



BUSINESS WEEKLY

Restoring the primacy of choshen mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

BROTHERS-IN-LAW

Moshe was making arrangements for his wedding. "I'd like you to sign as one of the witnesses on the kesubah," he told Dovid, his best friend and long-time chavrusa, who gladly accepted.

At the wedding, Dovid said: "When I get married, I want you to sign my kesubah!"

A shidduch was suggested for Dovid — Moshe's sister — and it was a perfect match! At the vort, Dovid reminded Moshe of his earlier commitment. "I told you last year that I'd honor you to sign my kesubah," he said.

"I can't sign," Moshe pointed out. "I'm disqualified as an eid. We're no longer just close friends; we're becoming relatives!"

"Too bad," replied Dovid, with a grin.

Dovid's wedding was celebrated with joy. On the way home, Moshe began thinking. "Dovid just became my brother-in-law," he said to himself. "A brother-in-law is also a disqualified relative. Is my kesubah still valid? After all, one of the witnesses who signed just became disqualified."

When sheva brachos were over, Moshe shared his concern with Dovid. "That's an interesting question," he replied. "It seems strange that your kesubah should become disqualified retroactively. Yet, if you were to separate, chas v'shalom, and your wife would want to actualize the kesubah, I don't see how she could claim money from you based on my signature, since I'm now your relative!"

Moshe and Dovid decided to discuss the issue with Rabbi Dayan.

"Dovid signed on my kesubah a year ago and just became my brother-in-law," Moshe said. "Is the kesubah still valid? What if it would need to be actualized?"

"This question touches on some fascinating points about witnesses," replied Rabbi Dayan. "Although a brother-in-law is disqualified to testify or sign as a witness, the Gemara (B.B. 159a) teaches that the kesubah remains valid. This is because when witnesses sign on a document it is considered as if their testimony is accepted and verified by beis din at that point. This concept is known in Halachah as 'Eidim hachasumim al hashtar — naasah k'mi shenechker eidusan b'veis din' (Kesubos 18b).

"When Dovid signed your kesubah last year, he was not a relative and was qualified to be a witness," continued Rabbi Dayan. "Thus, his signed testimony remains valid even



BHI HOTLINE

FAULTY CANDLESTICK

I purchased silver-dipped leichter and when I opened

the package at home, I saw a couple of scratches on it. I went to the store to return it but the owner claims that a few scratches is common for this item and is not considered damaged. Additionally, he claims that I should have examined them in the store, and once I left the store I relinquished my right to return them due to an imperfection.

Q: Is he correct that he is not responsible, or may I stop the check and return the leichter to him?

A: There are two issues under dispute. A) How do we determine what is considered a defect that cancels a sale; and B) Does a customer lose the right to return defective merchandise if he does not examine it for defects in the store?

The gauge used to determine whether a defect is grounds to cancel a sale is whether people, in general, would cancel a sale due to such a defect. A minor, generally ignored imperfection is not grounds to cancel the sale unless the customer reserved for himself the right to return it. The reason is that people conduct business matters in accordance with local customs (C.M. 232:6). It seems from Shulchan Aruch that even though customers would not have purchased the merchandise with the slight imperfection, it is not sufficient grounds to cancel a completed transaction, since most people don't consider such a minor imperfection significant enough to cancel a sale. Even if the customer did not yet pay for the item, he may not cancel the sale and is obligated to pay.

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STORY LINE

after becoming your brother-in-law. However, should a need arise in the future to validate his signature in order to actualize the kesubah, Dovid could no longer testify to validate it, since he is now your brother-in-law" (C.M. 46:35; Sma 46:86).

"What could be done, then?" asked Moshe.

"Other people, who recognize his signature, would have to validate it," Rabbi Dayan replied. "Alternatively, beis din could compare it with other validated signatures of his" (C.M. 46:7).

"Would this apply to other disqualified witnesses?" he asked. "For example, what if one of the witnesses later became a thief?"

"The same would apply, provided we knew of the existence of the document before the person became a thief. Otherwise, we are concerned that the thief signed a false document now, but predated it before he became disqualified" (C.M. 46:34).

"Does the requirement to know about the document apply also to a relative?"

"No. While the Torah disqualifies a relative as a witness, he is not necessarily suspected of being dishonest," replied Rabbi Dayan. "For example, he cannot testify even to the detriment of his relative. Even Moshe and Aharon are disqualified as witnesses for each other, despite their impeccable integrity. The Rambam calls the disqualification of relatives a gezeiras hakasuv (Scriptural decree). Once their signature is validated, we do not suspect that they signed after becoming relatives and predated the document. Thus, their signed testimony remains valid" (Hil. Eidus 13:15; Shach 46:92).



MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shlit

BEIS DIN AND CIVIL COURT #12

Registering Rights

Can I secure in civil court or other government agencies legal rights that do not involve adjudication?

A: If this is done willingly by both parties, it is not considered granting authority to a secular law system. Therefore, it is permissible to register in civil court rights that do not require adjudication, for example, to place a lien or mortgage on a borrower's property or to have the proceedings of the beis din conferred there with legal status (Pischei Teshuvah, C.M. 26:3).

Furthermore, while government agencies that do not have adjudicating authority, such as the Better Business Bureau, might not be included in the prohibition of litigating in civil court, since a complaint there can cause monetary losses not warranted by Torah law and potential legal suits, one should consult with a qualified posek before submitting a complaint against a fellow Jew.



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Consequently, each situation must be considered to determine whether or not the imperfection is so significant that most people would return the item. This determination obviously takes into account the cost of the item and extent of the imperfection.

Regarding the second matter, one who discovers a defect in an item that he purchased has the right to return that item, even if he does not discover the defect until many years after the purchase. However, a customer who intends to return the defective merchandise may not use it once he discovers the defect, since by doing so he forgoes the right to return it (C.M. 232:3).

Some authorities maintain that if the customer could have examined the merchandise immediately and did not bother to do so, he loses the right to return it later for a refund (Sema 232:10). (This assumes that the merchant did not explicitly assure the customer that the merchandise is not blemished [Divrei Malkiel, E.H. 86 (6)]). Accordingly, in your case since you could have opened the box to examine the leichter before leaving the store and did not do so, you relinquished your right to return the merchandise if you subsequently found it to be defective. Other authorities reject this position as representative of a minority opinion (Divrei Chaim, C.M. 36) or limit the scope of its application (Nesivos 232:1). Therefore, if it is determined that the leichter are scratched to the point that most people would return them, it is permitted to stop the check and return the leichter to the merchant.

For questions on monetary matters,
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