



# 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

### CANCELING A STIPULATION

Chaim Reider got his driver's license. He did not need to drive much, so he used the family's car as needed. Then he began learning in a different yeshivah, where having his own car would be helpful.

"Would you consider getting me a used car?" Chaim asked his father.

"I'm willing to get you a car, but with two stipulations," Mr. Reider replied. "First, that you cover the gas. Second that you don't get any tickets. Otherwise, the gift is null and void and the car gets sold."

Chaim agreed to the terms. He drove carefully and reimbursed his father for any gas that was charged to his credit card.

After a year, Chaim said to his father, "I walk around nervous thinking that if I goof — I lose the car," he said. "Would you agree to cancel the stipulations?"

"You've behaved responsibly," Mr. Reider said. He agreed to cancel the stipulations.

It was only two weeks later that Chaim got two tickets, one for speeding and one for going through a red light.

"I told you that if you get tickets the gift is null and void," Mr. Reider said sternly. "It's time to invoke that clause!"

"I did wrong," acknowledged Chaim, "but you canceled the stipulations two weeks ago, so the car should remain mine. I promise to be more careful."

"Promises are not enough in this situation," said Mr. Reider. "I'm not convinced that simply canceling stipulations works. I'd like to discuss this with Rabbi Dayan."

The two came to Rabbi Dayan. "I gave Chaim a car with two stipulations: that he pay for gas and not get tickets," said Mr. Reider. "Although I canceled the stipulations, can I revoke the gift now that he violated the stipulation and got tickets?"

"Canceling a stipulation depends on a number of factors," answered Rabbi Dayan. "There is a fundamental difference between a condition of im (if), where the transaction does not take effect until the condition is fulfilled, and a condition of al menas (on condition) or mei'achshav (from now), where the transaction takes effect now, but remains dependent on fulfillment of the condition. In the first case, it is usually possible to retract the condition and/or cancel the transaction before it takes effect. In the second case, such as ours, it is not always possible to

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## BHI HOTLINE

### WITNESS SIGNATURE ON KESUBAH

I was honored with signing the kesubah at a wedding. After the chuppah I was asked to return

to sign another kesubah because the other witness forgot to add HaKohen to his name. I signed the new kesubah and made sure that they destroyed the original kesubah so there wouldn't be two promissory notes on the same obligation.

**Q: Was it necessary to replace the kesubah if one of the witnesses omitted writing that he is a Kohen?**

**A:** There are three categories of documents that must be addressed: 1) general documents (including loan documents, sale documents, etc.); 2) gittin; and 3) kesubos — the topic of this article. Most of the discussion in the Poskim relates to the parties of the document (e.g., lender, borrower). We will then address the halachah regarding the witnesses who sign on such documents.

Regarding the parties of general documents, it is not necessary to mention that one of the parties is a Kohen unless there are two people in town with the same name and adding HaKohen will differentiate between them (C.M. 49:1). Regarding a get, some authorities invalidate a get if the husband is not identified as a Kohen, whereas others assert that the get is valid. Rema rules that l'chatchilah, HaKohen should be included, but if it was omitted and it is a pressing circumstance, the get remains valid (E.H. 129:7).

A kesubah is technically in the same category as other documents and it should not be necessary to include HaKohen. However, common custom is to be stringent with a kesubah as one would be with a get out of concern that if, Heaven forbid, they divorce, the get will be written by copying the name



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cancel a stipulation" (E.H. 103:3).

"When is it possible?" asked Mr. Reider.

"If the stipulation requires one party to pay something, the other party can uphold the transaction even if the condition is not fulfilled," replied Rabbi Dayan.

"The intended recipient can say, 'It is as if I received,' and uphold the action as if he were paid and the condition fulfilled, even if it wasn't. Thus, the stipulation about paying for the gas is canceled" (Y.D. 228:39; E.H. 38:36; Ketzos 243:2).

"What about the other stipulation, not getting tickets?" asked Mr. Reider.

"That is the subject of a significant dispute," replied Rabbi Dayan. "The Rashba maintains that a stipulation to refrain from something cannot be repealed without redoing the transaction without the stipulation. The Ran maintains that if the stipulation was made for someone's benefit, he can cancel the condition by saying that he was not insistent. The Rosh maintains that in most situations it is possible for the one who made the stipulation to cancel it and uphold the transaction, even if the stipulation will be violated. There are widely divergent opinions regarding the opinion of the Rambam" (Hil. Ishus 7:23; E.H. 38:35, 143:5-6; Machaneh Ephraim, Hil. Zechiyah Umatanah #14; Chazon Ish, E.H. 53; Pischei Choshen 20:23).

"Thus," concluded Rabbi Dayan, "the car remains Chaim's according to the Rosh and some understandings of the Rambam that even a stipulation not to get tickets can be repealed to uphold the transaction."



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of the husband as it appears on the kesubah (Nachalas Shivah 12:16. We do not, however, add to a kesubah all the nicknames that must be in a get).

The above applies to the names of the husband and wife, but regarding the witnesses' names we are more lenient. Even though l'chat'chilah witnesses on a get should also include their lineage (Kohen or Levi), (E.H. 154, Seder Hagot 62), that requirement is not as strong as the requirement to include the lineage of the husband. This is evident from the fact that whereas the nicknames of husband and wife are necessary, the witnesses' nicknames are not included in a get (see E.H. 130:11, Kesubah K'Hilchasah pg. 98).

[The reason to distinguish between the names of the husband and wife and the names of the witnesses is that mid'Oraisa, the names of the husband and wife must be on the get, while the witnesses' signatures on a get are only required mid'Rabbanan. (Terumas Hadeshen 234; however, Kesubah K'hilchasah, p. 340, differentiates between nicknames and lineage and entertains the possibility that there is a stronger reason to include lineage than a nickname.)]

In your case, since it involves a kesubah, the matter is even more lenient. Although the husband's lineage is included in the kesubah, that requirement is the only l'chat'chilah. Additionally, the reason is so that a mistake is not made when writing a get. Such a concern obviously does not apply to the witnesses. Accordingly, although witnesses are instructed to include their lineage, if it was omitted, the kesubah remains valid (Kesubah K'hilchasah, pp. 96, 345).

The fact that the second witness omitted HaKohen was not grounds to invalidate the original kesubah. However, the new kesubah may, in fact, be invalid and the issues related to that question will iy"H be addressed in next week's issue.

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## MONEY MATTERS

### PARTNERSHIP # 25

Kinyan Chatzer to a Partner

**Q: I have heavy equipment in our partnership's office. Can I sell it to my partner or to the business through kinyan chatzer in our office?**

**A:** The Gemara (B.B. 84b) teaches that partners can acquire through kinyan chatzer in a joint courtyard. However, it indicates that they cannot sell to each other in this manner (C.M. 260:4).

Nonetheless, the Ketzos writes that while it is not possible to sell to the other partner in this manner, it is possible to sell to joint ownership of the partnership (Ketzos 260:1, 207:6, 176:1).

The Nesivos (176:2) maintains that it is possible to sell to a partner through kinyan chatzer in an area meant exclusively for joint use, such as an office, but not in a shared area intended also for private use, such as an apartment.

Machaneh Ephraim (Hil. Kinyan Chatzer #6) maintains that if the item was initially placed in the shared area for the purpose of transferring ownership, it can be sold to the partner through kinyan chatzer there (Pischei Choshen, Shutfim 8:26).

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