

TOWARDS AN EGALITARIAN KETUBAH

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שאלה:

The traditional ketubah, which delineated the husband's obligations to support his wife and to provide for her food, clothing and shelter, as well as her sexual needs, also served to protect the wife from divorce at the capricious whim of the husband --- שלא תהא קלה בעיניו להוציאה --- (so that it not be easy to divorce her --- *et al*) by mandating payment to her, upon his death or upon divorce, of the amount stipulated therein. The document reflected a time when women were especially vulnerable, since a marriage could be dissolved at the initiative of the husband, with or without her consent, and since their economic opportunities were limited, societal conditions made life difficult for a single woman unprotected and unsupported by a husband --- טוב למיתב טנדו מלמיתב --- (it is better to be married than to live in spinsterhood--- יבמות קלי"ח ע"ב).

The traditional ketubah therefore does not reflect, nor address the needs of present reality. In Western countries, divorce can be initiated in the civil courts by either party, and the Court will attempt to protect the interests of both parties. While still subject in some ways, and to some degree, to discriminatory practices in the social and economic spheres, economic opportunities are equally available today to women, and it is equally possible for women to be both economically and socially independent, and even to attain high positions, in the social and political arenas, as well as in the business world.

Additionally, and even most significantly, both as a result and as a motivation of the change in the condition of women, our moral sense now also requires us to treat women equally in all respects. They no longer play a subordinate role in the marital and familial relationship, and the traditional language of the ketubah is, in some of its phraseology, offensive in the way it portrays the wife's role. Indeed, embarrassment at the language and terms of the traditional ketubah are such, that the ketubot now in the market, when accompanied by a parallel document in English, the English document is never a literal translation, but a paraphrase that often only remotely resembles the original.

Therefore, may we and/or can we create a ketubah that is egalitarian and more accurately reflects present-day reality?

תשובה:

In response to the above, the attached is being presented as a possible text for an egalitarian ketubah that would have the format and fulfill the essential requirements of the traditional ketubah, as far as possible without doing violence to the egalitarian premise which motivates it.

In contrast to a Get, which is strictly and rigidly delineated in all of the details of text, formulation, language, and even spelling, the ketubah has, in different times and

diverse places, manifested diversity in formulation, text, and even in the nature of the issues covered. (See Mordecai Friedman, *The Ketubah*) I have appended the ketubah in official use by the Chief Rabbinate and Religious Council of Jerusalem. It contains many stipulations not found in the *ketubot* in general use in the rest of the world. Among those unusual additions is a stipulation that, upon approval by the religious court, the groom may marry an additional wife (a stipulation we would certainly not include); that he may not leave Israel without his wife's consent; that any waiver of her rights under the ketubah is *ab initio* a nullity, *et al.* This ketubah, therefore, is illustrative of the latitude and freedom permissible in the formulation of the ketubah text, in order to provide for the specific and individual needs of the parties, and in conformity with societal norms..

Despite the wide latitude and freedom which characterized the treatment of the ketubah, there are essentially three elements in the traditional ketubah that are *de rigeur*. They are:

- 1) The statement that it is a contract entered into in consideration of marriage;
- 2) The acceptance of obligations by the husband and wife towards each other;
- 3) The classification and disposition of property.

The first requirement is met by the husband saying *היי לי לאשה כדת משה וישראל* (become my wife in accordance with the laws of Moses and of Israel) and by her reciprocal statement. Even though I do not feel justification to be necessary, her statement, despite its non-traditional language, can be justified halachically on several grounds: Any statement in the ketubah is not a statement that creates *kiddushin*. *Kiddushin* takes place when the *kinyan* is made by the placing of the ring upon the bride's finger with the proper formula and her acceptance of it. Even if the statements in the ketubah were to effect *kiddushin*, placing her statement after the groom's statement, which would be the operative statement that effects *kiddushin*, it can be regarded as merely an appendage *מוריד ואינו מעלה* (that neither adds nor detracts). (This could, therefore, also justify its use under the *hupah*.) The criteria that governed the validity of the *kiddushin* formula are specified in *כ"י* ש"ע אבן העזר ס"י כ"י, among them whether the formula is understood by the parties and so understood locally. Additionally, it is the active statement of the groom that is operative as evidenced in the Gemara's discussion of the Baraita in Kiddushin 5b. The Torah's specification of the man as the active party in the contracting of the marriage, is the basis for this as indicated in Kiddushin 4b where it is stated *הוה אמינא היכא דיהבה איהי לדידיה הוה קידושי כתב רחמנא כי יקח ולא כי תקח* (I might have thought that in a case where she gave him [the *קידושין*] it would be a valid marriage, had the Torah not specified "he shall acquire" and not "she shall acquire".) Therefore, by placing the bride's statement after the groom's, her additional statement does not affect the *kiddushin* already effectuated by the groom's declaration and action.

The bride's use of the phrase *מקודש לי כדת משה וישראל* has two elements that require explication. One is the use of *מקודש*. The use of the term *קידושין* for marriage

implies exclusivity: דאסר לה אכייע כהקדש (He has rendered her forbidden to others like *hekdesh*) (Kiddushin 2b) Consequently, the Tosafot on the passage in Kiddushin 4b *supra* (ד"ה דיהבה לדידיה וקדשתו) takes issue with Rashi who defines the issue as the woman saying התקדש לי (in our version of Rashi) or הרי אתה מקודש לי (as in Tosafot's version of Rashi) because קידושין is not applicable to a man, since he may have more than one wife and does not become forbidden to other women. But considering that monogamy is today's societal standard and we would therefore consider the ban of Rabbenu Gershom still in operation in Jewish marriage, the use of מקודש לי is certainly appropriate. The other element is the use of כדת משה וישראל. That phrase was understood by the Rabbis as implying Rabbinic law as well as Biblical law. When the Gemara asserts that כל דמקדש אדעתא דרבנן מקדש (Ketubot 3a, Gittin 33a et al), the Tosafot base the rabbis' jurisdiction over marriages on the fact that the formula by which the marriage is contracted specifies כדת משה וישראל which implies the Rabbinic law as well as the Biblical law. Just as it implies the Rabbinic law operative in the time of the Gemara, so it implies the Rabbinic law operative in our time, which includes the תרם דרבנו גרשום .

The second requirement of obligations vis-a-vis each party is stated in terms of mutuality, since in today's world, the roles of men and women are not as rigidly and separately defined as they were in the past. Even the classical halacha which enumerates the obligation of the parties (See אבן העזר ס"י ס"ט) allows the parties to stipulate to all with the exception of עונתה, עיקר כתובתה, וירשתה nor may she forego her right to be ransomed by him should she be taken captive or waive his obligation to her to attend to her funeral needs upon her death (סעיף ה'). But the ongoing obligations (with the exception of עונה) that involve their daily living together can be determined by their mutual agreement.

Regarding financial and property issues, we have left out any reference to מוהר, since, for the egalitarian it is a distasteful element, in addition to having no practical or tangible reality. In regard to other financial issues, Jewish law has been preempted by the civil law, which is not the same in all jurisdictions. We have therefore indicated that any issues regarding property, both realty and personalty, would be determined by the law of the state. This echoes the statement: וכשבאה לגבות כתובתה מגבין לה מה שבכתובתה לפי מנהג המדינה (when she comes to collect her ketubah, we pay in accordance with the custom of the country.) (אבן העזר ס"י ו' סעיף י"א). Now, of course, מנהג המדינה in that context does not mean the civil law of the non-Jewish courts. However, it is reflective of the fact that already by the time of the Shulchan Arukh, the amount specified in the ketubah (100 or 200 zuzim) no longer had any practical meaning and therefore local authorities and custom made a determination of the amount due. It is equally true that today the monetary terms of the ketubah have no tangible reality and it is the Civil Courts that make the determination of spousal and child support, as well as the division of the marital assets. Today, it is the practice of the Civil Courts that is מנהג המדינה. I draw your attention to the attached Israeli ketubah which makes the same stipulation in regard to property. The stipulation that הדירה בישראל והירושה כפי ההסכמה הנהוגה בירושלים (The disposition of the

residence in Israel and inheritance shall be determined by the customary practice of Jerusalem) is essentially saying that it is the municipal law of Jerusalem that will determine the disposition of the residential property and other testamentary issues.

It should be added as a caveat that all of the above is certainly relevant in countries such as the United States of America where the ketubah is a *pro forma* document without legal force. It may not be the case in Israel or in other jurisdictions where the ketubah, containing specific monetary stipulations expressed in terms of a modern currency, is considered a legal prenuptial agreement. In those places, צריך עיון to determine the degree and nature of the specificity required.

CONCLUSION:

It is therefore permissible to amend the traditional ketubah to reflect more accurately, the needs engendered by present social and economic conditions, and to express our moral and ethical stance by egalitarian language, both in its stipulations and in its phraseology. The attached is presented as fulfilling these objectives.

