When There Was No *Ketubbah*

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**Sha'alah**

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

**Teshubah**

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 על אדם שחบาง את אשת אפליה – It is forbidden for a man to remain with his wife even for one hour without a *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 Iyya, and lost her *ketubbah*. Rav Yosef instructed him to write a new one for her. This is what is now known as a חבלת אירכסה – a *ketubbah* which has been lost. The document here proposed is modeled on a.

There are several versions of a חבלת אירכסה, but the best known and virtually the only one used in our day is the version of the *Nahalat Shivah*, 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 חابة אירכסה. 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

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*The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.*
The document is not intended to replace a legal \textit{ketubbah} which has been lost, or to replace a legal \textit{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 מתפטרה או מתולעת, 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. The CJLS has approved two further possibilities for the \textit{ketubbah} of a woman who was previously unmarried at the time of her marriage: using no appellation whatsoever, or referring to her as אישה פשתן או באורגנים. I see no way to utilize these in this document, and urge that either מתפטרה או מתולעת be used in this document exclusively.

3. The Lieberman clause is included, necessitating that \textit{kinyan} be made between the witnesses 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 \textit{ketubbah} should be used, just as it is when a \textit{ketubbah} containing the Lieberman clause is written and signed on the wedding day. However, the document approved for use as a ketubbah 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 \textit{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 \textit{ketubbah} establishes a lien against property of the husband, it cannot be dated with an earlier date, for that would render it a טשרט מקדמים and make it invalid. 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.

Conclusion
When a couple has been married without a \textit{ketubbah}, the attached document should be utilized as a \textit{师事务וה שלма נמכירה}.

\textbf{NOTES}

1. See Bava Kama 89a and Ketubbot 57a.
2. Ketubbot, ibid.
5. Ketubbot 56b, bottom.
6. No. 13. \textit{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 \textit{师事务וה שלמה נמכירה}, 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 \textit{ketubbah}, but also \textit{kiddushin}, must have both now, and the wording of the \textit{ketubbah} is standard.
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.

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 conveniton of the Rabbinical Assembly, and tapes are still available.

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 osen rya 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 encumberances.

This is precisely what the Nahalat Shivah does when the witnesses on a ketubbah 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 ketubbah, 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.
[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 ___6 (Husband’s parentage)___, came before us and said to us: “This Ms (if a convert, say “convert” instead of “Ms”) ___7 (Wife’s name)___, daughter of ___8 (Wife’s parentage)___, when ___9 (Where wedding took place)___ was married to me as my wife at an earlier time, in the city of ___10 (city of wedding)___, 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. ___1 (Husband’s name)___, the son of ___2 (Husband’s parentage)___, of the ___3 (Husband’s surname)___ family, said to Ms. (if the wife is a convert, say “convert” instead of “Ms.”) ___4 (Wife’s name)___, the daughter of ___5 (Wife’s parentage)___, of the ___6 (Wife’s surname)___ family, ___7 ___ 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 ___8 ___ , and your food and clothing and necessities, and I will live with you in marital relations according to universal custom.” And ___9 (Wife’s name)___ 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 ___10 ___ house, whether in silver, gold, jewelry, clothes, home furnishings or bed linens, ___11 (Husband’s name)___, the aforementioned bridegroom, accepted upon himself in the sum of ___12 ___ silver pieces. And ___13 (Husband’s name)___, the aforementioned bridegroom, agreed to increase this amount from his own assets a corresponding ___14 ___ pieces of silver, for a total of ___15 ___ pieces of silver.

And thus did ___16 (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.”

___17 (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 ___18 (Husband’s name)___, the son of ___19 (Husband’s parentage)___, and this Ms. ___20 (Wife’s name)___, daughter of ___21 (Wife’s parentage)___, 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 aforemen-
tioned ___(Husband’s name)_____, the son of __(Husband’s parentage)___
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.
6. The priest, the Levite. When used, the term follows the father’s name, not the mother’s name.
7. Same as 6.
8. WIFES’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 הַבֵּן)
    • 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
特斯לום חונכה שלא נכתבה

(wife's name) (date of signing) (wife's surname) (wife's parentage)

(1) (day of signing) (2) (date of signing) (3) (month of signing) (4) (year of signing) (city of signing) במדינת (5) אברעתי עם (6) (Husband's surname) (Husband's parentage) (Husband's name)

[If the wife is a convert, insert here:]

(1) (day of signing) (2) (date of signing) (3) (month of signing) (4) (year of signing) (city of signing) במדינת (5) אברעתי עם (6) (Husband's surname) (Husband's parentage) (Husband's name)

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

(1) (day of signing) (2) (date of signing) (3) (month of signing) (4) (year of signing) (city of signing) במדינת (5) אברעתי עם (6) (Husband's surname) (Husband's parentage) (Husband's name)

(1) (day of signing) (2) (date of signing) (3) (month of signing) (4) (year of signing) (city of signing) במדינת (5) אברעתי עם (6) (Husband's surname) (Husband's parentage) (Husband's name)

(1) (day of signing) (2) (date of signing) (3) (month of signing) (4) (year of signing) (city of signing) במדינת (5) אברעתי עם (6) (Husband's surname) (Husband's parentage) (Husband's name)

(1) (day of signing) (2) (date of signing) (3) (month of signing) (4) (year of signing) (city of signing) במדינת (5) אברעתי עם (6) (Husband's surname) (Husband's parentage) (Husband's name)

(1) (day of signing) (2) (date of signing) (3) (month of signing) (4) (year of signing) (city of signing) במדינת (5) אברעתי עם (6) (Husband's surname) (Husband's parentage) (Husband's name)

(1) (day of signing) (2) (date of signing) (3) (month of signing) (4) (year of signing) (city of signing) במדינת (5) אברעתי עם (6) (Husband's surname) (Husband's parentage) (Husband's name)

(1) (day of signing) (2) (date of signing) (3) (month of signing) (4) (year of signing) (city of signing) במדינת (5) אברעתי עם (6) (Husband's surname) (Husband's parentage) (Husband's name)

(1) (day of signing) (2) (date of signing) (3) (month of signing) (4) (year of signing) (city of signing) במדינת (5) אברעתי עם (6) (Husband's surname) (Husband's parentage) (Husband's name)

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(1) (day of signing) (2) (date of signing) (3) (month of signing) (4) (year of signing) (city of signing) במדינת (5) אברעתי עם (6) (Husband's surname) (Husband's parentage) (Husband's name)

(1) (day of signing) (2) (date of signing) (3) (month of signing) (4) (year of signing) (city of signing) במדינת (5) אברעתי עם (6) (Husband's surname) (Husband's parentage) (Husband's name)

(1) (day of signing) (2) (date of signing) (3) (month of signing) (4) (year of signing) (city of signing) במדינת (5) אברעתי עם (6) (Husband's surname) (Husband's parentage) (Husband's name)

(1) (day of signing) (2) (date of signing) (3) (month of signin...
WIFE’S STATUS AT TIME OF MARRIAGE

[Options for previously unmarried woman:]

• Widow
• Divorced

[Additional options:]

• Widow
• Divorced

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

WIFE’S STATUS AT TIME OF MARRIAGE
AMOUNTS (11)
Select appropriate line:
[במתנה:] מחוללת מכף וזכאות דזו לי לשי מתוארות
[赁תחת:] מכף מחוללות וזכאות דזו לי לשי מתוארות
[האמנה:] מכף אימבול런 וזכאות דזו לי לשי מדרבנן
[מסכנת:] מכף מרוכבת וזכאות דזו לי לשי

WIFE’S STATUS AT TIME OF MARRIAGE (12)
[Options for previously unmarried woman:]
• אויה בתולתא
• אויה פניתא

[Additional options:]
• אויה אימבולאת
• אויה מתרכבת
• אויה מתא ליה
• אויה לא אימבולאת

SOURCE OF ננדנית (13)
[If father is living:]
אבוה
[If father is deceased:]
נשה
[If father is not Jewish:]
במה

HUSBAND’S FINANCIAL ACCEPTANCE (14)
[If wife was previously unmarried:]
בהמשיכ
[Others:]

AMOUNT OF תוספתא (15)
[If wife was previously unmarried:]
מאא
[Others:]

TOTAL AMOUNT (16)
[If wife was previously unmarried:]
מאא
[Others:]

(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—דע א] (20)
[second witness’s signature—דע ב] (21)