YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**GEMARA GITTIN**

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**This shiur is dedicated *le-zekher nishmot***

**Amelia Ray and Morris Ray
by their children Patti Ray and Allen Ray**

**on the occasion of their twelfth *yahrtzeits***

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

Daf 22a - The Dispute Between R’ Meir & R’ Elazar

Rav Yair Kahn

Sources and questions:

1. Gittin 22a, “*ve-chakhamim makhshirin… ka mashma lan*.”

2. Gittin 22b, Tosafot s.v. “*aval*,” Tosafot Rid Bava Batra 77a s.v. “*de-ad kan… le-shi’abud*.”

3. Gittin 22a, Tosafot s.v. “*man chakhamim*,” Gittin 24b, Tosafot s.v. “*be-eidei mesira*.”

4. Ketubot 94a, “*itmar shnei shetarot… kartei*,” Tosafot s.v. “*leima*.”

5. Gittin 36a, “*ve-ha-eidim chotmin… limdinat ha-yam*,” Tosafot Gittin 4a, s.v. “*de-kayma lan*.”

1. What is the basis of the dispute between Rabbi Elazar and Rabbi Meir? (See Tosafot Rid in Bava Batra.)

2. What is the distinction between a *get* and other *shetarot* (“documents,” “deeds”)?

3. Why does Rabbi Meir rule that in the instance of two *shetarot* issued on the same day the assets are divided (“*yachloku*”) by the two parties?

4. What did the Sages achieve with the *takkanah* (“ordinance”) that witnesses are required to sign the *get*? (See Tosafot on *daf* 4a)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*

Witnesses Who Effect (“*eidei chalot*”) A *Get*

“Rabbi Yehuda ben Beteira says, ‘[A *get*] is not to be written on paper [from which writing can easily be] erased nor on *diftera* (“hide” prepared for writing) because such [a *get*] can be forged.’ The Sages validate [such a *get*].” (*Gittin* 21b)

The Gemara (*daf* 22b) ascribes the dispute here to the dispute between Rabbi Elazar and Rabbi Meir as to which set of witnesses effectuate the transaction intended by a document - the *eidei mesirah* (“witnesses of delivery” who witness the physical transfer of the *get* between the two parties) or the *eidei chatima* (“witnesses of signing” who sign the document): “‘The Sages validate [such a *get*]’ – who are ‘the Sages’? Rabbi Elazar said, ‘This [opinion is that of] Rabbi Elazar who stated, ‘the *eidei mesirah* effectuate [the *get*].’” In other words, Rabbi Meir alone invalidates text that may be forged, since in such an instance it is impossible to rely on the witnesses whose signatures are affixed to such a document. However, despite the unreliability of these signatures, it is still possible to rely on the witnesses who read the *get* and saw it being handed to the woman, and therefore know what was written in it at the time of its issue. Therefore documents written in a manner that can be forged are only valid according to the opinion of Rabbi Elazar who maintains that it is the *eidei mesira* who effectuate the intended transaction of the document.

The Gemara continues, nonetheless, and considers that a document with text that may be forged may be invalid even according to the view that it is the *eidei mesira* who effectuate the document.

“Rabbi Elazar further said: ‘Rabbi Elazar only validated [such a *get* if it was brought before the court] immediately, however from now [when it was written] until 10 days [later], [Rabbi Elazar did] not, [for in this instance] we are concerned there may have been a stipulation in [the *get*] that [the wife may have] altered.’ Rabbi Yochanan said, ‘Even from now until 10 days [later, Rabbi Elazar would validate it] – since if there was a stipulation [in the *get*] the witnesses would surely recall it.’ Rabbi Elazar further said, ‘Rabbi Elazar only validated [such an instance of text that may be altered] for *gittin*, but not for other documents, for the verse states, “And place [the documents] in an earthenware vessel so they may continue many days (Yirmeyahu 32,14).”’ Rabbi Yochanan [however] said, ‘Even in [other] documents [this is valid].’ However, does the verse (ibid.) not state, ‘so they may continue many days’? That is [merely] good advice [that the verse] teaches us.”(Gittin 22b)

Gittin vs. Other Documents

The commentators dispute the distinction between a *get* and all other documents. Tosafot s.v. “*aval*” (Gittin 22b) state:

“Yet if you shall say: according to Rabbi Elazar who said, ‘[erasable text is valid for a *get*] but not for other documents,’ how is this different from [the instance of a *get* that] does not have witnesses [signed] on it, as we learned [in the Mishnah] in the last chapter (*daf* 86a), that [according to] Rabbi Elazar [a creditor may] claim from pledged assets, i.e. by means of *shetarot*, as Rashi explained [there]?’ [To answer,] it can be said that [the instance of a *get* that] does not have witnesses [signed] on it is different, since it is written on a substance that cannot be forged, and the witnesses certainly recognize a document that was issued before them, and if any aspect thereof was forged, the forgery would be apparent. However there is a further difficulty, for it is clearly taught in the first chapter of Kiddushin (26a), ‘[if one] wrote for another on paper or on earthenware “my field is sold to you, my field is given to you” – the field is sold and given’; consequently [indicating that] Rabbi Elazar even validates [in the instance of] other documents [utilizing] material that can be forged! [To answer,] it can be said, that the statement here ‘but not for other documents’ only refers to documents that serve as evidence, whereas a document of sale and gift created for momentary usage for acquiring something is akin to a *get*.”

At the onset Tosafot understood that the term “other *shetarot*” refers to regular documents that effect acquisition of rights, for instance, a bill of sale. However in their second explanation Tosafot explained that in this matter a bill of sale is akin to a *get*. The distinction, then, between the *get* and "other documents" is essentially the distinction between a deed of acquisition (“*shetar kinyan*”) and a document serving as evidentiary proof (“*shetar re’aya*”).

Deeds of Acquisition vs. Evidentiary Deeds

The distinction between a deed of acquisition and an evidentiary document that serves as proof of a transaction can be understood by means of the commentary of Tosafot Rid in Bava Batra:

“For Rabbi Elazar only stated [his view validating such a text that may be forged] with regard a document intended for acquisition [thereby], for example a *get*, a betrothal document (“*shetar kiddushin*”), or a real estate deed when one desires to [effect the] purchase by means of a document. Also, when taking a loan and the borrower writes a [loan] document, since this document effects acquisition of the land of the borrower for [the lender to use in order to offset] a pledge.”

(Tosafot Rid, Bava Batra 77a)

It is clearly evident from Tosafot Rid that Rabbi Meir and Rabbi Elazar only dispute the instance of a *shetar kinyan*, whereas they do not dispute the instance of a *shetar re’aya*. This is how Rabbi Yosef Dov Halevi Soloveitchik *zt"l* understood Tosafot Rid, reasoning that only witnesses who signed the bill are viewed as having had their testimony examined and accepted in court, and thus the *eidei chatima* transform the document status to that of an object of testimonial evidence (“*cheftza shel eidut*”). However, a bill devoid of *eidei chatima* cannot constitute an object of independent testimony. The *eidei mesirah* may testify verbally about the written text of the document, but the document on its own does not constitute ‘testimony,’ and therefore is not an evidentiary deed. Therefore, also Rabbi Elazar agreed that *eidei chatimah* are necessary for a *shetar re’ayah*. However, regarding a *shetar kinyan*, the main function of which is to effect the acquisition or transfer of rights (“*chalot ha-kinyan*”), and not to serve as testimonial evidence, Rabbi Elazar disputes Rabbi Meir, contending that the *eidei mesirah* effectuate the document – “*eidei mesirah kartei*.”

In the light of this distinction, it is apparent that Rabbi Elazar, who, owing to the presence of *eidei mesira* validates a text that can be forged, did so solely for a *shetar kinyan*. A *shetar re’ayah*, however require *eidei chatima*, even according to Rabbi Elazar, and consequently text that can be forged is invalid for such an evidentiary deed. However, it then follows that Rabbi Yochanan, who validates the instance of text that can be forged for all other documents, i.e. evidentiary bills, apparently disagrees, reasoning that *eidei mesira* are sufficient to validate evidentiary deeds. However, according to the first explanation of Tosafot that the Gemara distinguishes between a *get* and a financial deeds, the Gemara here does not relate to evidentiary deeds at all. We must understand the nature of this distinction between these two types of documents.

“So They May Continue Many Days”

The Gemara explained that the dispute between Rabbi Yochanan and Rabbi Elazar regarding the validity of financial deeds written in text that can be forged is dependent on the requirement that a document “continue many days.” According to Rabbi Elazar, a financial deed must be written with the condition of potentially existing for many days, and therefore text that cannot do so (owing to the possibility of forgery) is invalid. According to Rabbi Yochanan, however, ‎“So they may continue many days” are merely words of advice. It would appear, then, that this concept of existing for many days is related to the evidentiary nature of the document. Indeed, the transaction itself was effected immediately on conveying the document to the acquiring party and certainly is not required to “continue many days.” The necessity for a document to exist for many days is only required so that it serve as future testimony of the transaction. Thus, Rabbi Elazar would seem to be innovating a secondary requirement that every *shetar kinyan* also be capable of serving as testimonial evidence in the form of a *shetar re-ayah*; if the very document itself cannot serve as such, it is also invalid for financial transactions. Rabbi Yochanan disputes this innovation, reasoning that while it is also proper for the deed to document the transaction for the future, and this is good advice that should be heeded, nonetheless a deed is valid to effect transactions even if it cannot serve as evidence thereof.

Regarding the dispute regarding a *shetar kinyan* as to whether *eidei mesira kartei* (the witnesses of delivery effectuate the document transaction) or the *eidei chatima kartei* (the witnesses who sign the document effect the transaction), Rabbi Elazar’s view that *eidei mesira* *kartei* would seem to be more reasonable. While a *shetar re-ayah* specifically requires the signatures of the witnesses, when considering a *shetar kinyan*, the critical point is the moment of transfer of the document itself to the other party, which is the moment of effecting the transaction – “*chalot ha-kinyan*.” According to the view that *eidei mesira* *kartei*, the party conveying rights (or assuming liability) expresses this intent in writing, in black and white, and then hands this written text to the acquiring party. The central point is the moment in time the transaction occurs that constitutes an explicit, public expression of the intent of the party committing himself. This intent is expressed in full clarity in a binding event before two *eidei mesira*. Yet Rabbi Meir’s opinion is difficult to comprehend: why does he view two *eidei chatimah* as preferable? A deed can be written for the person assigning rights to another even in the absence of this party acquiring the rights, indicating that the *eidei chatima* need not even be present at all at the moment the transaction is effected, and consequently would be unable to directly testify about the transaction?

We can suggest that, according to Rabbi Meir, the *eidei chatima* are an essential component of the body and form of the document: If witnesses have not signed the *shetar* it is nothing more than a piece of paper. In other words, Rabbi Meir, too, agrees that the transaction effected by a document is a result of the conscious decision of the party writing the document that is expressed in the text contained in the document – however Rabbi Meir contends that the witnesses’ signatures are an element of the laws of defining a *shetar*, and without the signatures the document is invalid and the transaction is voided.

Acquisition by Admission

However, it seems more reasonable to suggest that Rabbi Meir disputes the very basis of the transaction effected by a *shetar*. In his view, the transaction is not effected as a result of the party who conveys his rights by means of the document expressing his intentions to do so. Rather, the document effects the transaction by conveying the evidence that the document itself testifies to. At the moment of conveying the document, the *makneh* (“conveyor” of the rights) issues to the *koneh* (“acquirer” of the rights) evidence equivalent to the testimony of one hundred witnesses that the land has now become his. On the transfer of this evidence to the *koneh*, a new legal reality is created, and it is this very incident that creates the change in the status of ownership. We find a similar instance to this with regard “*kinyan odita*,” “acquisition by admission”:

“Come and hear: Issur the proselyte had twelve thousand zuz [deposited] with Rava. [Issur’s] son Rav Mari, [whose] conception was not in sanctity, [yet] his birth was in sanctity, was [at that time] at the house of Rav. Rava said: ‘How shall Mari gain possession of this sum of money? If as an inheritance – he is not [legally classified as] an heir’… Rav Ikka son of Rav Ammi objected: ‘Why? Have Issur declare that the money belongs to Rav Mari and [then Rav Mari] would acquire it [by means of this] admission!’ Meanwhile, [such] an admission (“*odita*”) was issued from the house of Issur.” (Bava Batra 149a)

In other words, Issur conveyed his money to his son by means of a false admission. It is difficult to claim that the Amoraim believed Issur, since it was apparent to everyone that he was lying. We must understand, then, that this is not a question of faith in an individual’s admission, but rather a question of conveying rights and effecting a change to ownership status by means of a new legal reality that was created by an individual’s admission. Therefore, a *shetar kinyan*, according to Rabbi Meir, must also be a *shetar re’aya*, and hence he demands specifically the presence of *eidei chatima*. When this *shetar re’aya* is issued then, this effects the transaction it is intended to perform.

It can be argued, however, that establishing such facts on the ground is only effective in the realm of *dinei mamonot* (“financial matters”). Ownership has significance not only for *kinyan* on the objective level; public recognition, which affects one’s practical control over the object, is also a significant element in the financial realm. In the sphere of divorce and the *get*, however, this is not the case: everything is a question of the objective reality. Following our approach thus far, we may explain that it is owing to this consideration that some Amoraim ruled like Rabbi Meir for financial documents, yet like Rabbi Elazar for *gittin*, as we see in the Gemara further on (*daf* 86b) and as Tosafot note on the discussion in our Gemara here.

It is Evident from the Contents of the Document

In several places Tosafot assert that according to Rabbi Meir, a document is required to be “*mukhach mi-tokho*” – “evident from within.” This means that all the information required to interpret the intention of a document must be explicitly evident from the document itself, without requiring external sources in order to understand its intent. This is why Tosafot dissented with Rashi, contending that according to Rabbi Meir text that may be forged is invalid even if external evidence can attest to the document’s authenticity. Tosafot state:

“However Rashi’s interpretation that according to Rabbi Meir a woman coming to remarry with a *get* [proving she is a divorcee and thus permitted to remarry] written on material that may [allow the text to] be forged, does not require *eidei mesira*, and she does not [need to] bring before us the witnesses who signed it if there are [people present] who recognize their signatures – even though there is no way to know if there was a stipulation in [the *get*] that she forged – indicates that if [such] witnesses are present [the *get*] would be valid. This cannot be asserted, for Rabbi Meir requires that it be evident from within, as is apparent from the beginning [of the chapter] *Kol ha-Get* (*daf* 24b); and a material that may [allow text to] be forged does not prove anything from within.” (Gittin 22a, Tosafot s.v. “*man chachamim*”)

Tosafot base their view on the later discussion in the Gemara regarding a man with two wives who share the same name:

“It is the younger [wife] who he may not divorce with that [*get*], however the older [wife] he may divorce with that [*get*]… here too [the *get* is valid if] there are *eidei mesira*, and [the Mishnah follows the view of] Rabbi Elazar.” (Gittin 24b)

It is from this Gemara that Tosafot expounded that according to Rabbi Meir it is impossible to divorce the older wife by means of this *get*: "However according to Rabbi Meir we require that it is evident from within the signature[s] that [the *get*] was written explicitly for this man and this woman, and *eidei mesirah* are of no consequence.”[[1]](#footnote-1)

According to our understanding of Rabbi Meir, Tosafot’s approach is quite reasonable. If in Rabbi Meir’s view the transaction effected by a document arises from establishing legal facts on the ground by furnishing evidence of one’s ownership, presumably this can only occur when everything is evident from the document text. However, should we require further external clarification, then the party conveying his rights by means of the document cannot establish any legal facts by issuing the document.

Moreover the Gemara in Ketubot states:

“It is taught, ‘Two deeds issued on the same day: Rav said, “[the two claimants] divide [the property in question],” and Shemuel said, “Cast [this case] to the judges [to rule how the property is to be divided].”’ [Shall we] say Rav said [his ruling] in accordance with Rabbi Meir…” (*Ketubot* 94a)

The Gemara asserts, then, that if the *eidei mesirah* *kartei*, two people who present deeds to a specific plot of land that have been dated on the same day are to share the land between them. Tosafot here explain this in the light of Rabbi Meir's demand that a document be evident from within:

“And since the deed is of primary significance, and from the witnesses’ signatures appearing on the deed it is not evident which party’s acquisition preceded the other, therefore both individuals acquire [the land] simultaneously, even if [the deed] was written, signed and issued to the one party first and thereafter [the second deed] was written and issued to the other individual.” (*Ketubot* 94a, Tosafot s.v. “*leima*”)

In other words, according to Tosafot the requirement that a document be evident from within is not merely a condition for the validity of the document, rather this determines the very moment of effectuation of the transaction – the moment of *chalot ha-shetar*. The transaction itself will be effected solely on the date recorded in the document. Therefore, according to Rabbi Meir, these two deeds will be effected simultaneously, and thus the land is owned by both parties. This concurs with our approach, for as long as the date recorded on the deed has yet to transpire, no legal facts have been established and therefore the ownership rights have not been transferred by this deed.

In his commentary to this discussion in Ketubot, however, it is apparent that here too Rashi disputes the approach of Tosafot. Rashi, evidently, does not ascribe the requirement of *mukhach mi-tokho* to Rabbi Meir. It would appear that Rashi contends that Rabbi Meir does not understand the transaction effected by a *shetar* to be based on the creation of legal facts on the ground. In any event, we can still explain that Rashi understands that Rabbi Meir believes that the transaction effected by a document occurs as a result of the document constituting the evidentiary *shetar re’aya*. This would explain why Rabbi Meir is necessitates *eidei chatima*. According to Rashi, however, the essence of the transaction is not premised on the determination of legal facts by issuing the document. Rather, the effectuation of a transaction by means of a document, for both Rabbi Meir and Rabbi Elazar, results from the document constituting an expression of intent of the issuing party, the *makneh*. Yet for those of the opinion that the *eidei mesira* constitute the essence of the transaction, then the document constitutes the expression of the intent of the *makneh*, intent that is explicitly recorded within the document that is issued to the acquiring party in a binding event before these witnesses. Whereas for those who reason that the *eidei chatima* effectuate the transaction, then the intent of the *makneh* is expressed by issuing a *shetar re’aya* to the acquiring party.

If the intent and purpose of the document is not evident from within its own text, then no legal facts are established when it is issued to the receiving party. Therefore, according to Tosafot, Rabbi Meir invalidates such a bill altogether. On the other hand, if at the moment the document is issued there is supplementary evidence that augments it, then issuing the document does comprise a clear expression of the intent of the *makneh*. Thus Rashi maintains that issuing a document where its intent is not self-evident – a document that is not *mukhach mi-tokho* – does effectuate the transaction even according to Rabbi Meir.

The Gemara states later in the Masekhet:

“‘The witnesses sign the *get* because of a social enactment (“*tikkun olam*”).’ ‘Because of a social enactment’?!? This [requirement] derives from scripture, as it states, ‘and write the deeds and signs them (Yirmeyahu 32:44)’! Rabba said, ‘[This teaching of the Mishnah] is only necessary for Rabbi Elazar who stated [that] *eidei mesirah kartei*; the Rabbis nonetheless instituted that witnesses sign [the *get*] for the sake of the social order, since on occasion the witnesses [who see issuing of the *get*] may die, and on occasion they may go abroad.’” (Gittin 36a)

Rif understands that Rabbi Elazar concurs that *eidei chatima* also effectuate the *get*. Therefore the Rabbis instituted their inclusion in order to validate the *get* by their testimony in the absence of the *eidei mesira*. Rif contends that Rabbi Elazar reasons that a document effectuates the transaction by means of either *eidei mesira* or *eidei chatima*, whereas Rabbi Meir dissents, reasoning that solely *eidei chatima* effectuate the intended transaction.

However, many Rishonim dispute this interpretation, asserting rather that according to Rabbi Elazar it is only *eidei mesira* who effect the transaction. These Rishonim understand that the ordinance mandating witnesses to sign a *get* was intended to transform the *get* into a *shetar re’aya*. It is as a result of this that the *get* may serve as testimony to the divorce having transpired, even though a document containing signatory witnesses cannot serve as *shetar kinyan* unless it was issued in the presence of *eidei mesira*. As Tosafot state in the first chapter of the Masekhet:

“For if there are no *eidei mesira* [present] she is not divorced even in the event of *eidei chatima*, and *eidei chatima* are of no consequence unless the *eidei mesira* die or travel abroad, [in which instance the woman] may remarry by means of the *eidei chatima*, for ostensibly [the *get*] was executed in a valid manner, as stated in [the chapter of] *ha-Shole’ach* (*daf* 36a).” (Gittin 4a, Tosafot s.v. ‘*de-kayma lan*’)

The Rishonim offer dissenting interpretations of Rif. Ran asserts that Rabbi Elazar’s principal view is that only the *eidei mesira* effect the transaction, however the *eidei chatima* can also serve as *eidei mesira*. He states:

“For the *eidei chatima* are akin to *eidei mesira*, since the *get* is furnished by [the woman] by means of these witnesses, and it is evident that the husband issued [the *get*] to her, and the result is as if the [witnesses] themselves testify to the issuing [of the *get*].” (Ran on Rif, Gittin 48a, s.v. “*ve-haynu di-ketanei*”)

Ramban, however, asserts that according to Rabbi Elazar there are two distinct paths for effecting a transaction by means of a document: both *eidei mesira* and *eidei chatima* are able to effect a *shetar kinyan*. This is because Ramban understands *eidei chatima* and *eidei mesira* to share a common denominator. If we understand that according to Rabbi Meir a document effects a transaction since when the document is issued this expresses the intent of the *makneh*, then it follows that Rabbi Elazar would concur that also *eidei mesirah* effectuate the transaction. However, if Rabbi Meir contends that a deed effectuates the intended transaction by establishing legal facts on the ground, then Rabbi Meir and Rabbi Elazar’s opinions are entirely unrelated. Therefore it would seem that Ramban also understood that *eidei chatima* can effect a *shetar kinyan*, since the issuing this constitutes expression of the individual’s intent. Tosafot, however, who reason that issuing a document containing *eidei chatima* is effective by means of it establishing legal facts, understand that according to Rabbi Elazar a document lacking *eidei chatima* would not effectuate the transaction at all.

Translated by R. Sholem Hurwitz

\*\*\*

We are now ready to discuss suitability for delivering a get.

Daf 23a: Non-Jews and Minors as Agents in the Delivery of a Get, by Rabbi Moshe Taragin

Sources:

1. Gittin 23a, Mishna; Gemara (until the mishna, 23b)

2. Mishneh La-melekh, Hilkhot Geirushin 1:3

3. Ra'avad, ibid. 6:9

4. Tosafot Sanhedrin 72b, s.v. Yisra'el

1. Indeed, Rashi explains this Gemara differently. See Rashi there, and also the novellae of the Ramban who expounds this in great detail. [↑](#footnote-ref-1)