

archs, and of elders among Jews throughout the ages. Some Hebrew words are used, such as the names of the days of the week. The spelling of the location, outside *Eretz Yisroel*, usually has no precedent in the *Tanach* or the Torah. The formula used to transliterate it into Hebrew depends on the accent used by the particular community when they read Hebrew. Some vowels or consonants are hard to transliterate, and lead to debate among the poskim of the time. The names of the bride and groom are usually used the way they were given to them at birth. Their fathers' names are also written into the document at some point. This is in order to identify them better, if their own names are common.

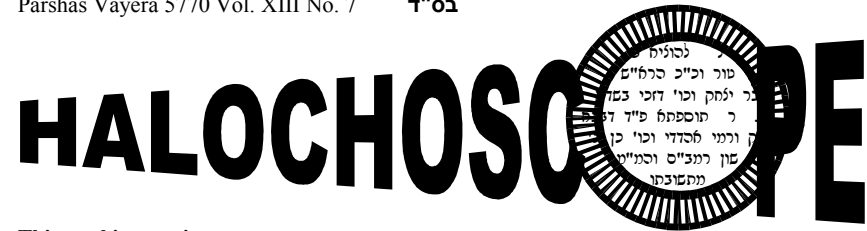
If a mistake is made in writing the names of the parties, or even of their fathers, the document is basically invalid. It is a document for people with other names. In the case of *get*, document of divorce, the divorce will not take effect. The writer of a *get* must be extremely specific in writing the names exactly. In the case of a *kesuba*, slight inaccuracies should not invalidate the document. It is still obvious who the people are. The *kesuba* is not a document that effectuates the transaction in the way the *get* does. However, it is a document that provides financial evidence. It might also be used to determine the spelling of a name later, in a *get* or the like. Therefore, the poskim insist that the names be written in the correct way, just as they would appear in a *get*.

If a groom or a bride has more than one name, the common practice is to include all their names, even if they are not used all the time. There is some debate on whether nicknames should also be included [as they are in a *get*.] In our case, a middle name was spelled wrong. A change could make it look like another person, invalidating the document. If, however, the name is not often used, or if it sounds like the correct name, albeit with a wrong spelling, it should not invalidate the document. The *kesuba* might have been valid even if it had been omitted. While the couple may remain together with this document, there is a risk that it will be relied on to determine the spelling of the name for a more critical document. At the earliest opportunity they should correct the situation. A new *kesuba* should be written, as explained in section B. [See refs above. Nachalas Shiva p. 51 (12:16). Gitin 20a, Poskim Tur Sh Ar EH 129 etc., commentaries.]

On the Parsha ... Sarah said "Divorce this maid and her son, for the son of this maid shall not inherit together with my son, together with Yitzchok" ... [21:10] Why should the son lose his inheritance just because his mother was divorced? [Kli Yakar] Furthermore, why is the term 'together with' repeated? [See Rashi] Perhaps, Sarah knew that they would both be involved in dividing the inheritance anyhow. In fact, they had already begun arguing about it. [See Rashi] She was concerned that Yitzchok should have as little as possible to do with Yishmael, due to his negative influence. If both she and Hagar were to die before Avraham, when Avraham would die, the two sons would also have to litigate their mothers' *kesubos*. Sarah was indicating to Avraham just how much she was concerned about the evil influence of Yishmael. Even that extra interaction involved in the second litigation would be too much. By divorcing Hagar now, the *kesuba* would be taken care of now. There would be no need for double inheriting together.

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ben Yehuda Lipa z"l, whose yahrzeit is on the 24th of Cheshvan. 🕯️

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This week's question:

Does misspelling a middle name invalidate a *kesuba*, marriage contract?

The issues:

- A) *The kesuba*
- B) If a *kesuba* is invalid
- C) The language of a *kesuba*

A) *The kesuba*

The word *kesuba* is a written legal document. The full marriage contract contains more than what is actually written in the currently authorized text. Furthermore, the obligations of the *kesuba* contract are binding even without the formal document. The contract includes material and personal obligations on each party and the settlement after the marriage ends by death of the husband or by divorce. It is accompanied by a binding *kinyan*, act of transaction. The document is written testimony that the husband has agreed to the terms of marriage.

The *kesuba* obligation is the subject of much debate. There is a Scriptural reference to *mohar habesulos*, a contractual settlement of virgins. However, there is no clear indication that it is required by *halacha*. Therefore, the Talmud debates whether the requirement is Scriptural or Rabbinical. It might have been enforced Rabbinically, for a reason to be discussed, while the Scriptural reference is to a customary voluntary practice. It might even have been enforced Rabbinically by the elders prior to the giving of the Torah. The Talmud uses this type of reference as *asmachta*, a support for a Rabbinical ordinance from Scripture, similar to a sign of Divine approval. Furthermore, this reference seems to exclude any settlement for the marriage of a non-virgin. Though the Rabbinical reason would apply to her as well, it could not be considered Scriptural. In practice, we follow the view that the *kesuba* obligation is Rabbinical. Nonetheless, the language of the document seems to indicate that for a virgin it is Scripturally required, and Rabbinically required for marriage to a widow or a divorcee. The language of the document is quite rigid, formally authorized to avoid mistakes. The poskim reconcile the implication of this in various ways, such as the type of money and the like.

The Rabbinical reason for the financial undertaking of the *kesuba* is to deter the husband from divorcing his wife on a whim, or as soon as he gets upset with her. It would also prevent the use of divorce as a threat to one's wife, where there are no good grounds for it, or where a husband might want to manipulate his wife. To protect women from this kind of abuse, a financial deterrent was need. At first, the husband made a written commitment to an amount of money in cash – two hundred *zuz* for a virgin and one hundred for a widow or divorcee. Women hesitated from marriage, due to the possibility that the husband would have no cash when the time came to pay. The first corrective institu-

tion was to put up this amount in advance, in the woman's father's possession. This did not work either. Husbands viewed it as 'written off'. The next attempt was to institute that the cash should be left in the care of the man's father, often in the form of precious items. It was hoped that the husband would hesitate before giving up these items. Still, angry husbands found it too easy to point to the property designated for the *kesuba* and send a wife on her way with it. Finally, the modern *kesuba* was instituted, in which the husband commits all of his assets to pay the *kesuba*. Nothing is set aside in advance, and the husband must think hard before deciding to divorce.

The *kesuba* and its accompanying *kinyan* also obligate other undertakings made at the time of marriage. Most common among these are the financial commitments made by both sides. There is a basic obligation that every groom must commit himself to provide on the dissolution of the marriage, similar to modern day prenuptial agreements. Many grooms add to this commitment. The bride provided a dowry of her own. Part of this could be an outright permanent non-refundable gift. Refundable gifts were assessed and given to the husband, with his commitment to refund their value in the event that the marriage would end. On other items the wife retained the title, but that the husband had the rights to use. These may be written into the *kesuba* or an accompanying document.

The obligations between husband and wife during marriage are not all written into the document. The written document automatically binds both parties to the unwritten parts. Some of these are really Scriptural obligations anyhow. According to some opinions, there are ways to circumvent these obligations by one party waiving its claim. This can only work when the claim is of some kind of financial nature, and even then, not in all situations. The obligation of a *kesuba* overrides this possibility of waiver, unless it is specified. The others are called *tnai kesuba/tnai bais din*, obligations that are imposed automatically by the Rabbis. Some may not be waived, due to other considerations.

There are ten obligations of the husband to the wife, and four of the wife to her husband. The husband's obligations are: food, clothing and conjugal rights (all Scriptural); the basic written financial commitment; medical care; to pay her ransom if she is captured; the cost of her burial; to provide her daily needs and shelter in his house after his death for the duration of her widowhood; to provide for her daughters until their marriage; to give her sons the value of her financial *kesuba* as a separate settlement when they share his inheritance. The four obligations of the wife are: to give him the minimum amount of earnings; to give him lost articles that she finds; to give him fruits and produce of the property of which she holds the title; and he inherits her property.

Nowadays, there is a standard text for a *kesuba*, followed more or less universally. There are slight variations depending on the customs of certain communities. Ashkenazim write a basic amount of two hundred silver *zuz* committed by the husband, the general terms used for a woman's dowry, including her personal items, valued at a standard one hundred silver pieces, plus one hundred silver pieces of additional commitment by the husband. In practice, these amounts are not necessarily enforced. Some say that they are meant as a representation of what would be customary. Some maintain that they must add up to a strict silver value, based on Scriptural money. Others maintain that they should be valued according to the equivalent in more modern times. Some say that the real obligation is assessed according to what would serve as a reasonable deterrent in the reality of

the times. Depending on the location and local standards, this might be very small, or very large. [See Shemos 22:16 Devarim 22:29. Kesubos 5b 10a 21a 46b-47b 52b 56a-58a 82b etc., Poskim. Tur Sh Ar EH 66 67 69 etc., commentaries.]

B) Invalid kesuba

If one did not write a *kesuba* before the marriage, the basic obligation is imposed automatically, through *tnai bais din*. This will work to oblige the husband in the marriage duties to his wife. Nonetheless, due to the lack of a visible deterrent, the husband will still think that it is easy for him to end the marriage. Therefore, he may not remain alone with his wife until he writes the *kesuba*. In emergency situations, some maintain that a *kinyan* can be made at the time of the marriage, under the *chupa*, that will allow them temporarily to remain together, until the earliest opportunity arises that they are able to write up a *kesuba*. The *kinyan* must be made with the same specifications that the *kesuba* will have written into it. Others maintain that a *kinyan* is insufficient. The groom must actually give his bride items up to the prescribed value until he writes a *kesuba*.

[There happens to be a quasi-Rabbinical injunction against divorcing a wife against her will. Accordingly, this should prevent arbitrary divorce, even without the written *kesuba* deterrent. However, we do not rely on this to allow the couple to remain together.]

If a document is invalid, it is not worth anything. Accordingly, if a *kesuba* is invalid, it has no deterrent value. Though the *tnai bais din* will impose the basic liabilities on the husband anyhow, he does not have the tangible deterrent. The fact that he made a *kinyan* at the time does not necessarily help. He made the *kinyan* to validate terms in the invalid document. However, some say that even according to the view that a *kinyan* under the *chupa* does not work, it can work in certain cases of invalidation. For example, if the witnesses failed to sign, the *kesuba* is really invalid. However, this is not the same as a torn document. If the *kesuba* was lost, a new *kesuba* must be written immediately. The same terms must be included, and certain language must be used to indicate that this is a replacement *kesuba*. [Since it is a monetary document, there is always some concern that it will be used to make a false claim. If a woman has two separate *kesubos*, she will use both to make claims.] [See references to section A, especially Tur EH 66:1-4. also Tur Sh Ar CM 52, commentaries.]

C) Language of the kesuba

The *kesuba* is a regular document to enforce a financial obligation. As such, the names of the parties, the location and the date must be accurate. The amounts and the obligations that are standard must also be accurate. Both parties should be aware of their obligations and undertakings. If there is an inaccuracy, a document can be used to commit fraud, or at least to force an unjust and illegal outcome. In addition, the *kesuba* is often used to establish the status of a man or woman wishing to remarry, or the status of their children. Certain people have restrictions on whom they may marry, such as a *kohain* marrying a divorcee. The *kesuba* of an earlier marriage will be used as proof.

In the case of a *kesuba*, this means that the names of the bride and groom must be written correctly. The standard version of the *kesuba* has been authorized, to include all the necessary details required Rabbinically. It is written in Rabbinic Aramaic. This was the common language, especially among scholars, during the period when these authorized documents were formalized. It also happens to be the 'mother-tongue' of the Patri-