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**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

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Dedicated by the Wise and Etshalom families
in memory of Rabbi Aaron M. Wise, whose yahrzeit is 21 Tammuz.
Y'hi Zikhro Barukh.

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In loving memory of Fred Stone, Ya'acov Ben Yitzchak, A”H

beloved father and grandfather, by Ellen and Stanley Stone and their children Jake and Chaya, Zack and Yael, Ezra, Yoni, Eliana and Gabi.

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**Shiur #12: *Yakir*:
The authority of a father to testify about the identity of his child**

Money-related testimony can usually only be accepted if supplied by two witnesses. However, the Torah empowers a father to independently testify about the identity of his firstborn son, thereby enabling him to receive a double portion of the inheritance. By mandating that a father *“yakir”* or recognize his legitimate firstborn (as opposed to awarding that title to an impostor son), the Torah also AUTHORIZES a father to testify independently about his firstborn’s status. The father is thus one of the exceptions to the general rule –a lone individual who is trusted even without a second witness. Halakha awards a father similar abilities to testify about his daughter’s betrothal (*et biti natati le-ish ha-zeh*), and one witness is also believed to testify about a *sota* woman that she indeed committed adultery (thereby “sparing” her from the drinking ceremony but condemning her to death).

In truth, the extent of the father's reliability is debated between R. Yehuda and the Rabbanan. According to the Rabbanan, the father is only believed in the absence of ANY information. Accordingly, his status is not noteworthy. However, according to R. Yehuda (and in this instance, Halakha adopts his minority opinion), a father is believed to ALTER the conventional assumptions. According to R. Yehuda, the father is strongly empowered and this empowerment must be analyzed.

The most immediate question concerns the halakhic status of the father. Being that he testifies alone, he presumably does not attain the status of *eidim*. Presumably, he is BELIEVED because the information he possesses is private and difficult to be gathered by actual *eidim*. Hence, the Torah endows him with “*ne'emanut*,” which allows us to proceed even without ACTUAL testimony of *EIDIM*. The *gemara* in *Kiddushin* (73b-74a) lists two other individuals who are empowered to determine the identity of a baby – the midwife and the mother. The Tosafot Ha-Rosh claims that the validity of these latter two individuals is derived from the special status of the father. All three share the same advantage- they alone are generally privy to information which others are not. Hence they are RELIED upon even in the absence of classic *EIDUT*.

However, a *gemara* in *Yevamot* (47a) implies a very different view of this halakha. The *gemara* presents the case of a convert who disqualifies his own conversion and wants to similarly testify about his son. R. Nachman bar Yitzchak disqualifies the testimony about the son since the man has already disqualified his prior conversion, rendering himself a gentile, who is disqualified to serve as an *eid.* This newly confessed gentile cannot TESTIFY about his son. But who mentioned anything about testimony? A father’s statements about his son are accepted and actionable in the ABSENCE of *eidut*. Evidently, R. Nachman bar Yitzchak maintains that once the father is believed, he is afforded a status of *eidut* – even though he is only one person! He is not merely BELIEVED, but his statements are considered *EIDUT*. There are obviously many *halakhot* that would result from classifying the father’s statements about his son not merely as acceptable, but as authentic *halakhic* *eidut*.

Firstly if the father’s statement is considered “*eidut*,” we may expect the father’s testimony to defeat ACTUAL *eidut*. It is clear that according to R. Yehuda, a father’s testimony defeats conventional knowledge or *chazaka*. Even though we ASSUMED that one son was the *bekhor*, the father is believed to reject that assumption and reset our perspective. Would a father be believed even if *eidim* have already provided information? The Rashbam in *Bava Batra* (128b) claims that he is not, while the Rambam describes a case in which the father is trusted even in the presence of *eidim*. The Ramban’s case does not entail a DIRECT contradiction between *eidim* and the father; the *eidim* had testified that a person was a *bekhor* and the father – in assigning a different person as HIS *bekhor* – merely claims that the *eidim-*recognized *bekhor* is probably the firstborn of ANOTHER man. Hence, the father does not directly refute the *eidim*, but he still offers his statements AFTER *eidim* have already testified, something the Rashbam would probably not allow.

The Mishnah Le-Melekh in *Hilkhot Nachalot* 2:14 cites opinions that claim that a father is believed to actually contradict *eidim*. If the *eidim* claim that a son is the *bekhor*, the father is believed even to contradict them, assigning a different child as *bekhor* and rejecting ANY *bekhor* status to the *eidim-*appointed *bekhor*. Certainly, this opinion cited by the Mishnah Le-Melech, as well as the Ramban, viewed the father’s strength as equivalent to *eidut*. As a Torah qualified *eid*, the father is allowed to testify in the presence of *eidim* and even contradict them. According to the Rashbam, perhaps the father does not achieve a status of *eid* and is only believed if *eidim* have not offered their testimony.

A second issue surrounds the rule of *keivan she-higid*. Is a father believed if he recants or changes his testimony. Typically, *eidim* have ONE opportunity to testify. Any further attempt is blunted by the rule of *keivan* *she-higgid shuv eino chozer u-maggid* (once they have testified that cannot longer offer a second testimony). Would a father enjoy a second chance to alter his testimony? The Ramban claims (perhaps true to form) that he WOULD be impeded from a second testimony based on *keivan she-higgid* concerns. Those who deny the father a status of *eid* may not apply *keivan* *she-higgid* issue to his testimony.

Interestingly, the Rashbam ALSO mentions *keivan she-higgid*, complicating his position. On the one hand, he does not empower the father to be believed in the presence of *eidim*, suggesting that the father DOES NOT achieve a status of an *eid*. But by acknowledging *keivan she-higgid* concerns, he implies that a father DOES enjoy *eid*-like status.

In truth, the *gemara* may present the father as someone who is uninhibited by *keivan she’higgid*. The *gemara* (126b) only allows a father to recant his testimony if he JUSTIFIES his initial comments (which he now claims were false). For example, if he initially claims that a person is his son and later recants to designate him as his slave, he is only believed if he can explain – through a justification known as *amatlah* – his initial misleading statements. If his first statements were voiced near a tax collector, the father may claim that he initially referred to him as a “son” to avoid unfair taxation upon slaves. By offering this *amatlah* the father justifies his original misleading statement and is now believed to offer his authentic testimony. The ability to recant statements by offering a simple *amatlah* may itself prove that a father is NOT considered an *eid* and is NOT hampered by formal *kivan she’higgid* concerns; he must only EXPLAIN his initial deceit so that we trust his veracity and can accept his final statements as true. If the father WERE considered a halakhic *eid*, perhaps *amatlah* reversal would be insufficient.

Some (see *Shev Shmayta 6:8*) infer a different conclusion: They assume that a father is DEFINITELY an *eid* and if he can employ *amatlah* to facilitate reversal, then others who also are considered *eidim* may retreat by offering an *amatlah* as well.

The question of the father’s status emerges within an interesting dispute between the Ramban and his disciples regarding employing a *migu* on behalf of the father’s recantation. As stated above, if a father explains his initial deception, he is believed to recant and offer contradictory testimony. The *RIshonim* question the NEED for an *amatlah*. After all, he should be believed to recant his testimony since this is a case of “*migu*.” For example, in a situation in which he aims to recant his testimony that the person is his “slave” and instead wants to designate him as his son and rightful inheritor, he possesses an alternative approach toward achieving THAT VERY goal: he could unilaterally transfer all his holdings through *kinyan* and thereby achieve the same result.

The Ramban accepts the premise but disqualifies the *migu* on unrelated grounds (see <http://vbm-torah.org/archive/metho-by-topic/bava-batra.html>, *shiur* #16, which discusses the Ramban’s theory about a *migu le-chatzi ta’ana*). By contrast, the Ritva validates the integrity of the *migu* but questions its relevance. *Migu* can be used by a litigant against his adversary; it cannot be employed by a father seeking to recant his prior statement authorized by *yakir*. Although the Ritva does not actually articulate this, it is feasible that since the father’s initial statements were afforded *EIDUT* status, they cannot be undone through *migu*, which is a tool for disputants and not for *eidim*. This further complicates the Ramban’s position. As stated earlier, he trusts the father even in the presence of *eidim* and applies *keivan she’higgid* concerns to the father, suggesting that the father enjoys a status similar to *EIDIM*. However, by theoretically allowing a healthy *migu* to empower the father’s recantation, he may be denying the father a status of *eid*.

A final question concerns an issue the Ritva raises. The *gemara* extends the father’s authority beyond merely assigning the *bekhor* to receive a double portion of inheritance. A father is also believed to impugn his son’s pedigree by admitting that the child is a *mamzer* or *ben* *gerusha*. The exact SOURCE and LOGIC of this rule aside, the Ritva questions his ABILITY. By admitting that his child is the product of an illicit relationship, he is incriminating himself, and the rule of *ein adam meisim Atzmo* *rasha* disallows self-incriminating *eidut.* The Ritva’s first answer assumes that the case describes a situation without self-incrimination – for example, the father testifies that the child was produced by a *shogeg* illicit relationship. The son remains non-pedigreed, but that father/witness has not self-incriminated. However, the second answer of the Ritva claims that the concern of self-incrimination would not apply to the father’s special authority.

Perhaps the two different answers of the Ritva are disagreeing precisely about the nature of the father’s *yakir* authority. If he indeed is considered a witness, he would be plagued by the problem of self-incrimination. Assuming this problem, in his first answer, the Ritva was forced to assume that the situation was one absent of self-incrimination (he engaged in a *shogeg* relationship). However, the second answer of the Riva denies the status of *eidut* and therefore is not concerned by the rule against *eidim* self-incriminating.