



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

SIGNED AND SEALED

Guests were streaming into the wedding hall. The band was playing soft music, as people wished the chassan and kallah mazel tov and savored the smorgasbord.

Moshe sat at the head of the chassan's tisch. The officiating Rabbi filled out the kesubah with him. The Rabbi explained to Moshe that the kesubah was a standard form filled out at weddings, which contained the husband's obligations toward his wife during the course of their marriage, as well as monetary provisions in the event of death or divorce.

Moshe nodded in understanding. The completed kesubah was signed by two witnesses. The Rabbi asked Moshe to add his signature, as is practiced in certain communities.

After singing Siman tov u'mazal tov, those assembled at the chassan's tisch davened Maariv and proceeded on to the badeken.

Unfortunately, the marriage lasted only a short time; Moshe decided to get divorced shortly afterward. The couple did not have any children and had amassed minimal property, so that the financial settlement in civil court was expected to be negligible.

When Moshe and his wife came to Rabbi Dayan's beis din to arrange the get, his wife demanded full payment of the kesubah, which amounted to thousands of dollars.

"What are you talking about?" asked Moshe. "I wasn't aware that the kesubah entailed payment of such sums."

"Didn't the Rabbi explain to you that the kesubah entailed a monetary commitment in the eventuality of death or divorce?" asked the beis din.

"Yes," replied Moshe. "But we never discussed exactly how much it would be. Had I known it was thousands of dollars, I would never have signed!"

"You could have asked," responded his wife. "You gave your agreement and signed the kesubah of your own free will. The kesubah is no worse than any other contract that you committed to."

The two turned to Rabbi Dayan to hear his ruling.

"Moshe is obligated in the full value of the kesubah," ruled Rabbi Dayan.

DID YOU KNOW?

If you sign an agreement, you are bound by its terms even if you do not fully understand what it says, such as portions written in a different language or in fine print.

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BHI HOTLINE

WHO PAYS THE SHADCHAN?

I am a shadchan and was approached by a man to make

a shidduch for his granddaughter, who was R"l orphaned on the death of her father. B"H, my efforts were successful.

Q: Who is responsible to pay my shadchanus gelt, the kallah's grandfather who "hired" me, or her mother? I am uncomfortable contacting the mother. May I demand that the grandfather pay me?

A: The halachah is that if Reuven hires a worker to plant in his field but then pointed the worker to Shimon's field, Reuven is obligated to pay the worker (C.M. 336:1). The reason is that once Reuven hired him, he is Reuven's employee and thus Reuven is obligated to pay him. However, if Reuven informed the worker that he would be working in Shimon's field, Reuven is not responsible for the worker's salary unless he committed to pay his salary (secharcha alai). Since Reuven never committed to pay the worker nor specified who would pay him, he is not the employer and the worker must seek remuneration from Shimon, the field owner.

In your case as well, since you realized that your service benefits the kallah's mother, she is responsible to pay. The fact that you were initially contacted by the grandfather is inconsequential. However, an important point must be addressed. Why is it obvious that the service was performed for the parents rather than the grandparents when seemingly, the real beneficiaries of the service are the chassan and kallah? Perhaps they must pay the shadchan?

The answer to this is that the custom is that parents pay the shadchan. Consequently, when parents contact a shadchan, custom dictates that they must pay his fee. However, when a grandparent or some other relative contacts a shadchan, unless otherwise



STORY LINE

"When a person signs a document that contains an obligation," explained Rabbi Dayan, "he cannot claim afterwards that he did not know what he was signing. The Shulchan Aruch (C.M. 45:3) writes that even if the document was written in a foreign language and witnesses testify that he signed it without reading it, he is obligated to fulfill whatever is written."

"How could this be?" asked Moshe.

"Sma (45:5) explains that this is based on a responsum of the Rashba (7:77)," Rabbi Dayan said. "When a person does not bother to read what he is signing and relies on another, he commits himself to become obligated in whatever is included in the terms of the contract; the person becomes obligated through his signature."

"In another responsum (1:629) the Rashba rules that the same applies to one who claims that he did not understand what was written in the kesubah, since the witnesses signed on the basis of his agreement, against the opinion of Rabbeinu Meir," added Rabbi Dayan. "This ruling is cited in the Shulchan Aruch (C.M. 61:13) and Rema (E.H. 66:13). Thus, the chassan is not able to claim that he was not aware of the commitment of the kesubah, both on account of the witnesses and of his own signature" (Yabia Omer, E.H. 3:13).

"Nonetheless," concluded Rabbi Dayan, "the Aruch Hashulchan (C.M. 45:5) writes that if there was deception involved, and there is evidence that the amount written was not the amount agreed upon or that was said, the document is invalid, since the person never intended to obligate himself in the amount written in the document."



MONEY MATTERS

PARTNERSHIP # 18

Property Held by a Partner

Q: My partner holds certain professional equipment, which he claims is his, whereas I claim that it belongs to the business. What is the halachah?

A: Neither partner can claim something known to have belonged to the partnership without proof that he subsequently acquired sole ownership of it, even if he holds it for a long time. This is because partners are not particular about allowing each other to hold joint property. According to some authorities, if he held the equipment for an excessively long time, more than typically tolerated, he is believed when he claims that it is his; others do not differentiate (C.M., Sma and Taz 179:1; Shach and Gra 179:2).

However, if the disputed property is not known to be in a partner's hands, so that he could deny holding it, he is believed to say that he holds it, but that it is his (migo). Similarly, if it is unclear that this equipment initially belonged to the partnership, one partner can claim that it is his private property (Pischei Choshen, Shutfim 7:30[75], citing Mabit 2:73).



BHI HOTLINE

stipulated, it is not their responsibility to pay the shadchan. Obviously, if the grandparent raises his grandchild and the understanding is that he will pay for this service, he is responsible (see Pischei Choshen, Sechirus 14:[3]).

When a shadchan initiates the process, his fee is for providing a valuable benefit, rather than as an employee's salary (see Gra, C.M. 185:13). There are two perspectives regarding the shadchan's fee in this circumstance. According to some, since the shadchan initiated the process, the couple is obligated to pay his fee since they are the direct beneficiaries of his service, in contrast to the parents, whose benefit is indirect. Nevertheless, the custom is that the parents pay the shadchan (Avnei Nezer, C.M. 36; Mishpetei Shmuel 1:38).

Others assert that on account of the custom that the parents pay the shadchan, the children are not even technically responsible for the shadchan's fee. Moreover, the parents are direct beneficiaries of the shidduch since finding a shidduch for their child is a direct benefit for them and relieves them of the stress that typically accompanies shidduchim (Halichos Yisrael 3; Erech Shai 185:8, d.h. "shadchan"). [Obviously in a circumstance in which the child has no relationship with his/her parents, the child must pay the shadchan.]

All opinions agree that when the parents approach a shadchan regarding their child, the parent must pay the shadchan. The custom that parents pay is comparable to a stipulation that they would pay (Halichos Yisrael). Along these same lines, if parents hire a contractor to fix up an apartment for their child who is getting married and the contractor is aware of those circumstances, it is understood that the parents will pay for the repairs and improvements rather than the new couple. This case, as well, is comparable to one who hires and commits to pay an employee to work on someone else's field.

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