YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**GEMARA GITTIN 5772**

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

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**Daf 18b**

**by Rav Moshe Taragin**

**Part I. Disqualifying signatories of a shetar by discovering invalid witnesses**

Several gemarot (see, for example, Makkot 6) mention a principle governing a set of witnesses in which one or more invalid witnesses were discovered. According to the gemara, "Nimtza echad meihem karov o pasul kulan beteilim." If the set of eidim was joined by an invalid witness, the entire group becomes disqualified to testify. The gemara in Gittin (18b), along with a parallel sugya in Bava Batra (162b), considers the application of this rule to shetarot (which also contain witnesses).

 The gemara raises a scenario where a husband requests of ten witnesses to sign his 'get' - even though only two eidim are necessary. The gemara cites a dispute whether the extra eidim sign the document as witnesses (even though they are not needed), or they merely sign to fulfill the husband's desire that their names appear upon the document (the gemara refers to this option as 'tenai' - merely to fulfill the husband's stipulation). If their signatures render them as eidim, then they join the 'kat' (halakhic term for group of eidim) and can disqualify other signed witnesses if they are discovered to be invalid. If, however, their original signing was not as eidim but merely to apply their names to the document to perform the husband's request, they cannot be considered part of this 'kat' of witnesses. Hence, their subsequent disqualification in no way affects other witnesses signed upon the 'get.'

 Subsequently, the gemara questions a situation where invalid witnesses appear on a document followed by valid witnesses. According to the first position in the gemara, we can assume that their intentions were to sign merely as 'additives' but not as signatories. They could have intended to honor the husband by appending their name to his document. They might have wanted to embarrass the woman by participating - at least ceremoniously - in her divorce, or they might have been fulfilling the will of the husband that their names appear in addition to the required two witnesses. The fact that they appear BEFORE the valid witnesses merely supports the fact that they didn't see themselves as primary witnesses but merely as additives. By not signing on the bottom of the document and leaving room for valid witnesses to sign, they demonstrate their intention to sign as additives rather than as witnesses.

 The second position in the gemara basically accepts this concept - with one caveat. Even though, on principle, we deem these witnesses as merely additives and in no way menacing to the valid eidim who appear on this document, we still disqualify this shetar for technical reasons. Someone who sees this document - signed in part by invalid eidim - might mistakenly conclude that invalid witnesses can sign documents - even when they intend to incorporate themselves as bona fide eidim. Not knowing that in this particular case the eidim merely intended to 'add' their names for ulterior motives, people will reach faulty conclusions. Hence, we must suspend this document to prevent confusion. Fundamentally, though, the gemara validates a contract with invalid witnesses signed at the top of the list of witnesses; we assume that they merely added their names and their presence doesn't affect the validity of the legitimate witnesses.

 A similar tone is expressed by the gemara in Bava Batra (162b), which rules that a contract signed by more than two eidim can be processed even if an eid pasul was discovered amongst the signatures. The gemara bases this claim upon Chizkiya's principle that a document which was 'filled' with invalid signatures is still valid. If the signatures were added as 'fillers' rather than as witnesses, they do not integrate into the 'kat' and their disqualification does not affect the valid witnesses.

 This basic assumption - that invalid signatures can be 'discounted' as fillers while accepting the shetar - is challenged by a version of the gemara in Bava Batra suggested by Rabenu Chananel. He adds a word to our version of the gemara which effectively limits the gemara's allowance to one particular scenario - where the invalid eidim were signed at the beginning of the list of witnesses. In this case, we can assume them to be fillers and thus concentrate on the rest of the list. If, however, they sign in the middle or end of the list, we cannot reach such conclusions. We must at least consider that they signed as formal witnesses and reject the rest of the 'kat' based on their disqualification. This position is adopted by several Rishonim - among them the Behag and the R'I, cited in Tosafot both in Bava Batra as well as Gittin. Many Rishonim, though, dispute this approach and validate shetarot regardless of where the invalid witnesses sign. Basically, we can always propose that the invalid witnesses did not intend to incorporate as part of the 'kat,' and unless they specifically inform us otherwise, we can view them as fillers or additives. By contrast, the R'i asserted that any witnesses appearing on a document are automatically defined as formal signatories, unless there is strong reason to interpret their presence otherwise. For example, if their signatures just happen to appear at the beginning of the list, then this peculiarity strongly suggests that they were placed there as fillers and should not harm the document itself. In the absence of this 'smoking gun,' their assumed status is as formal witnesses. How might we isolate the principles underlying this dispute between the R'i and other Rishonim?

 To analyze this question we will turn our attention to a separate issue which underlies the gemara's debate. Both gemarot suggest certain litmuses to help determine the witnesses' true original intention, whether they signed as witnesses or as 'fillers.' Why not simply ask them what their original intentions were? This question is posed by Rabenu Tam in both Tosafots, as well as in two locations in the Sefer Ha-yashar. Though the answers in each instance differ slightly, they all revolve around one common principle: a concept from Ketubot (18b) that, according to Rabenu Tam, justifies our inability to ask them their original intentions. The gemara in Ketubot questions the ability of the signatories of a shetar to subsequently adjust their testimony (by claiming they were minors at the time of signing or that their signatures were coerced). The gemara denies them this right since 'eidim ha-chatumim al ha-shetar na'aseh ke-mi she-nechkera eidutan be-veit din' - once their testimony is recorded on the shetar, we consider as if it had been already processed in beit din - and can't be recanted. Normally, testimony becomes legal and binding only once it has been formally processed in beit din. Shetar circumvents beit din (see the beginning section to shiur #1), and thus the moment it is signed, the testimony becomes formal and binding. The shetar already testifies both about its content and self-referentially about the validity of its signatories. The shetar already testifies that these witnesses were valid at the point of the signature, and consequentially, they are not allowed to counter that original eidut. This gemara provides a crucial concept pertaining shetarot - what could be called 'the rule of self-referential testimony': a shetar not only testifies to its own content, but defends its very legitimacy.

 Rabenu Tam extends this notion to our context. Since the shetar was already issued, its testimony has already begun (even without processing in beit din). Hence, in defense of itself, it comments upon the valid witnesses appearing on the shetar. The only way to sustain its validity is to marginalize these witnesses as additives or fillers. In its own defense, the shetar actually testifies that these witnesses were intended as mere fillers and not as actual eidim. Once the shetar has already made this statement, the eidim are not allowed to offer competing testimony as to their original intentions.

 In truth, Rabenu Tam enacts here a rather profound extension of the principle delineated in Ketubot. That gemara allowed the shetar to testify about certain particulars of its eidim (age, volition). Rabenu Tam allows the shetar to testify about its overall integrity by marginalizing certain witnesses. A shetar does not speak only about its eidim - it speaks about ITSELF even at the expense of some of its eidim. This application highlights a crucial concept about shetar. We might have viewed a shetar as the recorded voice of the eidim. Instead of inviting witnesses to offer verbal testimony in court, we record their testimony through a contract. If we hear the eidim speaking through a shetar, we might find Rabenu Tam's extension somewhat troubling. In Ketubot the eidim - through the shetar - have already verified their prior validity and cannot subsequently modify. In our case, though, how can we allow the eidim of the shetar to speak about other signatories as to their intent? Evidently, Rabenu Tam believes that a shetar is an independent voice - a distinct and independent halakhic device, and the signatures are merely ingredients to process a viable document. Ultimately, though, the voice of the document is not that of the eidim, but its own. In Ketubot, the document chronicles the state of its eidim at the time of signature, while in our case it projects the intentions of the invalid witnesses in a manner amenable to its own viability. This can only occur if the contract speaks on its own; as such, it can referentially discriminate between the various witnesses appearing. If, however, the shetar were merely the collected voices of its own witnesses, such discrimination would be inconceivable.

 Our inspection of Rabenu Tam's subsidiary question (why not question the witnesses themselves as to their intentions) has yielded a crucial statement about the texture of a shetar - we hear an independent voice and not merely the relayed testimony of the eidim. Quite possibly, this same perspective propelled Rabenu Tam's original opposition to the R'i. The latter assumed that witnesses appearing on the document are automatically assumed to be eidim unless some intervening factor conclusively indicates otherwise. If they signed before the valid witnesses, then such indication exists. Otherwise, they are automatically assumed to be witnesses whose illegal status can collapse the rest of the 'kat.' The R'i sees the shetar as built upon the witnesses' testimony. Viewing signatories as eidim is the most natural perspective - unless we see strong reason to think otherwise. By contrast, Rabenu Tam probably viewed the shetar as an independent voice of testimony and not built upon the testimony of the eidim. They sign a document not as an alternate form of testifying, but to validate the document which itself will testify. Hence, we don't instinctively classify them as eidim and are open to visualize them as mere fillers. According to Rabenu Tam's view of shetarot, it is perfectly natural not to automatically view signatories as formal witnesses. The R'i might have adopted a different view of shetarot which compelled him to define ANY signatories as eidim.

 It should be noted that Rabenu Tam ultimately concedes to the R'i, that we can validate a shetar only if the invalid witnesses signed before the valid ones. Yet it is unclear from Tosafot whether this retreat was fundamental (because the underlying logic was incorrect) or merely technical, because of ancillary concerns. In fact, Tosafot in Bava Batra present the retreat as technical. Interestingly enough, in the Sefer Ha-yashar we find no record of this retreat.

**Part II - Incorporating the signatories of a shetar into a 'kat'**

 A second question which attracts some interest in our sugya concerns the method of forming a 'kat' of eidim on a shetar. The entire discussion of our gemara is predicated upon the assumption that witnesses upon a shetar do indeed form one 'set,' assuming they all signed with intent to be formal eidim and not just fillers. Establishing their original intentions is the only challenge facing the gemara. Assuming that they all intended to be witnesses, we incorporate all the eidim into one 'kat' and suspend the group if one is disqualified. The Yad Rama in Bava Batra makes a dramatic assertion. The only scenario in which we can establish a united 'kat' and disqualify members is if the signatures were performed simultaneously in each other's presence. As such, they solidify their status as one 'kat' which is susceptible to 'group disqualification.' If they signed independently, EVEN if they all intended to be formal witnesses, they do not incorporate and the valid signatures are not negatively affected by the invalid ones. This perspective coincides with our general impressions regarding the incorporation of a 'kat' of witnesses. The gemara in Makkot (6a) demands joint testimony as a criterion for incorporation into one 'kat.' Assuming the actual signing of a 'get' performs the same function as verbal testimony, their joint signatures can serve to integrate them into one group of eidim.

 In his sefer on the Rambam (Eidut 5:6), Rav Chayim of Brisk challenges the Yad Rama's basic assumption (though he doesn't actually cite his commentary). Rav Chayim notes that the Rambam never mentions the requirement of joint signatures. In fact, the signatures themselves do not serve a similar function to verbal testimony. The testimony which the eidim offer is through the shetar; the signatures create the document but do not constitute actual testimony. In fact (see again the beginning of shiur #1), shetar is different from verbal testimony primarily because it circumvents beit din and entails testimony without any formal legal processing in court. The absence of any role for beit din in generating the testimony of eidim makes it difficult to integrate a 'kat' of eidim through their signatures upon the shetar. They exist as separate and independent witnesses and cannot be integrated into one group testimony. Rav Chayim does not address the question we discussed earlier - whether the shetar entails the recorded testimony of the eidim or a separate halakhic force. Clearly, though, if he agrees that a shetar constitutes an independent testimony, it would be even harder to build a 'kat' of eidim through the shetar!!!

NOTE: Two separate but related issues regarding the nature of shetar have been addressed in this shiur and shiur #1. One relates to the manner by which the testimony of a shetar is processed and granted legal force. Rav Chayim is quite explicit that a shetar skirts the need for beit din and exists as legally valid testimony even without introduction into beit din. This concept accounted for the absence of zeman at a fundamental level (prior to Rabbinic decrees). According to Rav Chayim, it also creates difficulty in building a 'kat' of eidim from the signatories upon the shetar. Earlier (in the context of the Rabenu Tam's position), a separate question was raised: whose voice is contained within the shetar - the recorded voice of the eidim, or a separate halakhic source of testimony? These two questions obviously intersect at some level. However, they should be perceived as two logically distinct issues.

 Rav Chayim's initial response to this question is also a landmark statement about the texture and nature of shetarot. Even though the testimony 'courses' independently, the witnessing of the event about which they will testify occurs simultaneously. According to many positions in Makkot (6a), if eidim view an event together, even if they subsequently testify independently, they can be considered one 'kat.' According to Rav Chayim, though, the eidim of a shetar speak independently; they witness the event about which they will ultimately speak - together. Rav Chayim claims that the event about which they will testify is the actual writing of a shetar. Eidim who sign a shetar do not testify about its issue since they will not necessarily witness that subsequent event. At best they testify that this shetar was composed in a legal fashion. This composition they cannot help but witness together (as ostensibly there is only one moment of composition), and through this joint audience they form one 'kat.' This, of course, is a central question regarding the testimony of a shetar: does it speak about events beyond its composition? Keep in mind that the signing eidim probably never witnessed anything beyond the composition and signing. We will IY"H return to this question when we study the machloket between R. Meir and R. Eliezer regarding eidei mesira and eidei chatima.

Next shiur in this series - Does a Get Need to Abide by the Standards of Sefer? Sources and questions:

a. Mishna (19a), gemara... Rav Kahana

Tosafot (21b) s.v. al aleh

Sifri, Ki Tetze "sefer... shel kayama" - see website;

Gemara (21b) "Rebbi Yossi HaGelili... mishna"

b. Gemara 20b "Harei zeh gitekh... sefarim"

Tosafot s.v. sefer

Tosafot s.v. Ha-Rosh

Tosafot Sota (18a) s.v. katura "ve-khein gabei get... kofrin"

c. Mishna (21b)

Rabbenu Kraskass s.v. ein kotvin...le-yad

d. Menachot (32b) "Amar Rav Yehuda...mi-sefer"

Rashi s.v. katva, ketiva

Menachot (34a) "Tanu rabanan yakhol... ka mashma lan"

Rashi s.v. le-halan, she-ne'emar

Tosafot s.v. ne'emar, kamah

1. What is the reason that a 'get' must be written with 'permanent' ink? Which reason does the Sifri invoke?

2. How do the different reasons affect the scope of the mishna? (Focus on Tosafot 21b.)

3. How might the Rabanan who argue with Rebbi Yossi HaGelili understand the gemara (20b) regarding multiple pages?

4. How does the Yerushalmi explain the disqualification of writing a 'get' on land or items attached to land?