

CENTER FOR MODERN TORAH LEADERSHIP

Center for Modern Torah Leadership



חרות ואחריות

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"Taking Responsibility for Torah"

THE DELICATE BALANCE OF HALAKHIC DECISION

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Halakhic decision-making requires the careful balancing of (at least) three disparate factors: The meaning of authoritative texts, the authority behind or against particular legal positions, and meta-halakhic considerations. In the spectacular just-concluded inaugural **Men's Winter Beit Midrash** of the Center for Modern Torah Leadership, we came across an excellent illustration of such balancing in a responsum of Rabbi Eliezer Waldenberg Z"l, *Tziqat Eliezer* 8:37. I hope the following presentation of that responsum will give you a taste of serious halakhic process and of the learning at WBM, and that you will be inspired to think about how studying Torah in this way can produce an exciting new generation of male and female Modern Orthodox leadership.

Rabbi Waldenberg is responding (in 1961) to an *agunah* case referred to him by a former student serving as the rabbi of a synagogue in Mexico. The husband in the case has refused to divorce his wife for five years, and the question is whether the original marriage can be invalidated so as to allow the wife her freedom without a *get*. The Mexican rabbi affirms that the designated witnesses at the wedding were halakhically ineligible. As a valid halakhic marriage ceremony requires the presence of eligible witnesses this should suffice to free the wife. However, there is a small chance that at least two eligible witnesses were present at the wedding as guests.

The technical question raised by this case is whether the presence of such witnesses would validate the marriage ceremony. There are two ways to argue that it should not: (a) the designation of specific witnesses for a marriage ceremony makes all other witnesses ineligible for the purposes of that ceremony; and (b) the halakhic rule that: "If one of the witnesses is discovered to be (ineligible because) they are related (to either party or to each other) or pasul (because of their own violations of Halakhah) – the entire set of witnesses (to which they

belong) becomes legally null" applies here even though the ineligible witnesses were designated and the eligible ones were not designated.

The Mexican rabbi cites a responsum of the late Sefardi Chief Rabbi Ben Tziyyon Uziel (*Mishpetei Uzziel Even HaEzer* 2:57) which uses this reasoning (together with other approaches) to free an *agunah*. Rabbi Uziel acknowledges that he is ruling against a responsum of the Chatam Sofer, and seeks to demonstrate that Chatam's Sofer's evidence is not compelling. But he is also perfectly clear that he sees freeing the *agunah* as the metahalakhically correct result, and therefore seems willing to rule against Chatam Sofer so long as he can undo his proofs:

מצוה עלינו מפי רבותינו הקדמונים
לחפש בכל צדדי היתר להציל אשה מעגונה,
ולכן כמצווה ועושה הנני נטפל בדבר זה
להשיב כהלכה כאשר יורוני מן השמים

It is a commandment upon us from the mouth of our earliest rabbis to seek all aspects of permission so as to rescue a woman from the condition of agunah.

Therefore it is as one "who is commanded and acts" that I engage with this matter so as to respond in accordance with Halakhah and as they direct me from Heaven . . .

Chatam Sofer's highly creative argument was that: (a) guests at a wedding can function as witnesses to the wedding even if they do not hear the groom's declaration or see him place the ring on the bride's finger, because knowledge obtained by overwhelmingly powerful inference can be considered testimony; and (b) the principle that "If one witness is ineligible etc." does not apply to cases where the witnesses are testifying via different legal mechanisms. Thus the designated ineligible witnesses, who testify on the basis of direct vision, do not invalidate the undesignated witnesses, who testify on the basis of overwhelming inference.

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Tzitz Eliezer does not contend that R. Uziel is demonstrably or even probably incorrect to reject one or both of these premises. However, he argues that because Chatam Sofer's authority is so much greater than R. Uzziel's, ruling like the latter over the former requires a much higher standard of evidence, even to free an *agunah*:

הן אמנם דבס' משפ"ע שם כותב לסתור דברי הח"ס,

אבל לסתור דברי רב רבנן כזה צריכים להוכחות נגדיות חזקות

ונוסף לכך גם למצוא דברים מסייעים מדברי גדולי פוסקים אחרים.

Granted that in the book Mishpetei Uzziel he writes to contradict the words of Chatam Sofer,

but contradicting the words of such a great among the rabbis requires strong disproofs,

and in addition finding supporting words among the words of other great decisors.

Note that Tzitz Eliezer is probably not casting any aspersion on R. Uziel's ruling. He might agree that R. Uziel had the right to overrule Chatam Sofer, and yet contend that lesser decisors such as himself could not follow R. Uziel against Chatam Sofer when their arguments are equally persuasive. Furthermore, Tzitz Eliezer contends that he **has** found a compelling disproof of Chatam Sofer in Responsum 7 of the great 15th-century German decisor Rabbi Yehudah Weil. Mahari Weil rules explicitly that in a case where the designated witnesses were ineligible, the wedding can be invalidated to free an *agunah*. Tzitz Eliezer believes either that R. Weil by himself outranks Chatam Sofer, or else that R. Weil and R. Uziel together suffice to overrule Chatam Sofer in an *agunah* case.

But we are not done. The 16th-century Greek decisor R. Yosef Ibn Lev (Maharival) states that one may not rely on R. Weil's position in *agunah* cases, and the 18th-century Polish compendium Baer Heiteiv seems to endorse his position. Tzitz Eliezer indicates that Maharival, Baer Heiteiv and Chatam Sofer together outrank R. Weil and R. Uziel, and so at this point he cannot free the *agunah*.

But he is not done, either – he is just beginning. He notes that Baer Heiteiv quotes only R. Weil's ruling, not his reasoning (and perhaps had did not have access to the full responsum). There are two ways to rationalize R. Weil's ruling: (a) he denies Chatam Sofer's claim that testimony-from-inference is sufficient to validate a marriage; or, (b) he believes that designating specific witnesses to a wedding has the legal effect of rendering all other witnesses ineligible with regard to that marriage.

Tzitz Eliezer contends that the second possible rationale contradicts the position of R. Moshe Isserles (RAMO: author of the late 16th century *Mapah*, or *Tablecloth*, which is the set of Ashkenazi glosses to R. Yosef Caro's *Shulchan Arukh*, or *Set Table*, and have been absorbed into that work, and are generally authoritative for Ashkenazi Jews) that if **eligible** witnesses were designated, other undesignated witnesses remain eligible as well.

Tzitz Eliezer then argues as follows: (a) Perhaps Baer Heiteiv rejected R. Weil in favor of Maharival because he believed that R. Weil contradicted the position later adopted by R. Isserles, and he correctly held that R. Isserles holds greater authority for subsequent decisors. However, (b) when one looks at R. Weil's full responsum, it becomes clear that R. Weil accepts R. Isserles' position, and therefore rejects (only) Chatam Sofer. Finally, (c) R. Weil is more authoritative for us than Chatam Sofer. (Indeed, if Chatam Sofer was unaware of R. Weil's position, we can argue that he would have ruled differently had he been aware, and so deprive his ruling of most or all authority.) On this basis (and others), Tzitz Eliezer agrees to free the *agunah*.

I have one point to add. It seems to me that the legal force of a position is affected by the context in which it is articulated. For example: A position that is articulated to free an *agunah* cannot necessarily be relied on in other circumstances, and a position articulated by a decisor in other circumstances should not be applied automatically to *agunah*-cases, especially when it would prevent subsequent decisors from freeing the *agunah*.

In this case, R. Weil's position was not articulated in an *agunah* context. He addressed a case in which, so far as we can tell, both parties still wished to be married to each other. The impact of his ruling was to require them to go through a second marriage ceremony. If Chatam Sofer **had** addressed an *agunah* situation, perhaps we would give his position authority equal to or greater than R. Weil's. However, Chatam Sofer's position was also articulated in a non-*agunah* context. In his case, the question was whether the second ceremony could be waived in order not to embarrass the officiating rabbi at the initial ceremony by exposing his failure to notice the ineligibility of a designated witness. Chatam Sofer makes clear that at the outset that this is not a serious concern, as the second ceremony can be done without publicity, and that in practice the second ceremony should be held.

Chatam Sofer then obliquely references a Talmudic statement which suggests that one must give a substantive answer to even a fool's Torah questions. It is in the context of that statement that he offers his novel ground for validating the initial marriage. In other words, he did not intend for this ruling to be followed even in its original context. Moreover, he wrote this ruling while implicitly calling its recipient a fool, which suggests that he did not hold it to the highest standards of rigor. Tzitz Eliezer mentions none of this, but I suggest that it is in the background of his ruling. Regardless, it would give a contemporary decisor a basis for following his ruling, and that of R. Uziel, despite the position of Chatam Sofer. *Shabbat Shalom!*

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