidei mesira* to fulfill the requirement of *edei KIYUM*, attending witnesses whose PRESENCE validates the status change conferred by marriage or divorce. According to this approach, R. Eiliezer maintains that *eidei mesira* are not necessary for the sake of the *shetar*, but rather to validate the *geirushin* or *kiddushin* process.

How would R. Meir respond to this position? He clearly concedes the need for *eidei kiyum*. If there are only *eidei chatima* on a *get*, how is the requirement of *eidei kiyum* fulfilled? This question is so compelling that Rabbenu Tam (cited by Tosafot, *Gittin* 4a, s.v. *de-kaima*) asserted that R. Meir requires ADDITIONAL *eidei MESIRA* as *eidei KIYUM*. *Eidei chatima* are indeed necessary to produce a valid *shetar*, but they are not SUFFICIENT to provide *eidei kiyum*, and *eidei mesira* are therefore ALSO necessary.

Although this logic seems appealing, the simple reading of R. Meir's position suggests that *eidei chatima* are SUFFICIENT and that no *eidei mesira* are required. We are thus confronted with our original question – where are the *eidei kiyum* in a *get* processed solely through *eidei chatima* according to R. Meir?

Surprisingly, in his presentation of the *gemara*, the Rif alters R. Eliezer's stance. While the literal reading of R. Eliezer suggests that *eidei mesira* are

necessary and sufficient, the Rif claims that R. Eliezer offered two possible tracks – EITHER *eidei mesira* OR *eidei chatima* – each track being sufficient. Accordingly, we are faced with the same question articulated above regarding R. Meir's stance. R. Meir REQUIRED *eidei chatima* and, according to the Rif, R. Eliezer ALLOWED exclusive *eidei chatima*. If a *get* can be processed through *eidei chatima* alone (and according to Rebbi Meir ALWAYS is) where are the *eidei kiyum*?

The Ran – in his comments to the Rif in Gittin (86) claims that a signed contract INDICATES a delivery of that contract; if the contract was signed, it was probably processed validly. If that contract is subsequently seen in the hands of the woman in question, we can ASSUME that it was actually delivered. Most properly prepared 'gittin' are delivered by the husband and not taken independently by the woman. Thus, R. Eliezer maintains (according to the Rif) that as long as there are *eidei chatima* on the *get* and it is in the possession of the woman, it is AS IF there are *eidei kiyum* for the *gerushin*- because we can assume delivery. Hence Rebbi Eliezer – at least according to the Rif – allowed a 'get' with pure *eidei chatima*.

This explanation assumes the halakhic rule of “*anan sahadī*,” “we are witnesses.” We can often accept OBVIOUS ASSUMPTIONS as empirical truth - as if those truths had been actually TESTIFIED about. According to the Ran, a *shetar* processed with *eidei chatima* and KNOWLEDGE of delivery makes a statement of “*anan sahadī*” about the delivery of the contract, which serves as a *kiyum* even in the absence of actual *eidei mesira*.

The Ran's explanation is an important part of the debate about the nature of *eidei kiyum*. Many assume that *kiyum* requires ACTUAL *eidim* to witness the event; a marriage or divorce must be ceremonial, and only the presence of witnesses grants this quality. According to that approach, the Ran's substitution of *anan sahadī* in place of actual *eidim* is unacceptable. In contrast, the Ran probably viewed *kiyum* as practical, rather than formal; a divorce that can be legally denied is not valid. The presence of witnesses does not formally validate a divorce, but rather provides provability and prevents deniability, and therefore assures that the parties take the matter seriously. If a divorce can be denied it may not have been performed with requisite seriousness; once the parties know that they are accountable their disposition is more serious. Theoretically, ANY

legally acceptable proof can replace actual *eidim*. Thus, if we can prove the delivery of the *get* through *anan sahad*, no actual *eidim* are required.

The *Kezot Ha-Choshen* (see his comments to Choshen Mishpat 42;1, 90;7) employs this Ran to establish an important principle governing *eidei kiyum*. He claims (90;7) that witnesses attending a *kiddushin* do not have to witness the ENTIRE action of *kiddushin*. If they stand under the *chuppa* and witness the general proceedings – even if they don't witness the actual delivery of money or the ring – they may still serve as *eidei kiyum*. Since they can ASSUME (and ultimately testify based upon that assumption) that the *chatan* they saw reciting the *kiddushin* formula while standing next to the *kalla*, actually delivered a ring, this event has provability. They may patch together their testimony based on what they actually saw and what they can assume- based on what they saw. Since this patchwork testimony would ultimately be accepted by *beit din*, this *kiddushin* is provable and the *eidei kiyum* have served their role. If we were to view *eidei kiyum* as a more formal element, we might have required them to actually witness the ENTIRE process and disagreed with the *Kezot* (as the *Tumim* actually maintains).

The Ran asserts his notion of *eidei kiyum* to explain a *get* processed solely through *edei chatima* according to R. Eliezer (based on the Rif's assumption that R. Eliezer would allow exclusive *eidei chatima* as an option). The same logic may be applied to explain R. Meir's position, who ALWAYS demands *eidei chatima* and does not allow for *eidei mesira* at all. Presumably, his *eidei chatima* supply *eidei kiyum* in the form of an *anan sahad*; although no actual witnesses attended the delivery of the *get*, the presence of a signed document indicates the delivery and is sufficient for *kiyum*.

R. Chayim suggests a very different approach to locating the *kiyum* of a *get* processed solely through *edei chatima*. According to a theory that he develops repeatedly in his comments to the Rambam (in particular in *Hilkhos Eidut*), a *shetar* is not merely a form of "recorded" or "written" *eidut*. Instead, R. Chayim viewed a *shetar* as a completely different halakhic entity with autonomous rules and dynamics. As part of the unique nature of a *shetar*, it may testify well beyond the actual events witnessed by the signatories. The *eidei chatima* actually only witness the preparation of document; they have no idea if this document was ever be issued and whether the halakhic activity triggered by

this *shetar* will ever ensue. Yet a *shetar* testifies to the events in question which the *eidim* never actually witnessed. In addition, *me-de'oraita*, a signed *shetar* is valid even if the signatures have not been validated by *beit din* (it was the *Rabbanan* who required that documents be notarized). The *shetar* actually testifies that it was prepared legitimately- even though the *eidim* have no clue about events before or after they signed!!

According to R. Chayim, this demonstrates that a *shetar* is not merely the recorded testimony of the signatories. By signing their names, the *eidei chatima* create an independent testimony that testifies far beyond the parameters of what they themselves witnessed. The *shetar* as an independent force testifies to its own integrity – that no forgeries occurred, that the participants of the *shetar* were halakhically valid, and that the event occurred – and that the *shetar* was actually delivered to the intended party – e.g. the person issuing the loan, the woman becoming married or divorced, or the recipient of the transferred land. According to R. Chayim, a signed *shetar* actually TESTIFIES to its own delivery. Even though there are no actual *eidim* witnessing the DELIVERY, there is halakhic EIDUT about the delivery through the unique voice of the *shetar*.

Practically, R. Chaim limits this “inherent testimony about delivery” to certain forms of delivery. A *shetar* can inherently testify that it was delivered to the woman (thus forming the equivalent of *edei mesira* according to R. Meir.) However, a *shetar* will not testify about its delivery into the hands of a *shaliach* who will carry it to the designated party. The *shetar* only testifies to its delivery to its intended target (the woman in the case of a *get*), but not to its transfer to an intermediary. R. Chaim employs this distinction to explain that a *shaliach* enjoys no “inherent” *edei kiyum* in the same fashion that a woman does.

However Rav Chaim provides an alternative solution to *edei kiyum* in a scenario of pure *edei chatima*. Unlike the Ran who claimed that documents affixed with *edei chatima* supply an '*anan sahadi*' about the delivery, Rav Chaim claimed that actual EIDUT exists about the delivery. Though no actual witnesses or *edei mesira* attend the delivery of the contract, the signed contract ITSELF testifies about its own delivery. Such is the unique legal power of a *shetar* to testify to the conditions of its own validity.