

When There Was No *Ketubbah*

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שאלה

What should be done when a couple was married without a *ketubbah*.

תשובה

Years ago a married student came to see me. He informed me that he had been married in a Jewish religious ceremony, but without a *ketubbah*. I agreed to compose a document for him which he could then give to his wife as her *ketubbah*. At the time, I considered such a wedding ceremony an unusual occurrence, and did nothing with the document but give it to this student, saving a copy for myself in my files. Over the course of the years it has become clear that the need for such a document is greater than I had believed early on. I have since given it to many rabbis who have discussed the matter with me. The Chair of the Law Committee has now asked me to submit the document for the deliberation of the Committee, and I have agreed to do so.

The Gemara records¹ in the name of Rabbi Meir that אסור לו לאדם שישהא את אשתו אפילו שעה אחת בלא כתובה *ketubbah*. Though the Gemara indicates² that the Sages do permit, even for a period of several years, Maimonides³ and the Shulhan Arukh⁴ record the precedented position in accordance with Rabbi Meir, based on a clear statement to that effect there in the Gemara itself. The Gemara⁵ also records the case of the sister of Rami bar Hama who was married to Rabbi Ivya, and lost her *ketubbah*. Rav Yosef instructed him to write a new one for her. This is what is now known as a כתובה דאירכסא – a *ketubbah* which has been lost. The document here proposed is modeled on a כתובה דאירכסא.

There are several versions of a כתובה דאירכסא, but the best known and virtually the only one used in our day is the version of the *Nahalat Shivah*,⁶ which serves as the basis of the document here suggested. It is basically self-explanatory, but for a couple of points that should be clarified.

1. The document is intended only for those couples who were married without a *ketubbah*, but did have חופה וקידושין. The document does not serve as evidence of valid *kiddushin* in any way, being based exclusively on the statement of the couple that they were married religiously, but without a marriage contract.⁷ This document should be used whenever it comes to the attention of the rabbi that the couple was married without a *ketubbah* being written for them, or when the *ketubbah* written meets no halakhic standards whatsoever to qualify as a legal *ketubbah*. This

document is not intended to replace a legal *ketubbah* which has been lost, or to replace a legal *ketubbah* which is found to contain errors.

2. The document attached provides options for: a) a woman who was previously unmarried, using either the appellation בתולתא or פניתא, b) a woman who had been a widow or divorcee, and c) a woman who is a convert. All refer to her status at the time of the marriage.⁸ The CJLS has approved two further possibilities for the *ketubbah* of a woman who was previously unmarried at the time of her marriage: using no appellation whatsoever, or referring to her as איתתא. I see no way to utilize these in this document, and urge that either בתולתא or פניתא be used in this document exclusively.
3. The Lieberman clause is included, necessitating that *kinyan* be made between the witnesses⁹ and both the husband and the wife. And, as is our current practice, the Letter of Intent urged by the Joint Beit Din to accompany the signing of the *ketubbah* should be used, just as it is when a *ketubbah* containing the Lieberman clause is written and signed on the wedding day. However, the document approved for use as a בקידושין תנאי cannot be used in this instance. Such a stipulation can only be made **at the time of betrothal and not retroactively**. In our case we are assuming that valid *kiddushin* had taken place on the day of the wedding and we cannot now retroactively apply a condition to them.
4. The date to be filled in on the document is the date on which it is being completed, and not the date which the couple says was the date of their wedding. The location by insertion #5 of the document is the city in which the document is being filled in, and the location by insertion #9 is the name of the city in which the couple was married.

Since the *ketubbah* establishes a lien against property of the husband, it cannot be dated with an earlier date, for that would render it a שטר מוקדם and make it invalid.¹⁰ Thus, it seems preferable to avoid any possible confusion about this matter by avoiding all mention of the date of the wedding in this document. In that way, it will be absolutely clear that the lien is established only as of the date written in the document.¹¹

Conclusion

When a couple has been married without a *ketubbah*, the attached document should be utilized as a תשלום כתובה שלא נכתבה.

NOTES

¹ See Bava Kama 89a and Ketubbot 57a.

² Ketubbot, *ibid*.

³ Hilkhoh Ishut 10:10.

⁴ Even ha-Ezer 66:3 and 105:1.

⁵ Ketubbot 56b, bottom.

⁶ No. 13. *Nahalat Shivah* is written by Samuel b. David Moses ha-Levi, 1625?- 1681, Poland. It is the most widely used reference volume for the wording of documents, particularly marriage and divorce documents. For an earlier version of a כתובה דאירכסא, see Tur, Even ha-Ezer, at the end of Siman 66. There are others, as well.

⁷ Obviously, a couple who lacked not only a *ketubbah*, but also *kiddushin*, must have both now, and the wording of the *ketubbah* is standard.

⁸ If she became a convert after her marriage, then she and her husband would, of course, require *kiddushin* as well, with the standard wording of the *ketubbah*, since her first marriage was an intermarriage and hence has no halakhic validity.

⁹ This is not the appropriate place for a lengthy treatment of the best manner of effecting *kinyan* at a wedding. Suffice it to say that the very wording of the *ketubbah* indicates that the *kinyan* is between the witnesses and the groom (and the bride, whenever the Lieberman clause is used). The author gave a session on this subject at a recent convention of the Rabbinical Assembly, and tapes are still available.

¹⁰ See Mishnah Shevi'it 10:5, quoted in several other places, Maimonides, *Hilkhot Malveh ve-Loveh* 23:1 and *Shulhan Arukh*, *Hoshen Mishpat* 43:7. The reason that a שטר מוקדם is invalid is that it would allow the person owed the money to collect it from goods or land sold by the person who owes the money from the date in the document, even though people who may have purchased from him between the date written in the document and the actual date on which it was written would have had no way of knowing that the lien was going to be established. Thus, the invalidation of the document is intended to protect unsuspecting third parties. There is some dispute among the authorities as to whether the document is entirely invalidated or is still valid for properties that are free and clear of all encumbrances.

¹¹ This is precisely what the *Nahalat Shivah* does when the witnesses on a דאירכסא are people who were not present at the wedding to see and hear the original *ketubbah* read and given to the woman. If witnesses to the original wedding sign as the witnesses on the דאירכסא, the date of the original wedding can be included in the replacement. But, our case is not one of replacement at all, so that even if persons present at the original wedding sign as witnesses on this document, the date of the original wedding cannot be included since it might be understood to imply that a lien had been established as of that date.

Translation of the תשלום כתובה שלא נכתבה

[Testimony] regarding what took place before us on the __1 (day of signing) __ day of the week, the __2 (date of signing) __ day of the month of __3 (month of signing) __, in the year five thousand seven hundred __4 (year of signing) __ since the creation of the world, according to the counting system by which we reckon here in __5 (city of signing) __ in North America, that __ (Husband's name) __, the son of __ (Husband's parentage) __ __6 __, came before us and said to us: "This Ms (if a convert, say "convert" instead of "Ms") __ (Wife's name) __, daughter of __ (Wife's parentage) __ __7 __, when __ (8) __ was married to me as my wife at an earlier time, in the city of __9 (Where wedding took place) __, in accordance with the laws of the daughters of Israel who become married to their husbands through huppah and kiddushin. But, I did not write a marriage contract for her. And since our Sages have said that it is forbidden for a son of Israel to stay with his wife even for one hour without a marriage contract, I wish to write a marriage contract for her." Therefore, we, the undersigned, have now performed the act which in Jewish law makes a commitment binding and have written this marriage contract for her in the manner that they are customarily written in this country, to wit:

Mr. __ (Husband's name) __, the son of __ (Husband's parentage) __ __6 __, of the __ (Husband's surname) __ family, said to Ms. (if the wife is a convert, say "convert" instead of "Ms.") __ (Wife's name) __, the daughter of __ (Wife's parentage) __ __7 __, of the __ (Wife's surname) __ family, __10 __ at that earlier time: "Be my wife according to the law of Moses and Israel. I will work on your behalf and honor, sustain, and support you according to the practice of Jewish men, who faithfully work on behalf of their wives and honor, sustain and support them. And I obligate myself to give you __11 __, and your food and clothing and necessities, and I will live with you in marital relations according to universal custom." And __ (Wife's name) __ __12 __ at the earlier time agreed to be his wife, to participate together with him in establishing their home in love, harmony, peace and companionship, according to the practice of Jewish women.

And the dowry which she brought from her __13 __ house, whether in silver, gold, jewelry, clothes, home furnishings or bed linens, __ (Husband's name) __, the aforementioned bridegroom, accepted upon himself in the sum of __14 __ silver pieces. And __ (Husband's name) __, the aforementioned bridegroom, agreed to increase this amount from his own assets a corresponding __15 __ pieces of silver, for a total of __16 __ pieces of silver.

And thus did __ (Husband's name) __, the aforementioned bridegroom, say: "I take upon myself, and my heirs after me, the obligation of this ketubbah, the dowry and the additional sum, to be paid from the best part of all the property that I own anywhere on earth, real and personal, that I now possess or may hereafter acquire. From this day forward, all my property, wherever it may be, even the mantle on my back, shall be mortgaged and liened for the payment of this ketubbah, this dowry, and this additional sum, whether during my lifetime or thereafter."

__ (Husband's name) __, the aforementioned bridegroom, took upon himself all the obligations and strictures of this ketubbah, this dowry, and this additional sum, as is customary with other ketubbot written for Jewish women, in accordance with the enactment of our Sages, may their memory be for a blessing.

The aforementioned __ (Husband's name) __, the son of __ (Husband's parentage) __ __6 __, and this Ms. __ (Wife's name) __, daughter of __ (Wife's parentage) __ __7 __ __17 __ at the earlier time agreed that should either contemplate dissolution of the marriage, or following the dissolution of their marriage in the civil courts, each may summon the other to the Bet Din of The Rabbinical Assembly and The Jewish Theological Seminary, or its representative, and that each will abide by its instructions so that throughout life each will be able to live according to the laws of the

Torah.

[This ketubbah] is not [to be regarded] as mere rhetoric or as a perfunctory legal form.

We have performed the act which in Jewish law makes the obligations of this document legally binding on the part of the aforementioned ___(Husband's name)___, the son of ___(Husband's parentage)___ ___6___ in regard to this ___(Wife's name)___, the daughter of ___(Wife's parentage)___ ___7___ ___18___ when she married him, and from this ___(Wife's name)___, the daughter of ___(Wife's parentage)___ ___7___ ___19___ when she married him in regard to the aforementioned ___(Husband's name)___, the son of ___(Husband's parentage)___ ___6___ with an instrument fit for that purpose, in order to confirm all that is stated and specified above, which shall be valid and immediately effective.

Attested _____20_____, witness

Attested _____21_____, witness

INSERTIONS

1. Day of the week: first day, second day, third day...
2. Date: first, second, third twenty-second, twenty-third... thirtieth day of X which is Rosh Hodesh Y.
3. Month: Tishre, Heshvan, Kislev, Tevet . . .
4. Year: sixty-two, sixty-three . . . seventy –four, seventy-five . . .
5. City: optional: add state/province.
6. The priest, the Levite. When used, the term follows the father's name, not the mother's name.
7. Same as 6.
8. WIFE'S STATUS AT TIME OF MARRIAGE
[Options for previously unmarried woman:]
 - she was a virgin
 - she was unmarried[Other options:]
 - she was a widow
 - she was a divorcee
 - she had converted
9. City: [optional: add state/province]
10. WIFE'S STATUS AT TIME OF MARRIAGE
[Options for previously unmarried woman]
 - who was a virgin
 - who was unmarried[Additional options]
 - who was a widow
 - who was a divorcee
 - who had converted
11. KETUBBAH AMOUNTS
Select appropriate line.
 - Your virgin settlement in the sum of 200 zuzim to which you are entitled by the Torah
 - Your marriage contract settlement in the sum of 200 zuzim to which you are entitled by the Torah (for use with the appellation פניתא)
 - Your widowhood settlement in the sum of 100 zuzim to which you are entitled by the

Rabbis

- Your divorcee settlement in the sum of 100 zuzim to which you are entitled
- The sum of 100 zuzim to which you are entitled (for use with a convert)

12. WIFE'S STATUS AT TIME OF MARRIAGE

[Options for previously unmarried woman:]

- And this (wife's name) who had been a virgin
- And this (wife's name) who had been unmarried

[Additional options:]

- And this (wife's name) who had been a widow
- And this (wife's name) who had been a divorcee
- And this convert (wife's name) who had converted

13. SOURCE OF DOWRY

- If father is living: her father's
- If father is deceased: her family's
- If father is non-Jewish: her family's

14. HUSBAND'S FINANCIAL ACCEPTANCE

- If wife was previously unmarried: 100
- Others: 50

15. AMOUNT OF TOSEFET

- If wife was previously unmarried: 100
- Others: 50

16. TOTAL AMOUNT

- If wife was previously unmarried: 200
- Others: 100

17. Same as 10

18. Same as 10

19. Same as 10

20. Signature of first witness

21. Signature of second witness

תשלום כתובה שלא נכתבה

מה דהות קדמנא _____ 1 (day of signing) בשבת _____ 2 (date of signing) לחדש _____
_____ 3 (month of signing) שנת חמשת אלפים ושבע מאות _____ 4 (year of signing)
לבריאית עולם למנין שאנו מונין כאן ב _____ 5 (city of signing) במדינת אמריקה הצפונית איך מר
_____ (Husband's name) בר _____ 6 (Husband's parentage) אתא לקדמנא ואמר לנא הדא
[If the wife is a convert, insert here:
מרת _____ (Wife's name) בת _____ 7 (Wife's parentage) _____ 8 אנסית
לי לאנתו מן קדמת דנא בעיר _____ 9 (where wedding took place) כהלכות בנות ישראל דמתנסבין
לגוביריהון בחופה וקידושין אך לא כתבי לה כתובה ומכיון דאמרי רבנן דאסור לבר ישראל לשהויי עם
אנתיה בלא כתובה אפילו שעתא חדא בעינא למיכתב לה כתובתא ובכך אנחנו סהדי דחתימו לתחות קנינא
מיניה השתא וכתבנא לה כתובתא דא בלשנא דנהגין למיכתב בה באתרא הדין איך מר _____ (Husband's name)
בר _____ 6 (Husband's parentage) למשפחת _____ (Husband's surname) אמר לה להדא
אתתא

[If the wife is a convert, replace previous word, אתתא, with: גיורתא]

מרת _____ (Wife's name) בת _____ 7 (Wife's parentage) למשפחת _____ (Wife's surname)
_____ 10 מן קדמת דנא הוי לי לאנתו כדת משה וישראל ואנא אפלה ואוקיר ואיזון ואפרנס יתיכי ליכי
כהלכות גוברין יהודאין דפלהין ומוקירין וזנין ומפרנסין לנשהון בקושטא ויהיבנא ליכי _____ 11
ומזוניכי וכסותיכי וסיפוקיכי ומיעל לותיכי כאורה כל ארעא. וצביאת מרת _____ 12 (Wife's name)
מן קדמת דנא והות ליה לאנתו לאשתתופי עמיה בצותא לקימא ית ביתיהו באהבה ובאחווה בשלום וברעות
כמנהגא דנשי יהודאין ודין גדוניא דהנעלת ליה מבי _____ 13 בין בכסף בין בדהב בין בתכשיטין במאני
דלבושא בשימושי דירה ובשימושי דערסא הכל קבל עליו _____ (Husband's name) דנן _____ 14 זקוקים
כסף צרוף וצבי _____ (Husband's name) דנן והוסיף לה מן דיליה עוד _____ 15 זקוקים כסף צרוף
אחרים כנגדן סך הכל _____ 16 זקוקים כסף צרוף. וכך אמר _____ (Husband's name) דנן אחריות שטר
כתובתא דא גדוניא דין ותוספתא דא קבלית עלי ועל ירתי בתראי להתפרע מן כל שפר ארג נכסין וקנינין דאית
לי תחות כל שמיא דקנאי ודעתיד אנא למקנא נכסין דאית להון אחריות ודלית להון אחריות כלהון יהון אחראין
וערבאין לפרוע מנהון שטר כתובתא דא גדוניא דין ותוספתא דא מנאי ואפילו מן גלימא דעל כתפאי בחיי
ובמותי מן יומא דנן ולעלם. ואחריות וחמר שטר כתובתא דא גדוניא דין ותוספתא דא קבל עלי
_____ (Husband's name) דנן כחומר כל שטרי כתובות ותוספתות דנהגין בבנת ישראל העשויים כתקון
חכמינו זכרונם לברכה. וצביאו מר _____ (Husband's name) בר _____ 6 (Husband's parentage)
דנן ומרת _____ (Wife's name) בת _____ 7 (Wife's parentage) _____ 7 מן _____ 17
קדמת דאן יסיק אדעתא דחד מינהון לנתוקי נישואיהון או אן איתנתוק נישואיהון בערכאות דמדינתא דיכול דין
או דא לזמנא לחבריה לבי דינא דכנישתא דרבנן ודבית מדרשא דרבנן דארעתא דקיימא או מאן דאתי מן חילה
וליצותו תרוייהו לפסקא דדיניה בדיל דיכלו תרוייהו למיחי בדיני דאורייתא. דלא כאסמכתא ודלא כטופסי
דשטרי. וקנינא מן _____ (Husband's name) בר _____ 6 (Husband's parentage) דנן למרת
_____ (Wife's name) בת _____ 7 (Wife's parentage) _____ 7 כד אינסיבא ליה
ומן מרת _____ (Wife's name) בת _____ 7 (Wife's parentage) _____ 7 _____ 19 כד
אינסיבא ליה למר _____ (Husband's name) בר _____ 6 (Husband's parentage) דנן על כל מה
דכתוב ומפורש לעיל במנא דכשר למקנא ביה והכל שריר וקים.

נאום _____ 20 עד _____
נאום _____ 21 עד _____

INSERTIONS

(1) באחד / בשני / בשלישי / ברביעי / בחמישי / בששי

(2)

באחד / בשני ימים / בארבעה ימים / בחמשה ימים / בששה ימים / בשבעה ימים / בשמונה ימים / בתשעה ימים / בעשרה ימים / באחד עשר יום / בשנים עשר יום / בשלושה עשר יום / בארבעה עשר יום / בחמשה עשר יום / באחד עשר יום / בששה עשר יום / בשבעה עשר יום / בשמונה עשר יום / בתשעה עשר יום / בעשרים יום / באחד ועשרים יום / בשנים ועשרים יום / בשלושה ועשרים יום / בארבעה ועשרים יום / בחמשה ועשרים יום / בששה ועשרים יום / בשבעה ועשרים יום / בשמונה ועשרים יום / בתשעה ועשרים יום / בשלושים יום

(3)

תשרי / מרחשון / כסלו / טבת / שבט / אדר / אדר ראשון / אדר שני / ניסן / אייר / סיון / תמוז / אב / אלול /
[: בשלשים יום לחדש With]
month שהוא ראש חדש month

(4)

(וחמשים / וששים / ושבעים)
(ואחת / ושתים / ושלוש וארבע / ושש / ושבע / ושמונה / ותשע)

(City [opt.: state/prov.]) (5)

[When used, the term follows the father's name, not the mother's name:] (הכהן / הלוי) (6)

[When used, the term follows the father's name, not the mother's name:] (הכהן / הלוי) (7)

WIFE'S STATUS AT TIME OF MARRIAGE (8)

[Options for previously unmarried woman:]

- הוית בתולתא
- הוית פניתא

[Additional options:]

- הוית ארמלתא [Widow]
- הוית מתרכתא [Divorcee]
- איגיירא [Convert]

(City [opt.: state/prov.]) (9)

WIFE'S STATUS AT TIME OF MARRIAGE (10)

[Options for previously unmarried woman:]

- דהוית בתולתא
- דהוית פניתא

[Additional options:]

- דהוית ארמלתא [widow]
- דהוית מתרכתא [divorcee]
- דאיגיירא [convert]

AMOUNTS כתובה (11)

Select appropriate line:

- בתולתא: [בתולתא:] מוהר בתוליכי כסף זוזי מאתן דחזי ליכי מדאורייתא
- פניתא: [כסף כתובתיך זוזי מאתן דחזי ליכי מדאורייתא]
- ארמלתא: [כסף ארמלותיכי זוזי מאה דחזי ליכי מדרבנן]
- מתרכתא: [כסף מתרכותיכי זוזי מאה דחזי ליכי]
- גיורתא: [כסף זוזי מאה דחזי ליכי]

WIFE'S STATUS AT TIME OF MARRIAGE (12)

[Options for previously unmarried woman:]

• דא דהוית בתולתא

• דא דהוית פניתא

[Additional options:]

• דא דהוית ארמלתא [widow]

• דא דהוית מתרכתא [divorcee]

• גיורתא דא דאיגיירא [convert]

SOURCE OF נדוניא (13)

[If father is living:] אבוה

[If father is deceased:] נשא

[If father is not Jewish:] נשא

HUSBAND'S FINANCIAL ACCEPTANCE (14)

[If wife was previously unmarried:] במאה

[Others:] בחמשין

AMOUNT OF תוספתא (15)

[If wife was previously unmarried:] מאה

[Others:] חמשין

TOTAL AMOUNT (16)

[If wife was previously unmarried:] מאתים

[Others:] מאה

(Wife's status at time of marriage [same as 12]) (17)

(Wife's status at time of marriage [same as 12]) (18)

(Wife's status at time of marriage [same as 12]) (19)

[first witness's signature—'עד א'] (20)

[second witness's signature—'עד ב'] (21)