



## Gittin daf 4

### ME'ZUYAF MI'TOICHO

בגישין דף ד'. אלא לעולם רבי אלעזר היא, וכי לא בעי רבי אלעזר חתימה היכא דליכא עדים כלל, היכא דאיכא עדים בעי, דאמר רבי אבא מודה רבי אלעזר במזוייף מתוכו שהוא פסול.

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#### Reason for disqualifying a get or shtar in which eidim pesulin signed

*Concern they might rely on eideim pesulin even for edei mesirah / Not to rely on eideim pesulin even when we know that it's true / Shtar is considered chasps b'alma, worthless / If one witness of a group of many witnesses is found to be pasul l'eidus, the entire group is disqualified /*

רש"י, תוספות, חת"ס, תפארת יעקב

Our gemara teaches that Rabi Elazar holds edei mesirah karsi, the witnesses to the delivery invest the get with its power to sever the marriage, and edei chasimah, signed witnesses, are not required. Nevertheless, if there are witnesses signed on the get, they must be valid eidim. If they are pesulei eidus, disqualified witnesses, the get is posul. This is referred to as mezuyaf mi'tocho.

This halachah is cited in the Rambam<sup>1</sup>. Although

the Rambam<sup>2</sup> paskens like Rabi Elazar that min ha'Torah, edei chasimah are not required, nevertheless, the Rambam here paskens that if eidim pesulin signed, even though the get was handed over before eidim kesheirim, it's pasul because it's mezuyaf mi'tocho. And so paskens the Shulchan Aruch<sup>3</sup>.

This halachah is also cited in Shulchan Aruch<sup>4</sup> regarding shtarei mamon, financial documents. The Mechaber writes that a shtar handed over before two eidim is a valid shtar, and can be used to collect even from meshubadim, encumbered properties. However, if pesulei eidus signed, even if only one eid was pasul, the shtar is invalid, even if was handed over before eidim kesheirim, because it's mezuyaf mi'tocho. [1]

#### NOTES

*A shtar that was paid, can it be reused for a new loan if given over before edei mesirah?*

רמ"א, ש"ך קצות החשן

[1] The Shulchan Aruch<sup>17</sup> writes the following halachah. A shtar chov that was paid cannot be reused for a new loan, even if it was loaned on the same day and there's no issue with the date, because once it was paid the shibud of the shtar is forgiven and cannot be reinstated. The Rama there comments that if at the second time the borrower gave it to the lender before

eidim, it is a valid shtar according to the opinion of edei mesirah karsi.

The Shach<sup>18</sup> asks, "Why does the shtar become effective by giving it before edei mesirah? Since the edei chasimah are saying that he owes him the money but when he paid, the shibud of the shtar was batel, the shtar is now mezuyaf mi'tocho, which even according to Rabi Elazar is pasul even though he gave it before edei mesirah?"

The K'tzos there answers that in this case it's not considered

There are several explanations in the *Rishonim* for the reason *Rabi Elazar* agrees that *mezuyaf mi'tocho* is *pasul*.

*Rashi* later<sup>5</sup> explains that it's merely *pasul mid'rabbanan* out of concern that they might hand over the *shtar* without *edei mesirah*, relying on the *eidei chasimah* only, who are *pasul*.

*Tosfos* here<sup>6</sup>, on our *daf*, offers a slightly different explanation. A *shtar* with *eidei chasimah pesulim* is *pasul* because we're concerned that *bais din* will carry out the *p'sak* based upon the *eidei chasimah pesulim*. For example, they will allow the woman to get married based on this *get* or collect the money with this *shtar*. Although their *p'sak* is correct since this *shtar* was handed over in front of *edei mesirah kesheirim*. Nevertheless, *bais din* must carry out their *p'sak* based on *eidim kesheirim*, not based on *eideim pesulim*. As we see in *Masechet Yevamos*<sup>7</sup> that *bais din* may not rule based on *mipi kesavam*, written testimony, even if we know that it's the truth. Obviously, according to this explanation, it's only *pasul mid'rabbanan* since it's merely a *chashash*. (See notes) [2]

This statement of *Rabi Abba* that *Rabi Elazar* agrees that *mezuyaf mi'tocho* is *pasul* is also stated in *Masechet Sanhedrin*<sup>8</sup>. *Rashi* there<sup>9</sup> explains that with

*eidei chasimah pesulim* the *shtar* is *pasul* because it's *chaspa b'alma*, a worthless piece of paper.

The *Chiddushei Chasam Sofer* in our *sugya* here<sup>10</sup> asks, "Why is it considered *chaspa b'alma*? "It was written properly and handed over in front of *edei mesirah kesheirim*. "Although there are the concerns mentioned by *Rashi* and *Tosfos*, that should not invalidate the *shtar* to be completely ineffective?" (See further)

The *sefer Tiferes Yaakov* in our *sugya* writes that we can be *mechadesh* that *mezuyaf mi'tocho* is *pasul* not merely *mid'rabbanan*, but *me'ikar ha'din mid'oiraisa* based on the following. The *Rif* later in *Perek Ha'megaresh*<sup>11</sup> says that even according to *Rabi Elazar* that *edei mesirah karsi*, sometimes *eidei chasimah karsi*. *L'chatchilah* we require *edei mesirah*, but *b'dieved* either one is effective, even *eidei chasimah*. For example, if there were no *edei mesirah*, the *get* is *chal* and effective by the *eidei chasimah*. As the *Ran* there explains, the *get* was first written for the husband and given to him. That it is now in the hands of the wife is tantamount to the *eidei chasimah* testifying to its *mesirah*, that the husband gave it to the wife. Likewise, in a *shtar mamon*, it was initially written for, and given to the *loveh*, the borrower. That it is now in the

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*mezuyaf mi'tocho* because the *eidim* did not sign on the second loan. They signed for the first loan, which no longer exists. The *Chachamim* considered it *mezuyaf mi'tocho* only if the *eidim* signed on the current issue with which we're dealing. Even though the actual concern mentioned above by *Rashi* and *Tosfos* that people might come to rely on *eidim pesulim* applies even by *nimchal shibudo*, however, the *takonas chachamim* to *pasel* the *shtar* was only where they signed for this loan.

(It must be noted that the *Shach* there offers a different explanation, and therefore says that it works only if the *eidei chasimah* were the *edei mesirah* of the second loan. However, the *K'tzos* has difficulty with that *p'shat*. But the *Nesivos* there explains the words of the *Shach*.)

[2] In *Shiurei Reb Shmuel*<sup>19</sup> he discusses whether that which *Tosfos* writes that the ruling of *Bais Din* must be based on *eidim kesheirim*, not on *eideim pesulim*, is *min ha'Torah* based on the *pasuk*<sup>20</sup> עַל פִּי שְׁנֵי יְקוּמֵי דָבָר, the *p'sak* shall be based on

the testimony of two *eidim*, obviously, *eidim kesheirim*. And so, allowing the woman to marry based on a *get* signed by *eideim pesulim* contravenes this *halachah*. Or it does not, because the ruling of *bais din* is not a *p'sak*, but merely a *birur*, a verification of what has already occurred, that she had received a valid *get*.

And he questions *Tosfos'* comparison to the *gemara* in *Masechet Yevamos*<sup>21</sup> where the *gemara* says that *bais din* cannot issue a *p'sak* based on written testimony, *mipi kesavam*, with the following distinction. The *gemara* there is discussing a case of *chiyuv misah*, for *bais din* to issue a death sentence, which requires a *p'sak*. Before the *p'sak* there's no *chiyuv misah*. Whereas in the case of a *get*, *bais din* merely need to verify that she indeed received a valid *get*. If she did, she would already be divorced. Therefore, perhaps it is only where a *p'sak* is needed, that it cannot be based on *eidim pesulim*, but where we only need verification, if we know that it's true, there's no problem with it being based on *eidim pesulim*.

hands of the *malveh*, the lender, is as good as the *eidei chasimah* testifying to its *mesirah*, that the *loveh* gave it to the *malveh*.

Therefore, says the *Tiferes Yaakov*, if the *eidei chasimah* are *pesulim*, even though the *edei mesirah* were *kesheirim*, the *edei mesirah* should also be disqualified because of *נמצא אחד קרוב או פסול עדותן בטלה*. If even

one witness of a group of many witnesses is found to be *pasul l'eidus*, the entire group is disqualified, and their testimony is null and void. According to this explanation, *mezuyaf mi'tocho* is *pasul me'ikar ha'din mid'oiraisa*. [Perhaps this *p'shat* can be the understanding of *Rashi's* words *האי שטרא חספא בעלמא הוא*.] (See further)

- ב -

### Even according to *Rabi Elazar* that *edei mesirah karsi*, if *edei chasimah* signed *sheloi lishmah*, the *get* is *pasul*

*Chasimah sheloi lishmah is pasul because of a gezeirah / Chasimah sheloi lishmah is pasul because since chasimah can sometimes verify the get, the chasimah is considered part of the kesivah / According to the opinion that eidei chasimah are sometimes karsi, it's considered part of kesivah / Is chasimah sheloi lishmah pasul min ha'Torah or only mid'rabbanan?*

תוספות, רשב"א, אמרי משה, רמב"ם

As we've learned in our *gemara*, even according to *Rabi Elazar* that *edei mesirah karsi*, if *pesulei eidus* signed, even though the *get* was handed over before *edei mesirah kesheirim*, it's *pasul* because it's *mezuyaf mi'tocho*. Likewise, regarding the *halachah* of *lishmah*, writing this *get*, specifically, for the purpose of this couple; if the *eidei chasimah* did not sign *lishmah*, even though the *get* was written *lishmah*, and handed over before *edei mesirah kesheirim*, it's *pasul* because it's *mezuyaf mi'tocho*. This *halachah* is cited in the *Rambam*<sup>12</sup> and *Shulchan Aruch*<sup>13</sup>.

*Tosfos* here asks, "Why is *chasimah sheloi lishmah* considered *mezuyaf mi'tocho*? "We understand that it's *pasul* in the earlier case where *pesulei eidus* signed, because *bais din* may not carry out their *p'sak* based on *eideim pesulim*. But in this case where the *eidim* signed *sheloi lishmah*, the *get* should be *kosher* since it was written *lishmah* and handed over before *edei mesirah kesheirim*?" *Tosfos* answers that it's *pasul* out of concern that if we permit a *get* with a *chasimah*

*sheloi lishmah*, they might also 'write' the *get sheloi lishmah*.

The *Chiddushei HaRashba* answers that since according to *Rabi Elazar* we must have *kesivah lishmah*, the *chasimas ha'eidim* must also be *lishmah* because the signatures are part of the written *get*. When the *edei mesirah* are not available we validate the *get* based on the *eidei chasimah* because when the signatures are confirmed we assume that the *get* was done properly with all the necessary *halachos*. Since the *get* is accepted based on the signatures, the *chasimah* is part of the *kesivah*. Therefore, if the *chasimahi* is not *lishmah* it's considered *mezuyaf mi'tocho*.

The *sefer Imrei Moshe*<sup>14</sup> explains that the *Rashba* is saying that since the *get* is validated and effective based on the *chasimah*, the signatures are considered part of the *toref*, the essential part of the *get*. Therefore, '*v'kosav lah*' - from which we derive the requirement of *lishmah* - refers to the signatures as well.

The *Rashba* then writes that according to the above-mentioned *Rif* that even according to *Rabi Elazar* that *edei mesirah karsi*, *eidei chasimah* are also *karsi* - if there are no *edei mesirah*, the *get* is *chal* by the *eidei chasimah* - it is very well understood why we need *chasimah lishmah*. Since in some cases *eidei chasimah karsi*, '*v'kosav lah*' - from which we derive the requirement of *lishmah* - refers to both the writing of the *get* 'and' to the signatures.

According to this explanation of the *Rashba*, says the *Imrei Moshe*, it would seem to depend on whether there were *edei mesirah* or not. As explained, if there were no *edei mesirah*, the *get* is effective based on the *edei chasimah*. If so, the *chasimah* is considered part of the *toref* and 'v'kosav lah' requires it to be *lishmah*. However, if there were *edei mesirah*, the *edei chasimah* are not necessary. Even though the *edei chasimah* may later be utilized to prove the validity of the *get*, however, since the effectiveness of the *get* is not based on the *edei chasimah*, the *chasimah* is not considered part of the *toref* and does not need to be *lishmah*. In this case, it would not be *pasul min ha'Torah*, but merely *mid'rabbanan* out of concern that they might rely on *edei chasimah sheloi lishmah* when there are no *edei mesirah*, in which case it would be *pasul min ha'Torah*.

However, the *Imrei Moshe* cites the *Ran* there who explains the *Rif* as follows. Even according to *Rabi Elazar* that *edei mesirah karsi* the *chasimah* must be *lishmah* because since when there are no *edei mesirah* the *get* is *chal* based on the *edei chasimah*, the *chasimah* is considered part of the *kesivah* even when there are *edei mesirah*. And if the *chasimah* is *sheloi lishmah*, the *kesivah* is *sheloi lishmah*, and *pasul min ha'Torah* even when there are *edei mesirah*.

However, at the end of this discussion the *Rashba* retracts this *sevara* and concludes that according to *Rabi Elazar* the *chasimah* does 'not' need to be *lishmah* because 'v'kosav lah' refers to either the *kesivah*

only, or the *chasimah* only, and since according to *Rabi Elazar edei mesirah karsi* and the *edei chasimah* are not necessary, the *chasimah* does not need to be *lishmah min ha'Torah*. And that which the *gemara* says that if the *chasimah* was *sheloi lishmah* it's *mezuyaf mi'tocho* and *pasul*, is merely a *gezeirah d'rabbanan* as explained earlier.

The *Rambam*<sup>15</sup> writes that if a *get* was written *lishmah* but signed *sheloi lishmah*, if it was given over before *eidim*, it's only *pasul mid'rabbanan*. But it's not *bateil min ha'Torah* because the *chasimah* is only *mipnei tikun ha'olam* to verify the *get* later if the *edei mesirah* will not be available. The *Rambam* also cites another opinion that the *get* 'is' *bateil min ha'Torah*, but he disagrees with it. The *Shulchan Aruch*<sup>16</sup> cites both opinions whether it's *pasul min ha'Torah* or only *mid'rabbanan*.

The *Imrei Moshe* explains that the opinion that it's *pasul min ha'Torah* is that of the above-mentioned *Ran* who holds that since according to the *Rif* if there are no *edei mesirah* the *get* is *chal* based on the *edei chasimah*, the *chasimah* is part of the *kesivah* even when there are *edei mesirah*. Therefore, if the *chasimah* was *sheloi lishmah*, it's *pasul min ha'Torah*. The *Rambam* however holds that when there are *edei mesirah* the *chasimah* is not part of the *kesivah* since the effectiveness of the *get* is not based on the *edei chasimah*. Therefore, it need not be *lishmah min ha'Torah*. It is only *pasul mid'rabbanan*.

#### מראי מקומות

1. הלכות גירושין פ"א הלכה י"ז
2. הלכה א'
3. אהע"ז ס' ק"ל סעיף י"ז
4. חו"מ סי' נ"א סעיף ו'
5. להלן דף י': (ד"ה מודה) 6. (ד"ה מודה) 7. דף ל"א: 8. דף כ"ח: 9. (ד"ה במזוייף מתוכו) 10. (ד"ה מודה) 11. (דף מ"ז: מדפי הרי"ף) 12. הלכות גירושין פרק ג' הלכה ח' 13. אהע"ז ס' קל"א סעיף ו' 14. סי' ט"ז (אות ו') 15. הלכות גירושין פרק ג' הלכה ח' 16. אהע"ז ס' קל"א סעיף ו' 17. חו"מ סי' מ"ח סעיף א' 18. שם סק"ה 19. אות נ"א 20. דברים י"ט ט"ו 21. דף ל"א: