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Restoring the Primacy of Choshen Mishpat

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STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Kesubah Correction

Rabbi Dayan received a phone call from his nephew, Rabbi Federberg.

"In two weeks I'll be officiating as mesader kiddushin for the first time," said Rabbi Federberg. "I'd like to review the order of the wedding ceremony with you."

"I'd be happy to," replied Rabbi Dayan. "Officiating at the wedding is a big honor but also a big responsibility."

The following evening, Rabbi Dayan reviewed with Rabbi Federberg each step of the wedding ceremony and the chuppah.

"We're also invited to that wedding," Rabbi Dayan added. "I'll be there in any case, but I'm confident that you'll do a fine job!"

"What if I make a mistake in filling out the kesubah?" asked Rabbi Federberg.

"That depends on the nature of the mistake and when it's caught," answered Rabbi Dayan. "I don't want to confuse you now,

though. The best thing is to avoid the problem in the first place, especially if it's an artistic kesubah. Verify the names and other information beforehand and fill out the kesubah carefully!"

"Will do; thank you for your time," said Rabbi Federberg. "I'm looking forward to seeing you at the simchah!"

Two weeks later, Rabbi Federberg sat in the middle of the table at the chassan's tisch. He filled out the kesubah based on a draft he had prepared, made a kinyan sudar with the chassan, and called on the two witnesses to read and sign the kesubah.

After the witnesses had signed, when Rabbi Federberg checked it one final time before proceeding with the wedding ceremony, his jaw dropped. He noticed a mistake in the date!

"Just what I was afraid of," he thought to

himself in dismay. "My uncle warned me to make sure that the kesubah was filled out carefully!"

Rabbi Federberg instructed the people to continue singing for a few minutes. He stepped aside with Rabbi Dayan and showed him the kesubah.

"I prepared all the information, as you said, but miscopied the date," apologized Rabbi Federberg. "Can I cross it out and write the correct date?"

"As you know, the kesubah is a legal document that sets forth the husband's financial obligations to his wife, particularly in the event of death or divorce," explained Rabbi Dayan. "As such, it cannot have emendations — erasures, additions, or corrections — without validating them. Emendations that are not validated can sometimes disqualify the document (C.M. 44:5)."

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Documenting a Loan

Submitted by E. B. D.

I lent my friend some money and, trusting him, we did not draft a loan document. The loan is overdue and my friend claims that he does not have the funds to repay the loan.

Q: May I demand that we now draft a promissory note to have a written record of the loan? If the document were to state that he will repay me "when he will

be financially stable," what would be the halachic meaning of such a statement?

A: There is a general dispute whether a lender can force a borrower to write a promissory note subsequent to the loan. One school of thought maintains that once the lender agreed to loan money without even a handwritten documentation by the borrower, he cannot later demand such documentation to be written (Sema 73:5). Others maintain that

since the lender stands to lose if he cannot substantiate his claim (C.M. 70:1) and the borrower does not lose by documenting the loan, the lender can demand that the borrower write a note containing the basic outline of their agreement (Urim 73:5).

When a borrower does not have the funds to repay a loan and there is a realistic concern that the loan will be forgotten, all opinions agree that the lender can demand documentation of the loan (Kisei Eliyahu cited in Divrei

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"How does one validate an emendation?" asked Rabbi Federberg.

"Toward the end of the kesubah, before writing 'hakol sharir v'kayam' (everything is correct and valid), the witnesses write that the word or phrase in question was crossed out or added," answered Rabbi Dayan. "Thus, their signatures attest to the emendation, as well. Nowadays, when 'hakol sharir v'kayam' is printed already at the end of the kesubah, this is problematic, as one should avoid writing 'hakol sharir v'kayam' twice before the signatures (C.M. 44:9)."

"What can be done, then," asked Rabbi Federberg, "especially now that the witnesses have already signed the kesubah?"

"It is still possible to write the validation following the signatures," replied Rabbi Dayan. "Conclude the validation with 'hakol sharir v'kayam' again' and have the same witnesses

sign a second time. Ideally, the validation should be in the same writing as the rest of the document (C.M. 44:7, 11; see Pischei Choshen, Ishus, p. 517)."

"You mentioned that sometimes an emendation can disqualify the document if not validated," noted Rabbi Federberg. "When is that?"

"If the emendation is in one of the essential parts of the document, such as the names of the groom or bride, it would disqualify the document if not validated," answered Rabbi Dayan. "If it was in the date, it would be considered a document without a date, and some disqualify the document (see Pischei Teshuvah 44:1). In these cases it is preferable to write a new kesubah. If this is difficult, though, or if the kesubah is a specially prepared artistic one, it is possible to rely on the validation and second signature (Hanisuim K'hilchasam 11:186-188)."

Geonim 102:23). This is based on the principle that a lender may be empowered by beis din to put a lien on a potential delinquent borrower's property (C.M. 73:10), so therefore, he may certainly demand documentation of the loan (see also Pischei Teshuvah 53:1).

Certainly in your case, when the loan is already past due and the borrower claims that he does not currently have the funds to repay the loan, you may demand that he write a promissory note (see also C.M. 39:10 relating to summoning the borrower to beis din to receive a psak from beis din that will document the loan).

The answer to your inquiry concerning the meaning of the wording "when he will be

financially stable" is that its meaning is subject to the time and place of the parties involved in the loan, and it is up to beis din to determine when a borrower is considered to be financially stable (Noda BiYehudah, C.M. 11:14).

The only issue subject to discussion is whether the heirs of the borrower are obligated to repay their father's debt. One might argue that if the borrower did not reach financial stability during his lifetime, his heirs are not obligated to repay their father's debt. However, according to halacha, heirs are obligated to repay their father's debt even if the wording of the promissory note was "when he will be financially stable" (Amudei Or 102 cited in Pischei Teshuvah, C.M. 73:4).

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Damages #11

Q: I broke someone's professional tools, rendering him unable to work for a week. Must I compensate him for his lost earnings?

A: The Yerushalmi (B.M. 5:3) writes that in a case of mevatel kiso shel chaveiro - a person restrained his friend's money and prevented him from earning profit - the friend has only a complaint against him (Pischei Choshen, Nezikin 3:29). Many authorities consider me-

vatel kiso shel chaveiro a form of grama. As such, there remains a moral obligation. However, since there is no loss of capital, some maintain that there is not even a moral obligation, only a "complaint" (see Shach 61:10, 292:15; Responsa Imrei Binah #1).

If there is a definite loss of profit or regular earnings, some maintain that there is a legal liability of garmi. However, others maintain that preventing clear profit also remains

grama (see Aruch Hashulchan 61:11; P.C., Nezikin 3:[72-73]).

Even one who withheld another's money and earned profit from it does not have to share the profit with the owner. However, if the owner demanded the money back in order to invest it, but the recipient continued to withhold it, some maintain that he must share his profits from the money with the owner (Rema, C.M. 292:7).

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