**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

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**LIFECYCLES – HILKHOT ISHUT**

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**Shiur #17: Laws of the Wedding (7)**

**Customs and Laws of the Wedding**

**Introduction**

[Last week](http://etzion.org.il/en/laws-wedding-6-customs-and-laws-wedding)**, we began our study of the** practical elements of the *kiddushin*, the first part of the wedding ceremony. We discussed the *birkat ha-eirusin*, which is recited by the *mesader kiddushin* before the *kiddushin* ceremony. This week, we will discuss the role of *eidim* (witnesses) at the *kiddushin* ceremony itself.

**Witnesses (*Eidim*)**

The Talmud (*Kiddushin* 65a; see also *Shulcḥan Arukh*, EH 42:2) teaches that the *kiddushin* must be performed in front of two *eidim* (witnesses):

R. Yehuda says: With regard to one who betroths another in the presence of one witness, one need not be concerned that his betrothal has taken effect. The students raised a dilemma before R. Yehuda: If both the man and the woman concede that it was a betrothal, what is the *halakha*? Is the betrothal valid? R. Yehuda did not provide a clear answer. He said: Yes and no, and the matter was uncertain to him. It was stated that *Amora’im* discussed this point. R. Nachman says that Shmuel says: With regard to one who betroths a woman with one witness, one need not be concerned that his betrothal has taken effect, and this is the *halakha* even if both parties concede that there was a betrothal.

Even if both parties confirm that there was a proper *kiddushin*, the *kiddushin* is only valid when performed in the presence of two *eidim*.

 The *Acharonim* explain that unlike *dinei mamonot*, cases of financial matters, the *eidim* in this case not only testify as to what they saw; their mere presence enables the change of legal status. This is known as “*edut le-kiyum ha-davar*.” Some explain that the *kiddushin* is only valid if that have the ability to be proven in *beit din*. Others suggest that the presence of *eidim*, and the public nature of the ceremony, enables the *kiddushin* to take effect. We will return to the comparison to criminal and financial matters shortly.

***Kashrut Ha-Eidim* – The Qualifications of the Witnesses**

 These two witnesses must be halakhically valid *eidim*. Some *eidim* are disqualified due to their identity or physical are developmental state. Others are disqualified because they are related to the *chatan*, *kalla*, or to each other. Still others are disqualified due to their behavior.

First, both witnesses must both be Jewish males (*Shulchan Arukh*, CM 35:14) over the age of thirteen. The witnesses may not be blind, mute, deaf, or severely mentally impaired. A convert may serve as a witness, like any another other person born Jewish.

Second, the witnesses must not be related, by blood or by marriage, to the *chatan* or *kalla*, or to each other. There are numerous relationships that disqualify *eidim*, *mi-de’oraita* and *mi-derabannan*.

Parents and those related to the *chatan*, *kalla*, or *eid’s* parents may not serve as witnesses. Therefore, a father or step-father, paternal or maternal grandfather, or a grandmother’s husband, as well as a great-grandfather, cannot serve as witnesses.

Similarly, the witnesses may not be the *chatan*, *kalla*, or other *eid’s* son, or related to their children, such as a son-in-law, step-son, grandson, or great-grandson.

Siblings, as well as those related by blood or marriage to siblings, are disqualified. The *chatan*, *kalla*, or witnesses’ uncles, nephews, and cousins, by blood or marriage, are disqualified as well.

(It is also customary not to appoint relatives who are not disqualified, so that bystanders should not mistakenly believe that close relatives may serve together as witnesses.)

Finally, the witnesses must not be disqualified due to their behavior. They therefore must not be thieves (*Shulchan Arukh*, CM 34:7) or intentional sinners (ibid. 34:2). Non-religious Jews should not serve as witnesses for a wedding. Some *eidim* are accustomed to repent for their sins under the *chuppa*, before the wedding ceremony.

***Yichud Eidim*- Designating Witnesses**

 The *mishna* (*Makkot* 5b) teaches that when one member of a group witnesses (*kat eidim*) is disqualified from testifying – for example, if he is related to another witness or the subject of the testimony – the entire group of witnesses is disqualified:

And just as with regard to two witnesses, if one of them is found to be a relative or is otherwise disqualified, their entire testimony is voided, as it is no longer the testimony of two witnesses, so too, with regard to three witnesses who came to testify as one set – if one of them is found to be a relative or is otherwise disqualified, their entire testimony is voided, even though two valid witnesses remain. From where is it derived that the same *halakha* applies even in the case of one hundred witnesses? It is derived from a verse, as the verse states: “witnesses.”

The *gemara* (ibid. 6a) qualifies this statement.

Rava said to him: [It is written: “According to two witnesses or three witnesses] shall a matter be established” (*Devarim* 19:15); it is with regard to those who establish a matter as legal fact in court that the verse is speaking.

Rava explains this applies only to *eidim* who come to testify (*mekaymei davar*), and not to all witnesses who witnessed the subject of the testimony. Furthermore, the Talmud explains:

Rava says: This is what we say to the witnesses who come to the court: Did you come to observe the proceedings or did you come to testify? If the witnesses say they came to testify, then if one of them is found to be a relative or otherwise disqualified, their entire testimony is voided. If the witnesses say that they came to observe, in that situation, what shall two brothers do in a case in which they saw someone who killed a person? It is certainly unusual for those who witnessed the murder to not even attend the court hearing.

In other words, if an invalid witness is found among witnesses who come to *beit din* with the intention to testify, the entire group is disqualified.

 Although the Talmud refers to financial matters, some *Rishonim* raise the following concern regarding *gittin* and *kiddushin*: If there are relatives present at the giving of the *get* or at the *kiddushin*, then should we say that all *eidim* who witnessed the ceremony are disqualified, in accordance with the principle “if one of them is found to be a relative or is otherwise disqualified, their entire testimony is voided”?

Tosafot (*Makkot* 6a, s.v. *Shmuel*; see also Rosh 1:11) explain that since the *gemara* only applies this rule to witnesses who come to testify in *beit din*, and not to those who merely witnessed the action, it would not apply to those who witnessed the *kiddushin*.

 Ritva, (*Kiddushin* 43a, s.v. *itmar*) disagrees. He explains that when the *gemara* differentiated between witnesses who come to testify in *beit din* and those who saw the act, “that referred to monetary and criminal cases, regarding which the testimony is not fulfilled until the witnesses come to *beit din*… However, for *kiddushin*, regarding which the testimony does not only come to confirm the act, as even if we know that she was betrothed, the *kiddushin* is not valid without testimony… if invalid witnesses join them during the *kiddushin*, the entire testimony is disqualified.” In other words, the testimony for *kiddushin* is fundamentally a different type of testimony. It is not to verify that the *kiddushin* occurred, but rather, “*edut le-kiyum ha-davar*,” and therefore, as we mentioned above, if the *kiddushin* is performed without witnesses, it is not valid.

 Although the Ritva does not accept this view, he records that the practice of his teacher was that “whenever there are valid and invalid witnesses at the (*kiddushin*) ceremony, it is necessary to designate the *eidei kiddushin* (i.e. the witnesses for the *kiddushin*), because if not, since there is an invalid witness among them, the testimony of all of them is disqualified.” By designating witnesses to the exclusion of others, the “*kat*” of *eidim*, which does not include disqualified witnesses, is defined.

 The *halakha* is in accordance with Tosafot (*Rema* 42:4). Therefore, there is no need to designate *eidim*, and even those who did not intend to testify may serve as the *eidim* (*Shulchan Arukh*, CM 36:1; *Pitchei Teshuva*, EH 42:11). However, a number of *Acharonim* (see, for example Radvaz, II ch. 707; Shakh, CM 36:8; Beit Meir 42:2; Ketzot Ha-Choshen 36:1) record that it is customary to designate the *eidei kiddushin*. The Arukh Ha-Shulchan (EH 42:31), for example, writes:

It is proper to designate the witnesses for the *kiddushin* under the *chuppa*, and it is customary to do so in many holy communities, and it is proper for a number of reasons. First, as those who are at the wedding ceremony are often distracted by the wedding music and they do not witness the actual *kiddushin*, [witnesses are designated] in order that two witnesses should see the *kiddushin*. Second, since those standing under the *chuppa* who see the *kiddushin* are generally related to each other, and those who are valid *eidim* generally stand far from the *chuppa* and do not at all see the *kiddushin*… therefore, it is proper for the *chatan* to designate the witnesses. However, in order to spare him this embarrassment and responsibility, it is proper for the officiating rabbi to designate the *eidim*.

If the *eidim* were not designated and other people witnessed the *kiddushin* ceremony, the wedding is still valid (see Otzar 22:25:6).

**The Responsibilities of the *Eidim***

 The *mesader kiddushin* instructs the *eidim* to pay careful attention to the wedding ceremony. The *eidim* should examine the ring to determine that it is indeed worth the value of a *peruta* and that it conforms to the requirements of *kiddushei kesef*. The *eidim* must hear the *chatan* say “*harei at mekudeshet*” and see the giving of the ring to the woman, as well as her acceptance of the ring.

 The *Acharonim* discuss whether the *kiddushin* is still binding if the *eidim* did not witness the actual giving of the ring (see Pitchei Teshuva 42:12).

 Next week, we will discuss the laws of the wedding ring and the act of *kiddushin*.